

Decision No. 89030 JUN 27 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of: )

THOMPSON TRANSPORT SYSTEMS, INC., )  
a corporation to sell and trans- )  
fer a certificate of public con- )  
venience and necessity authori- )  
zing the transportation of cement )  
to MILES TANK LINES, INC., a cor- )  
poration. )

Application No. 57845  
(Filed February 1, 1978)

In the Matter of the Application )  
of: )

MILES TANK LINES, INC., a corpor- )  
ation, to sell and transfer a )  
certificate of public convenience )  
and necessity authorizing the )  
transportation of cement to )  
THOMPSON TRANSPORT SYSTEMS, INC., )  
a corporation. )

OPINION

By their joint application, Thompson Transport Systems, Inc. (THOMPSON) and Miles Tank Lines, Inc. (MILES), both California corporations, seek authority from this Commission to sell and transfer, by means of a mutual exchange thereof, their individual cement carrier certificates.

THOMPSON is presently operating under a cement carrier certificate granted to it by this Commission's Resolution No. 13825, Sub No. 28, dated June 23, 1964, as amended by Decision 81320 dated May 1, 1973 in Application 53123. Said certificate authorizes the transportation of cement from any and all points of origin to all points located within the Counties of Kern, Sacramento and San Joaquin. THOMPSON also holds other certificate and permit authorities from this Commission, none of which are involved herein.

MILES also operates under a cement carrier certificate granted to it by this Commission in Decision 79926 dated April 11, 1972 in Application 53159. That certificate authorizes it to transport cement from any and all points of origin to all points located within the Counties of Fresno and Merced. MILES also possesses certificate to operate as a highway common carrier and as a petroleum irregular route carrier in addition to permit carrier authority, none of which are involved in this proceeding.

According to their proposal, as evidenced by the "Agreement" identified as Exhibit "A" of the application, THOMPSON and MILES have entered into a mutual agreement whereby each carrier would exchange its present cement carrier certificate for that of the other one, both parties having determined the two certificates to be of equivalent value. Both carriers assert that no consideration, other than the cement certificates themselves, is involved in the proposed exchange of their cement authorities.

THOMPSON and MILES both allege that the following facts justify the proposed exchange of their current cement carrier certificates with each other:

- (a) The present certificates of both carriers authorize them to perform such transportation and they have done so individually, regularly and dependably to and from points located in their respective, authorized counties;
- (b) The Boards of Directors and shareholders of both THOMPSON and MILES have now separately determined that it would be in their own best interest to terminate the transportation of cement in their respective authorized counties and, instead, to seek different operating authority which would allow each of them to transport cement in other designated counties more consistent with their other transportation services, as well as their other business interests;
- (c) As a result of arm's length negotiations, both carriers determined that the proposed mutual exchange of their respective cement carrier operating authorities, without

any other consideration involved, would be fair, just and equitable; also that such an exchange of operating authorities would be in the best interest of each carrier as well as the public generally; and

- (d) That the proposed exchange of like certificates will not adversely affect the financial condition of either applicant because no financial obligations or encumbrances will accrue from the proposal if approved.

Both THOMPSON and MILES point out that they, as well as their predecessors in interest, have been engaged in the for-hire transportation of cement for a significant period of time. As recited above, both carriers presently hold valid certificated authority from this Commission authorizing each of them to perform such transportation. Furthermore, both applicants assert that they have the financial ability, as well as the operating equipment, necessary to enable each one of them to continue to conduct cement carrier operations; and to expand their own fleet of operating equipment, as well as terminal facilities wherever and whenever it is deemed necessary.

Each of the carriers involved herein declares that it stands ready, willing and able to conduct and perpetuate the transportation services heretofore provided by the other carrier in its present service area of cement operations. Both carriers contend that approval of their proposed exchange of cement certificate authorities will prevent any gap in their cement transportation services; and will assure the public of the continued availability of each carrier's efficient and responsive transportation service, all of which would be in the public interest.

The verified application contains the latest financial data for each of the carriers involved:

- (1) THOMPSON's balance sheet for the fiscal period ended September 30, 1977 indicates total assets of \$438,939; total liabilities of \$382,106; and the stockholders' equity as \$56,833.
- (2) MILES' balance sheet dated December 31, 1976 shows total assets of \$392,817; total liabilities of \$281,578; and the stockholders' equity as \$111,239.

Both applicants are parties to Western Motor Tariff Bureau, Inc., Agent, tariffs which are necessary for the publication of rates to cover their respective intrastate cement operations. Upon approval of their proposal, each applicant proposes to adopt the applicable tariffs, including the service area by counties, of the other one. In addition thereto, applicants confirm that they will comply with all of the certificate requirements of this Commission, including the filing of evidence of liability insurance. THOMPSON and MILES have each submitted a copy of one of their freight bills as evidence of cement operations having been conducted under their respective certificated authorities during the past year.

Copies of the application were served by applicants on each of their competing cement carriers, as well as on the California Trucking Association. Notice of the filing of said application appeared in the Commission's Daily Calendar of February 3, 1978. No protests to the granting of the application have been received. Applicants request that the Commission's decision on their unopposed application be rendered ex parte; that the resulting decision be made effective on the date it is signed inasmuch as there is no opposition; and that the necessary tariff filings be authorized for publication on five days' notice to the Commission and to the public.

After consideration, the Commission finds that the proposed sale and transfer of each applicant's cement operating authority through a mutual exchange thereof, one with the other, would not be adverse to the public interest. The Commission concludes that the application should be granted as set forth in the ensuing order. A public hearing is not necessary. The order which follows will provide for, in the event the proposed exchange of said operating rights is completed, the revocation of the cement certificates presently held by THOMPSON and MILES, respectively, and the issuance of "in-lieu" certificates to each of them restating their new service areas according to the proposal herein.

Applicants are both placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the State which is not in any respect limited as to the number of rights which may be given. The authorizations granted shall not be construed as a finding of the value of the rights authorized to be transferred through a mutual exchange thereof.

ORDER

IT IS ORDERED that:

1. Thompson Transport Systems, Inc. and Miles Tank Lines, Inc., both California corporations, may sell and transfer to each other their respective cement carrier operating rights referred to in the application. This authorization shall expire if not exercised by December 31, 1978, or within such additional time as may be authorized by the Commission.
2. Within thirty days after the transfers, applicants shall each file with the Commission a written acceptance of its certificate and a true copy of the bill of sale or other instrument of transfer.
3. Each applicant shall amend or reissue the tariffs now on file with the Commission naming rates and rules governing the cement carrier operations transferred to show that it has adopted or established, as its own, such rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the date of transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's

General Order 117-Series. Failure to comply with the provisions of General Order 117-Series may result in a cancellation of the operating authorities granted by this decision.

4. In the event the transfers authorized in Paragraph 1 are completed, and effective concurrently with the effective date of the tariff filings required by Paragraph 3, certificates of public convenience and necessity are granted to Thompson Transport Systems, Inc. and to Miles Tank Lines, Inc. authorizing them to operate as cement carriers, as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendices A and B, respectively, of this decision.

5. The certificates of public convenience and necessity granted to Thompson Transport Systems, Inc. by Resolution No. 13825, Sub No. 28, as amended by Decision 81320; and to Miles Tank Lines, Inc. by Decision 79926, are revoked effective concurrently with the effective date of the tariff filings required by Paragraph 3.

6. Applicants shall each comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. Applicants shall maintain their accounting records on a calendar-year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content and number of copies as the Commission, from time to time, shall prescribe.

8. Applicants shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If it elects not to transport collect on delivery shipments, then it shall make the appropriate tariff filings as required by the General Order.

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The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27<sup>th</sup> day  
of JUNE, 1978.

William J. Ignone President  
George L. Sturgeon  
Richard D. Harshbarger  
Paul J. Dehrich Commissioners

Commissioner Robert Batinovich, being  
necessarily absent, did not participate  
in the disposition of this proceeding.

Thompson Transport Systems, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, from any and all points of origin to any and all points located in the Counties of Fresno and Merced.

RESTRICTION: This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 89030, Application 57845.



Miles Tank Lines, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, from any and all points of origin to any and all points located in the Counties of Kern, Sacramento and San Joaquin.

RESTRICTION: This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

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