

Decision No. 89799 : DEC 19 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Ted A. Lewis, individually and)
doing business as Lewis Trucking,)
Northern Cement Transportation,)
Inc., and Northern Commodities)
Transportation, a corporation to)
acquire cement carrier certifi-)
cates)

Application No. 58354
(Filed September 14, 1978)

O P I N I O N

By their joint application, Ted A. Lewis, an individual, and Northern Cement Transportation, Inc., a California corporation (herein collectively designated as sellers), seek authority to sell and transfer and Northern Commodities Transportation, a California corporation (purchaser), seeks authority to purchase and acquire the certificates of public convenience and necessity as cement carriers held by the sellers. The certificates were granted to the sellers as follows:

- (a) The cement carrier certificate of Ted A. Lewis, an individual, doing business as Lewis Trucking, was granted pursuant to Decision 85616 dated March 23, 1976 in Application 56229 and authorizes the transportation of cement from any and all points of origin to all points in the counties of Colusa, Fresno, Kings, Los Angeles, Orange, San Bernardino, San Diego, Santa Barbara, Tulare and Ventura.
- (b) The cement carrier certificate of Northern Cement Transportation, Inc. was granted pursuant to Decision 80652 dated October 25, 1972 in Application 53569 and authorizes the transportation of cement from any and all points of origin to all points in the counties of Alameda, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kern, Lake, Lassen, Madera, Marin, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Shasta, Solano, Sonoma, Sutter and Yolo.

Northern Cement Transportation, Inc. holds a highway contract carrier permit issued by the Commission under File T-96,015.

Ted A. Lewis, who is also chief stockholder of Northern Cement Transportation, Inc., wishes to withdraw from the trucking business and pursue other investment interests. The total selling price is \$784,000 which includes the sale of both certificates, certain operating equipment, and a National Compu-tronic billing machine, all as set forth in the purchase agreement, a copy of which is attached to the application. The breakdown of the sale price total is as follows:

Cement Carrier Certificates	\$125,000
Tractor and Trailer Equipment as listed in Exhibit D of the Application	651,500
National Compu-tronic Billing Machine	<u>7,500</u>
Total	<u>\$784,000</u>

The purchaser will pay the price by the following method: (a) \$399,000 will be paid in cash, (b) \$252,500 will be evidenced by a promissory note with interest at 9½% per annum, principal and interest to be paid in full on or before January 1, 1980. This note is to be secured by title to certain tractor equipment to be transferred as listed in Exhibit D of the application and (c) \$132,500 will be evidenced by a promissory note with interest at 9½% per annum, principal and interest to be paid in full on or before January 1, 1984. This note is personally guaranteed by Arlen Alberts, President and majority stockholder of the purchaser. The purchaser's balance sheet dated August 25, 1978 shows a net worth of \$138,000.

Sellers participate in tariffs published by Western Motor Tariff Bureau, Inc., Agent, for rates and rules governing the operations under the certificates. The purchaser proposes to adopt said tariffs.

The application includes copies of shipping documents which show that both certificates to be transferred have been exercised during the past year.

The applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. Notice of the filing of the application appeared in the Commission's Daily Calendar of September 15, 1978. No protests to the application have been received.

After consideration the Commission finds that:

1. The proposed notes are for a proper purpose.
2. The money, property or labor to be procured or paid for by the notes herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.
3. The proposed transfers would not be adverse to the public interest.

On the basis of the foregoing findings the Commission concludes that the application should be granted. A public hearing is not necessary.

The order which follows will provide for, in the event the transfers are completed, the revocation of the certificates presently held by Ted Lewis, an individual, doing business as Lewis Trucking and Northern Cement Transportation, Inc., and the issuance of a certificate in appendix form to Northern Commodities Transportation, a California corporation.

Purchaser is placed on notice that operating 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 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 cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. Ted Lewis, an individual, doing business as Lewis Trucking and Northern Cement Transportation, Inc., a California corporation, may sell and transfer the operative rights and equipment referred to in the application to Northern Commodities Transportation, a California corporation, who may issue two promissory notes in the principal amounts of \$252,500 and \$132,500, respectively, which documents shall be in substantially the same form as that attached to the application. This authority shall expire if not exercised by June 30, 1979 or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer, the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established as its own, the 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 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 authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Northern Commodities Transportation, a California corporation, authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

5. The certificates acquired by Decisions 80652 and 85616 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

7. Purchaser shall maintain its 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. Purchaser shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate filings as prescribed by the General Order.

9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

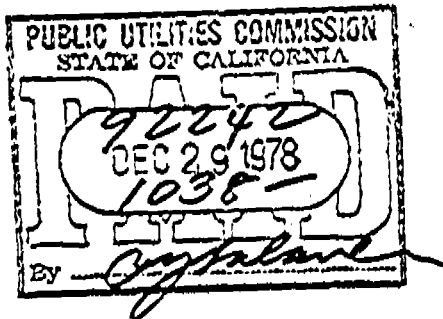
10. This order shall become effective when Northern Commodities Transportation, a California corporation, has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$1,038.

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The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 19th day of DECEMBER, 1978.

Robert Butman
President
William Lyons Jr.
Verizon L. Striggen
Robert D. Howell
Clair J. Deibel
Commissioners



Northern Commodities Transportation, a California 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 all points in the following counties:

Alameda	Los Angeles	San Francisco
Butte	Madera	San Joaquin
Calaveras	Marin	San Luis Obispo
Colusa	Merced	San Mateo
Contra Costa	Monterey	Santa Barbara
Del Norte	Napa	Santa Clara
El Dorado	Nevada	Shasta
Fresno	Orange	Solano
Glenn	Placer	Sonoma
Humboldt	Plumas	Sutter
Kern	Sacramento	Tulare
Kings	San Benito	Ventura
Lake	San Bernardino	Yolo
Lassen	San Diego	

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

RESTRICTION

Whenever Northern Commodities Transportation, a California corporation, engages other carriers for the transportation of the property of Ted Lewis, Arlen Alberts, Northern Cement Transportation, Inc. or Northern Commodities Transportation, or subsidiaries, affiliates or customers or suppliers of said individuals or corporations, Northern Commodities Transportation shall not pay such other carriers rates and charges less than the rates and charges published in Northern Commodities Transportation's tariffs on file with this Commission.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 89799, Application 58354.