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ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Ruth W. Mallory to)
transfer her Cement Carrier Cer- )
tificate of Public Convenience )
and Necessity and her Highway )
Common Carrier Certificate of )
Public Convenience and Necessity;)
and Robert P. Anderson and )
Rozella A. Anderson, husband and )
wife, doing business under the )
fictitious name of R and R Ander- )
son Trucking, (sic) to acquire )
said certificates (Public Util- )
ities Code Section 851) )

Application No. 58437
(Filed October 27, 1978)
(Amended January 2, 1979)

O P I N I O N

By their joint application, Ruth W. Mallory, an individual doing business as Mallory Trucking (seller), seeks Commission authority herein to sell and transfer, and Robert P. and Rozella A. Anderson, husband and wife doing business under the fictitious business name of R & R Anderson Trucking (purchasers), seek corresponding authority herein to purchase and acquire two existing certificates of public convenience and necessity, one authorizing operations as a cement carrier, the other as a highway common carrier, both for the transportation of cement in truckloads.

The conventional cement carrier certificate involved herein was granted to the seller by Resolution No. 13821 (Sub No. 69) dated June 23, 1964 in Application 46379. It authorizes the transportation of cement from any and all California points of origin to all points in the Counties of Los Angeles, Orange, Riverside, San Bernardino and San Diego.

The highway common carrier certificate involved herein was issued prior to the enactment in 1963 of legislation which established the classification "cement carrier" and defined it as a common carrier (see Section 214.1 of the Public Utilities Code).

Said certificate is limited to the transportation of cement, in bulk, between certain southern California points, as well as between certain northern and southern California points. It was granted to George R. Mallory, seller's deceased husband, by Decision 52304 dated November 29, 1955 in Application 36142 and subsequently transferred to his surviving wife (seller) by Decision 64525 dated November 7, 1962 in Application 44733.

At the time the initial application herein was filed, Ruth W. Mallory also held radial highway common carrier and dump truck carrier permits issued to her in File T-71,651. Since then, she has filed a "conversion" application with this Commission seeking to convert her radial permit to a highway contract carrier permit. Upon issuance of the contract permit later this year, she will file an informal application to transfer said permit to the purchasers herein as contemplated by the applicants in their original proposal. The dump truck permit, formerly held by Ruth W. Mallory in File T-71,651, was subsequently sold and transferred by her to Rozella A. Anderson, one of the applicants herein, on November 7, 1978 in File T-124,697.

Ruth W. Mallory also possesses two interstate certificates issued to her by the Interstate Commerce Commission under its Docket No. 112196 (Sub Nos. 1 and 5), both dated March 8, 1963, which authorize the interstate transportation of cement, in bulk, as specified therein, and which are subject to the jurisdiction of that federal commission.

The applicant purchasers already hold an assortment of permit authorities issued to them by this Commission either individually, or jointly, or corporately, in which they have a full or partial interest. Each one of the present owners of these permit authorities are affiliated and, thus, are "alter egos" of one another by reason of common ownership. These permit authorities are identified as to the owner(s) and type(s) thereof as follows:

1. Robert P. Anderson, dba R & R Trucking. Holds Radial and Dump Truck permits in File T-78,883.
2. Induroco, Inc., dba Industrial Rock Products. (Robert P. Anderson is President and Treasurer; Rozella A. Anderson is Vice-president and Secretary.) Holds Radial and Dump Truck permits in File T-107,277. According to Commission records, both of the Andersons are stockholders in Induroco, Inc., each holding 1,000 shares of capital stock in that California corporation.
3. Rozella A. Anderson. Holds a Dump Truck permit in File T-124,697. (Just recently acquired this permit from Ruth W. Mallory, dba Mallory Trucking, File T-71,651, one of the applicants herein.)

Applicants allege that the proposed sale and transfer of both of the intrastate certificate authorities is justified in that Ruth W. Mallory plans to retire from the trucking business while Robert P. and Rozella A. Anderson desire to operate under said certificates in order to be able to offer continuous and efficient cement transportation services in the same geographical areas as those previously served by the selling carrier. Approval of the sale and transfer of the intrastate certificates involved herein will not affect the existing competitive balance among common carriers of cement but rather it will serve to preserve the cement traffic involved by merely substituting one active and progressive carrier for another one with the desire to retire from the trucking business in California.

The initial application contains an "Agreement and Escrow Instructions of Sale" signed by all parties thereto on September 14, 1978 whereby Ruth W. Mallory agreed to sell and Robert P. and Rozella A. Anderson agreed to buy all of the seller's operating equipment, her interstate certificates, and her California intrastate authorities (both certificates and both permits as stated above) for the total purchase price of \$125,000 allocated to such equipment and operating authorities, according to the sale agreement, as follows:

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|----|--|------------------|
| A. | Operating equipment (9 vehicle units) as described in Exhibit "A."   | \$50,000.        |
| B. | Interstate Commerce Commission's certificates as described in Exhibit "B."   | \$50,000.        |
| C. | Certificates and permits issued by the California Public Utilities Commission (and approvals of the Arizona Commission not involved herein) as described in Exhibit "B." | <u>\$25,000.</u> |

Total Purchase Price: \$125,000.

According to the sale agreement, the terms of payment are as follows: (a) \$1,000 cash on date of execution thereof; (b) \$14,000 cash on the date of consummation of the sale and purchase of all of the property described above; and (c) the balance of the purchase price, or \$110,000, is to be paid by the purchasers by issuing a promissory note (Exhibit "C") in that amount to the seller herein. Principal of the note, plus interest at eight percent (8%) per annum on the unpaid balance thereof, is payable in monthly installments of \$1,050 each until the principal and interest thereon have been paid in full.

Also attached to the application is a "Security Agreement" signed by all applicants herein which provides that the purchasers (debtors) shall grant to Ruth W. Mallory, the seller herein, a security interest in the operating equipment, which they propose to purchase from her, as collateral; also in their rights under the certificates and permits, previously described above, which are the subject of the proposed sale and transfer; and in all proceeds and products which might be derived therefrom.

Purchasers' balance sheet as of March 31, 1978 is appended to the application. It lists their combined assets as \$541,502, liabilities as \$225,220 and net worth as \$316,282 which serves to confirm the fact that they have the financial ability to perform the proposed additional transportation services. Under the proposal,

all of the nine (9) units of trucking equipment, which the purchasers herein propose to buy from the selling owner thereof, will be used to provide the necessary transportation services under the newly-acquired certificates and permits if the transfer thereof, as proposed herein, is approved.

Ruth W. Mallory currently publishes her own individual tariff, filed with this Commission, governing the transportation of cement under her respective certificates. Purchasers state that they will adopt the seller's present published tariff of rates for the transportation that they propose to perform under the acquired operating certificates if this transfer application is approved by the Commission. As evidence of bulk cement transportation having been performed under her cement carrier authority during the past year, applicant seller has submitted with the application a copy of an actual shipping document issued by her trucking firm.

The applicants request a waiver of the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of applications seeking transfer authority. They contend that neither the shipping public nor any other carrier would be adversely affected by the granting of this application which merely seeks to substitute one owner for another so as to preserve and perpetuate the transportation operations of an existing common carrier.

A true copy of the subject application, as well as the amendment thereto, was served by applicants by mail upon the California Trucking Association. Notice of the filing of the application and the amendment thereto appeared in the Commission's Daily Calendar of October 30, 1978 and January 4, 1979, respectively. No protests to the granting of the application, as amended, have been received.

After consideration, the Commission finds that:

1. The proposed sale and transfer of the operating equipment and intrastate certificates as described in Application 58437, as amended, would not be adverse to the public interest.

2. Applicants' request for a waiver of certain provisions of the Commission's Rules of Practice and Procedure should be authorized.

3. The transfer of any existing permits, including the conversion of valid radial highway common carrier permits pursuant to Sections 1063.5 and 3572.5 of the Public Utilities Code, which are now held by any of the applicants in this proceeding, will require the filing by the parties involved of individual application (or conversion) forms and will be accomplished by separate action thereon according to established procedures.

4. A public hearing is not necessary.

Based on the above findings, the Commission concludes that the application, as amended, should be granted as set forth in the ensuing order. The operating certificates involved herein will be updated and restated to incorporate any necessary changes, as well as to reflect the "alter ego" relationships resulting from the ownership thereof by the purchasers involved herein. In the event the transfer is consummated, the order herein will provide for the issuance of two in-lieu certificates, in appendix form, to Robert P. and Rozella A. Anderson, the purchasers, doing business as R & R Anderson Trucking, and the revocation of the two certificates presently held by Ruth W. Mallory, doing business as Mallory Trucking, the seller.

Purchasers are 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, these rights extend to the holders 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 action taken herein shall not be construed as a finding of the value of the rights and properties authorized to be transferred. So far as the operative rights are concerned, the authorization herein granted is for the transfer of the highway common carrier and cement carrier certificates of public convenience and necessity only. Any transfer or conversion of permitted operative rights must be the subject of a separate informal application to the Commission.

O R D E R

IT IS ORDERED that:

1. Ruth W. Mallory, an individual, may sell and transfer the operating equipment and intrastate certificates referred to in the application and its amendment to Robert P. Anderson and Rozella A. Anderson, husband and wife, doing business as R & R Anderson Trucking. This authorization shall expire if not exercised by December 31, 1979, or within such additional time as may be authorized by the Commission.

2. On or after the effective date of this order and on or before December 31, 1979, for the purposes specified in this proceeding, purchasers may issue a promissory note to seller in the principal amount of not exceeding \$110,000, and may execute and deliver a security agreement therefor, which document shall be in substantially the same form as that attached to the application.

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

4. Purchasers shall amend or reissue the tariff on file with the Commission naming rates and rules governing each of the common carrier operations transferred to show that they have adopted or established, as their 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 Orders 80-Series and 117-Series. Failure to comply with the provisions of General Orders 80-Series and 117-Series may result in a cancellation of the operating authorities granted by this decision.

5. In the event the transfer authorized by paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 4, two certificates of public convenience and necessity are granted to Robert P. Anderson and Rozella A. Anderson, husband and wife, doing business as R & R Anderson Trucking, authorizing them to operate as a highway common carrier and as a cement carrier, as defined in Sections 213 and 214.1, respectively, of the Public Utilities Code, between the points specifically set forth in Appendices A and B, respectively, of this decision.

6. The certificates of public convenience and necessity, the one granted by Decision 52304 and acquired by Ruth W. Mallory by Decision 64525, and the other granted to her by Resolution No. 13821 (Sub No. 69) are hereby both revoked effective concurrently with the effective date of the tariff filings required by paragraph 4.

7. Purchasers shall comply with the safety rules of the California Highway Patrol, and the insurance requirements of the Commission's General Order 100-Series.

8. Purchasers 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.



9. Purchasers shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchasers elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

10. The applicants are granted a waiver from the Commission's Rules of Practice and Procedure to the extent requested in the application and amendment thereto.

11. The authority granted by this order to issue a promissory note and to execute and deliver a security agreement therefor will become effective when the issuers thereof have paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$220. In all other respects, the effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 14th day of FEBRUARY, 1979.

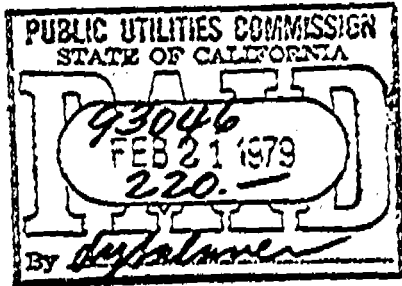
John E. Boyron  
President  
Carson L. Sturgeon

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

Alvin T. Delrick

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

Commissioners



Robert P. Anderson and  
Rozella A. Anderson  
(Copartners)  
doing business as  
R & R ANDERSON TRUCKING

Robert P. Anderson and Rozella A. Anderson, copartners, by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to conduct operations as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of Cement, in bulk, between the following specified points and subject to the restrictions shown below:

1. BETWEEN Colton and Riverside, on the one hand, AND El Centro, Calexico, Brawley, Arlington, Holtville and Calipatria, on the other hand.
2. BETWEEN Kentucky House and Redwood City Harbor, on the one hand, AND El Monte, Vernon, Redondo Beach and North Long Beach, on the other hand.

RESTRICTIONS:

1. This authority does not include the right to render service to, from or between intermediate points.
2. Whenever Robert P. Anderson and Rozella A. Anderson, copartners doing business as R & R Anderson Trucking, engage other carriers for the transportation of the property of Robert P. Anderson or Rozella A. Anderson, individually; or R & R Trucking; or Induroco, Inc.; or Industrial Rock Products; or subsidiaries, affiliates or customers or suppliers of said individuals, copartners, companies or corporations, Robert P. Anderson and Rozella A. Anderson, as copartners herein, shall not pay such other carriers any rates or charges less than the rates and charges published in their tariffs on file with this Commission.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 89970, Application 58437, Amd.

Robert P. Anderson and  
Rozella A. Anderson  
(Copartners)  
doing business as  
R & R ANDERSON TRUCKING

Robert P. Anderson and Rozella A. Anderson, copartners, by the certificate of public convenience and necessity granted by the decision noted in the margin, are 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 located within the Counties of Los Angeles, Orange, Riverside, San Bernardino and San Diego, subject to the following restrictions:

RESTRICTIONS:

1. Whenever Robert P. Anderson and Rozella A. Anderson, copartners doing business as R & R Anderson Trucking, engage other carriers for the transportation of the property of Robert P. Anderson or Rozella A. Anderson, individually; or R & R Trucking; or Induroco, Inc.; or Industrial Rock Products; or subsidiaries, affiliates or customers or suppliers of said individuals, copartners, companies or corporations, Robert P. Anderson and Rozella A. Anderson, as copartners herein, shall not pay such other carriers any rates or charges less than the rates and charges published in their tariffs on file with this Commission.
2. 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.

Decision 89970, Application 58437, Amd.