

ORIGINAL

Decision No. 90077 , MAR 13 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of: )

THOMPSON TRANSPORT SYSTEMS, INC., )  
a corporation, for (1) rescission )  
of Decision No. 89030, dated )  
June 27, 1978, in Application No. )  
57845; (2) return to status quo )  
ante; and (3) sale and transfer of )  
a portion of its certificate of )  
public convenience and necessity )  
authorizing the transportation of )  
cement to MILES TANK LINES, INC., )  
a corporation. )

Application No. 58575  
(Filed January 3, 1979)

In the Matter of the Application )  
of: )

MILES TANK LINES, INC., a corpora- )  
tion, for (1) rescission of )  
Decision No. 89030, dated )  
June 27, 1978, in Application No. )  
57845; (2) return to status quo )  
ante; and (3) sale and transfer )  
of a portion of its certification )  
of public convenience and neces- )  
sity authorizing the transporta- )  
tion of cement to THOMPSON )  
TRANSPORT SYSTEMS, INC. )

O P I N I O N

Applicants Thompson Transport Systems, Inc., (Thompson) and Miles Tank Lines, Inc., (Miles) both of which are California corporations request that the Commission Decision 89030, dated June 27, 1978, in Application 57845 be rescinded. In that decision, the Commission authorized an exchange of their cement carrier certificates of public convenience and necessity in their entirety and issued in-lieu certificates to each applicant. That transaction has been fully completed as evidenced by notice of consummation of transfer and acceptance of certificates served on July 25, 1978.

By the application in this proceeding, the applicants inform us that subsequent to the acceptance of the in-lieu certificates, Thompson discovered, on December 18, 1978, that it had consummated a transaction entirely different from that which it had originally contemplated as opposed to authorized transfer of authority. Discussion with Miles disclosed that it, too, was under a misapprehension concerning the scope of the Commission's decision. These variances between the applicants' understanding of their transaction, on the one hand, and, on the other, the application and agreement ultimately filed by their counsel arose through inadvertence, oversight, and failure of communication, and the parties and their counsel have acted in good faith at all times mentioned herein.

Rather than an exchange of the respective certificates in their entireties, as contemplated by the application and the Commission's decision, the parties only intended to exchange a portion of their respective authorities. They hereby seek rescission of the earlier decision, return to the status quo, and, then, transfer of the portion of the authorities so as to reflect the intended transaction. Specifically, Thompson has at all times intended only to transfer its authority to serve San Joaquin County to Miles, in exchange for Miles' authority to serve Fresno County. No other exchange of authority was or is contemplated. If the transaction were authorized and consummated, Thompson would possess authority to serve Kern, Sacramento, and Fresno Counties, and Miles would serve Merced and San Joaquin Counties.

It is apparent that an error has occurred and should be rectified. We do not believe, however, that it is necessary to rescind our prior decision on this matter. Rather, the objectives of the applicants can be readily accomplished by returning to each party those portions of the certificate authorities which they did not originally intend to transfer. Our order herein will authorize such transfers.

A copy of the application has been served on the California Trucking Association and notice of the filing of the application was noted in the Commission's Daily Calendar of January 8, 1979. No protest to the application has been received.

The applicants submitted financial statements with Application No. 57845 as required by the Commission's Rules of Practice and Procedure. They request relief from such requirement in connection with the instant application and also relief from the requirement that copies of the application be widely distributed.

After consideration, the Commission finds that the application would not be adverse to the public interest and concludes that it should be granted as set forth in the ensuing order. The requested relief from the provisions of the Commission's Rules of Practice and Procedure should also 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 held by Thompson Transport Systems, Inc., and Miles Tank Lines, Inc., and the issuance of an "in-lieu" certificate in appendix form to each applicant.

Applicants 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 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.

O R D E R

IT IS ORDERED that:

1. Thompson Transport Systems, Inc. and Miles Tank Lines, Inc., both California corporations, may transfer to each other the respective portions of their cement carrier certificates referred to in

the application. This authorization shall expire if not exercised by August 1, 1979, 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 Miles Tank Lines, Inc. and to Thompson Transport Systems, 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., and to Miles Tank Lines, Inc., by Decision 89030 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 their 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 they elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

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

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of MARCH, 1979.

John E. Boyan  
President  
Gregory L. Sturgeon  
Richard W. Gould  
Clare J. Debrich  
Samuel W. Jensen  
Commissioners

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 Merced 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 A)

Issued by California Public Utilities Commission.

Decision 90077 ; Application 58575.

Thompson Transport Systems, Inc., a corporation, by the certificate of public convenience and necessity granted in 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, Kern and Sacramento.

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.

Decision 90077, Application 58575.