

Decision No. 90120 ; MAR 27 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of )

MAC TRUCKING COMPANY, )  
a California corporation )

Application No. 58535  
(Filed December 18, 1978)

To sell and transfer a certificate )  
of public convenience and neces- )  
sity authorizing the transporta- )  
tion of cement to )

LOUIE DEFENDIS dba L-D )  
TRUCKING. )

O P I N I O N

By their joint application, Mac Trucking Company, a California corporation (seller), seeks authority to sell and transfer and Louie Defendis, an individual, doing business as L-D Trucking (purchaser), requests authority to purchase and acquire a cement carrier certificate of public convenience and necessity. The certificate, which was granted to seller by Commission Resolution No. 13827 (Sub. No. 5) dated January 23, 1964, authorizes the transportation of cement from any and all California points of origin to all points and places located within the County of Fresno.

Seller's certificate was revoked on December 7, 1978 for failure to pay Transportation Rate Fund fees pursuant to Section 5001, et seq. of the Public Utilities Code. Based upon the applicant's representation that the President and owner of Mac Trucking Company suffered a severe heart attack which impaired his ability to conduct the operations of the corporation, the certificate was reinstated by Commission Resolution No. 18037 dated February 27, 1979.

Purchaser presently holds a highway contract carrier permit issued by this Commission in File T-120,819. Pursuant to the agreement between the parties, the purchase price for the certificate is \$1,000 payable in cash within thirty days after the effective date of the Commission's approval of the proposed transfer.

In justification of the proposal herein, applicants allege that seller has determined that it would be in its best interest to cease and terminate the transportation of cement. Subsequent to arm's length negotiations entered into by and between the parties hereto, it was determined that the proposed sale price for the operating authority was fair, just and equitable under all the circumstances and that the sale would be in the best interests of both applicants and the general public. Further, purchaser has the financial ability and the equipment necessary to conduct such operations and to provide expanded facilities if necessary. Purchaser is familiar with the transportation of cement and stands ready, willing and able to conduct and perpetuate the service heretofore provided the public by seller. Approval of the subject application will prevent the creation of any transportation gap in this particular field and continue to make available to the public an efficient and responsive service such as that heretofore provided by seller. Both applicants respectfully submit that it would be in the public interest that the sale as proposed herein be approved by the Commission.

Purchaser's balance sheet of October 31, 1978 shows a net worth of \$186,400 and his profit and loss statement relating to his existing trucking operations for the first ten months of 1978 shows net profit before taxes of \$2,259.18. He operates three highway vehicles and will obtain additional equipment if necessary.

Seller formerly participated in tariffs published by Pacific Motor Tariff Bureau, Inc., for rates to cover operations under the certificate. Purchaser proposes to adopt the tariffs

which, if necessary, will be updated in conformance with the Commission's minimum rate orders.

A copy of the application has been served on the California Trucking Association and upon numerous cement carriers. Notice of the filing of the application appeared on the Commission's Daily Calendar of December 21, 1978. No protest to the application has been received.

After consideration, the Commission finds that the proposed sale and transfer of the certificate involved would not be adverse to the public interest and concludes that the application should be granted and that it can be seen with certainty that there is no possibility the activity in question may have a significant effect on the environment. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate currently held by Mac Trucking Company and the issuance of a cement carrier certificate, in appendix form, to Louie Defendis.

Louie Defendis is 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 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 to be transferred.

O R D E R

IT IS ORDERED that:

1. Mac Trucking Company, may sell and transfer the operating rights referred to in the application to Louie Defendis, an individual. This authorization shall expire if not exercised by September 1, 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 he had adopted or established as his 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 Louie Defendis, an individual, authorizing him 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 of this decision attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Commission Resolution No. 13827 (Sub. No. 5) is 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 the insurance requirements of the Commission's General Order 100-Series.

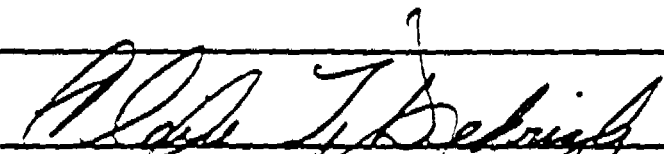

7. Purchaser shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations 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, he shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 27<sup>th</sup> day of MARCH, 1979.

  
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President

  
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Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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

Louie Defendis, 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 and places located within the County of Fresno, subject to the following restriction:

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 90120 ; Application 58535.