

Decision No. 90245 APR 24 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of HENRY MORSE and GARY BODKIN)
doing business as G & H Trucking)
a general partnership, to transfer)
to, and of Henry Morse, an indi-)
vidual to acquire, a cement car-)
rier certificate and operation.)

Application No. 58522
(Filed December 13, 1978,
Amended March 8, 1979
and March 26, 1979)

O P I N I O N

Henry Morse and Gary Bodkin, co-partners (sellers), seek authority to sell and transfer and Henry Morse, an individual (purchaser), requests authority to purchase and acquire a cement carrier certificate authorizing operations to and between all points in the Counties of Lake, Napa, Solano and Sonoma. The certificate held by the sellers was granted by Decision 87789 dated August 30, 1977 in Application 57368.

Purchaser is one of the co-partner sellers. Pursuant to an agreement of June 5, 1978 between the parties, the sale price of the certificate is \$2,500 which amount has now been paid. In addition, an encumbrance on the authority issued by sellers to Marie E. Kenyon, the former holder of the certificate, in the amount of \$14,000 has also been paid.

Sellers have agreed to dissolve their partnership and purchaser will continue the business as a sole proprietorship. According to the application, the four highway vehicles and other operating equipment utilized in the partnership business will be acquired by purchaser. These assets have an estimated value of \$19,500. In addition, purchaser has cash assets of about \$7,200 and a substantial equity in real property.

Sellers participate in Pacific Motor Tariff Bureau tariff publications which the purchaser will adopt. The applicants have submitted a copy of a shipping document evidencing operations under the sellers' certificate during the past year.

A copy of the application has been furnished to the California Trucking Association, and applicants indicate they will provide copies to other parties upon request.

Notice of the filing of the application and its amendment appeared in the Commission's Daily Calendar of December 14, 1978 and March 9, 1979, respectively. No protests to the application have been received.

After consideration, the Commission finds:

1. The proposed transfer would not be adverse to the public interest.
2. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
3. The applicants should be granted relief from the provisions of the Commission's Rules of Practice and Procedure which require wide distribution of the application.

The Commission concludes that the application, as amended, should be granted. 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 presently held by Henry Morse and Gary Bodkin and the issuance of an in-lieu certificate in appendix form to Henry Morse, an individual, doing business as G & H Trucking.

Purchaser 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 value of the rights authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. Henry Morse and Gary Bodkin may sell and transfer the operative rights referred to in the application to Henry Morse, an individual, doing business as G & H Trucking. This authorization shall expire if not exercised by November 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 has 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 to 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 Henry Morse, an individual, doing business as G & H Trucking, 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 hereto.

5. The certificate of public convenience and necessity granted by Decision 87789 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules of 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 his 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.

9. The applicants are granted a deviation from the provisions of the Commission's Rules of Practice and Procedure which require wide distribution of the application.

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

Dated at San Francisco, California, this 24th day of APRIL, 1979.

John E. Boyer
President
Richard D. Gould
James P. Stegeman
James P. Stegeman
Commissioners

Henry Morse, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, to all points and places within the counties of Lake, Napa, Solano and Sonoma from any and all points of origin, subject to the following 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 90245, Application 58522.