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Decision No. 90448

JUN 19 1979

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of LANG TRANSPORTATION CORPORATION,) )  
a corporation, to sell, and of )  
BRUCE'S TRANSPORT SERVICE, INC., )  
a corporation, to purchase cement )  
carrier certificates authorizing )  
service to and within the Counties )  
of Fresno, Inyo, San Luis Obispo, )  
Santa Barbara, Ventura, Kern, )  
Los Angeles, San Diego, Orange, )  
San Bernardino, Riverside and )  
Kings, State of California, )  
pursuant to Sections 851-853 of )  
the California Public Utilities )  
Code. )

Application No. 58692  
(Filed February 21, 1979)

O P I N I O N

Lang Transportation Corporation (seller) seeks authority to sell and transfer, and Bruce's Transport Service, Inc., a California corporation (purchaser) requests authority to purchase and acquire a cement carrier certificate of public convenience and necessity.

The certificate held by seller was granted by Decision No. 89033 dated June 27, 1978 in Application No. 57951. It authorizes the transportation of cement to and within the counties of Fresno, Inyo, Kern, Kings, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, California. Assertedly, there has been no suspension or discontinuance of service during the preceding three years. Buyer is engaged in the transportation of property (other than cement) between points in California pursuant to radial highway common, highway contract, and agricultural carrier permits issued to it by the Commission in File T-99988.

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Seller participates as a cement carrier in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17, Cal. P.U.C. No. 21. It does not participate in through routes or joint rates with any other carrier. Buyer also would participate in that tariff so there would be no change in the rates assessed to the shipping public.

Applicants point out that the entrance of buyer in the cement transportation industry to and within the counties involved will be balanced by the withdrawal of seller thereby causing no change in competitive relationships. Applicants have submitted a copy of a shipping document evidencing operations under the seller's certificate during the past year.

Exhibit A to the application is the purchase agreement dated January 11, 1979. The agreed purchase price for the certificate is \$12,000, payable in cash on consummation. No other asset is involved in the sale. Exhibit B contains buyer's balance sheet as of October 31, 1978. It shows total assets of \$475,247 and stockholders' equity of \$48,752. Exhibit B also contains buyer's statement of operations for the period January 1, 1978 through September 30, 1978. It shows gross income of \$865,861 and net income of \$747 after all costs and other expenses, including federal income tax. Exhibit C shows that buyer will perform the proposed service with two 3-axle tractors and two pneumatic trailers. Exhibit D is seller's profit and loss statement for nine months ending September 30, 1978. It shows revenue of \$4,580, expenses of \$3,591, and net profit of \$989 (operating ratio of 78.41 percent).

Exhibit E and the certificate of service show that copies of the application have been furnished to 10 cement manufacturers in this State and to the California Trucking Association. Applicants assert that there are over 110 cement carriers and cement contract carriers authorized to serve the

counties involved; that the cost of reproducing and mailing copies of the application to each of the carriers would involve considerable expense; that adequate notice will be given to them by service on the California Trucking Association and the mills; and that in order to provide just, speedy, and inexpensive determination of the issues presented, relief is needed from the provisions of Rule 37(a) of the Rules of Practice and Procedure requiring service on all competing carriers.

Notice of the filing of the application appeared on the Commission's Daily Calendar of February 22, 1979. There are no protests.

Findings

1. Buyer has the necessary equipment, experience, and financial ability to conduct the proposed additional cement carrier operations it seeks to acquire from seller.
2. There would be no change in rates under the proposed transfer.
3. The proposed sale and transfer would not be adverse to the public interest.
4. The requested relief from the Commission's Rules of Practice and Procedure should be authorized.

The Commission concludes that the application should be granted as applied for. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the certificate and other assets to be sold and transferred. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by seller and the issuance of a certificate in appendix form to purchaser.

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 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 other assets to be transferred.

O R D E R

IT IS ORDERED that:

1. Lang Transportation Corporation may sell and transfer the operating rights and other assets referred to in the application to Bruce's Transport Service, Inc., a California corporation. This authority shall expire if not exercised by December 31, 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 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 No. 117-Series. Failure to comply with the provisions of General Order No. 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 4, a certificate of public convenience and necessity is granted to Bruce's Transport Service, Inc., 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 certificate of public convenience and necessity granted by D.89033 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4.

6. Purchaser shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 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 No. 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 tariff filings as required by the General Order.

9. Applicants are granted a deviation 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 19th day of JUNE, 1979.

John E. Byrne  
President  
George L. Stegeman  
Richard W. Howell  
Clair J. DeLoach  
Edward W. Quinn  
Commissioners

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Appendix A

BRUCE'S TRANSPORT SERVICE, INC.  
(a California corporation)

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Bruce's Transport Service, Inc., 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 within the counties of Fresno, Inyo, Kern, Kings, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura, 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 No. 90448, Application No. 58692.