

Decision No. 90897

OCT 10 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of G. WESLEY FREE, an individual,
doing business as FREE BUILDERS
SUPPLY, to transfer, and FREE
BUILDERS SUPPLY, INC., a Califor-
nia corporation, to acquire a
Certificate of Public Convenience
and Necessity to conduct operations
as a cement carrier, and to issue
stock.

Application No. 58881
(Filed May 22, 1979;
amended July 30, 1979)

O P I N I O N

G. Wesley Free, an individual, doing business as Free Builders Supply (seller), seeks authority to sell and transfer, and Free Builders Supply, Inc. (buyer), a California corporation, seeks authority to purchase and acquire a certificate of public convenience and necessity to conduct operations as a cement carrier and to issue stock.

The cement carrier certificate involved was transferred to seller by D.76009 (1969). The certificate authorizes the conduct of operations as a cement carrier from any and all points of origin to and within the county of San Diego, subject to restrictions relative to payments to other carriers and termination of authority if not exercised for a period of one year. Buyer also holds permits authorizing operations as a radial highway common carrier and as a dump truck carrier. Buyer has applied, pursuant to Senate Bill 860 (1977), to convert the radial permit into a highway common carrier certificate and a highway contract carrier permit.

Buyer lists 22 units of motor vehicle equipment with a net book value of \$94,790 as of December 31, 1978. Buyer's balance sheet as of March 31, 1979 shows total assets of \$563,640 and stockholders' equity of \$201,165. Its statement of income and retained earnings for six months ended March 31, 1979 shows sales of \$1,240,445, gross profit of \$232,698, net income after income taxes of \$12,239, and retained earnings of \$200,165. Attached to the application is a copy of a freight bill dated October 13, 1978 reflecting the fact that within the last 12 months operations have been continued under the cement carrier certificate.

Buyer is authorized to issue 75,000 shares of one class of shares. At present 1,000 shares, representing 100 percent of the issued and outstanding stock, have been issued by buyer to G. Wesley Free for consideration of truck and passenger equipment and parts with net book value of \$94,790. The stock issuance assertedly is fair and equitable both to buyer and its stockholders, is for adequate compensation, and will have no adverse effect upon any carrier or the public.

Buyer and seller contend that they became aware of provisions of the Public Utilities Code requiring authorization for transfer of the certificate and to issue stock at the time the application was made to convert the radial highway common carrier permit. At that time Mr. Free was informed by Mr. Gene Olsen of the Commission staff that such authorization was required. Assertedly, the delay in filing this application resulted solely from an unawareness that formal procedure was necessary. It is stated that upon learning of these requirements Mr. Free moved expeditiously to employ proper application procedures, and the delay in filing was not an attempt to avoid regulation.

A copy of the application was served upon the California Trucking Association. Applicants believe the matters contained in the application are of little interest to any other carrier, but will provide copies to any interested party upon request. The application is verified and assertedly contains substantially the same evidence as would be presented at an oral hearing. It is requested that the application be handled ex parte.

Notice of the filing of the application appeared on the Commission's Daily Calendar of May 23, 1979. There are no protests.

Findings of Fact

1. The effect of the proposed certificate transfer and stock issuance will be continuance of the existing cement carrier business in corporate form rather than as a sole proprietorship.
2. Buyer has the necessary equipment, experience, and financial ability to conduct the cement carrier operations it seeks to acquire from seller.
3. There would be no change in rates under the proposed transfer.
4. The proposed sale and transfer and the stock issuance are found to be for proper purpose and not adverse to the public interest.
5. The property to be procured or paid for by the issuance of stock herein authorized is reasonably required for the purpose specified, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

6. Relief from the Commission's Rules of Practice and Procedure requiring wide dissemination of the application should be authorized.

7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

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 the revocation of the certificate presently held by G. Wesley Free and the issuance of a certificate in appendix form to Free Builders Supply, Inc., a California corporation.

Buyer 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 and other assets to be transferred.

O R D E R

IT IS ORDERED that:

1. G. Wesley Free may sell and transfer the operating rights and other assets referred to in the application to Free Builders Supply, Inc., a California corporation. This authority shall expire if not exercised by March 1, 1980 or within such additional time as may be authorized by the Commission.

2. Free Builders Supply, Inc., on or after the effective date hereof and on or before March 1, 1980, for the purpose specified in the application, may issue not to exceed 1,000 shares of its common capital stock having neither par nor no par value to Wesley G. Free in consideration of assets referred to in the application having a net book value of \$94,790 as of December 31, 1978.

3. Buyer shall file with the Commission a report required by General Order No. 24-B which order, insofar as applicable, is hereby made a part of this order.

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

5. Buyer 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 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.

6. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, a certificate of public convenience and necessity is granted to Free Builders Supply, 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.

7. The certificate of public convenience and necessity granted by Decision No. 76009 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5.

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

9. Buyer 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 March 31 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.

10. Buyer shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect-on-delivery shipments. If buyer elects not to transport collect-on-delivery shipments, it shall make the appropriate tariff filings as required by the general order.

11. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure requiring wide dissemination of the application.

12. The authority granted in this order to issue stock shall become effective when Free Builders Supply, Inc. has paid the fee prescribed by Section 1904.1 of the Public Utilities Code which fee is \$190. In other respects the effective date of this order shall be thirty days after the date hereof.

Dated OCT 10 1979, at San Francisco, California.

John E. Coyne

 President

Raymond L. Stapp

Richard W. Hooley

Leonard W. Seiner

 Commissioners

PUBLIC UTILITIES COMMISSION
 STATE OF CALIFORNIA

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BY *[Signature]*

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

Free Builders Supply, 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 and within the county of San Diego, subject to the following restrictions:

1. Whenever Free Builders Supply, Inc. engages other carriers for the transportation of property of G. Wesley Free, or Free Builders Supply, Inc., or customers or suppliers of said individual or corporation, Free Builders Supply, Inc. shall not pay such other carriers' rates and charges less than the rates and charges published in tariffs of Free Builders Supply, Inc. 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 A.)

Issued by California Public Utilities Commission.

Decision No. 90897, Application No. 58881.