

Decision No. 91135 DEC 18 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)

(a) IRON HORSE EQUIPMENT CORP., a California corporation, to purchase from DC EQUIPMENT CORPORATION, a California corporation, a cement carrier certificate authorizing service to and within the Counties of Los Angeles and Orange, in the State of California.

Application No. 59056
(Filed August 9, 1979)

(b) IRON HORSE EQUIPMENT CORP., a California corporation, to issue shares of its common capital stock.

O P I N I O N

DC Equipment Corporation (seller), a California corporation, seeks authority to sell and transfer and Iron Horse Equipment Corp. (purchaser), a California corporation, seeks authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier to and within the counties of Los Angeles and Orange. The certificate was issued to seller by transfer authorized by Decision No. 82070 dated October 30, 1973, in Application No. 54295. Purchaser also seeks authority to issue 20,000 shares of its capital stock.

Pursuant to the purchase agreement which is attached to the application as Exhibit B, the total consideration for the cement carrier certificate is \$3,000 payable in cash upon consummation of the transfer. The agreement also provides for the sale of a dump truck carrier permit for the sum of \$1,500, the transfer of which is the subject of a different application. No other assets are covered by the purchase agreement.

Purchaser has not previously held operating authority from this Commission. Purchaser was incorporated on January 11, 1979, and on February 1, 1979, commenced operations in the leasing of motor vehicle equipment. Purchaser owns two tractors, two pneumatic trailers, and one end-dump trailer which it alleges are specifically designed for the transportation of cement. Purchaser proposes to utilize the above-described equipment to conduct its cement carrier operations should the application be granted. Purchaser's president has heretofore served as an officer of seller. He is familiar with the conduct of a business as a cement carrier and will participate in the management of purchaser's business. Purchaser intends to adopt as its own the tariff of seller.

Purchaser's unaudited balance sheet of March 31, 1979, discloses a net worth of \$35,496.

The Articles of Incorporation of purchaser authorize the issuance of one million shares of common capital stock, which, under the current corporate laws of the State of California, is described neither as par value nor no par value. This is the only class of shares authorized. Purchaser presently has no shares of stock issued or outstanding. By this application purchaser seeks authority to issue 6,000 shares of its common capital stock to James W. Golson, 4,000 shares to Wade M. Golson, and 10,000 shares to James Patrick Sandoval, in consideration of the cancellation of indebtedness by each of the same arising out of cash heretofore advanced to the purchaser by each of the foregoing in the amounts of \$6,000, \$4,000, and \$10,000, respectively. In the event that additional sums of cash are required on the dates of consummation to purchase the cement carrier certificate or the dump truck permit, or in the event that additional sums of cash are required to establish and maintain highway carrier operations, one or more of the proposed shareholders of the corporation will advance cash, as an unsecured loan, in sufficient amounts as required to accomplish the same.

A copy of the application was mailed to the California Trucking Association and the application was noticed on the Commission's Daily Calendar of August 10, 1979. No protests to the application have been received.

Findings of Fact

1. The proposed sale and transfer of the cement carrier certificate will not be adverse to the public interest.

2. The proposed security issue is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the security authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

3. A public hearing is not necessary.

Conclusion of Law

The Commission concludes that the proposed transactions should be authorized as set forth in the ensuing order. 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 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 canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. DC Equipment Corporation (seller) may sell and transfer the operative rights referred to in the application to Iron Horse Equipment Corp. (purchaser). This authorization shall expire if not exercised by April 30, 1980, 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 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 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. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. 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 purchaser, 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 of this decision.

6. The certificate of public convenience and necessity granted by Decision No. 82070 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

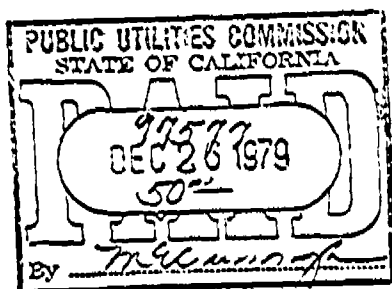
8. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 20 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

9. 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.

10. On or after the effective date of this order and on or before April 30, 1980, for the purposes specified in this proceeding, purchaser may issue not exceeding 20,000 shares of its common stock having a stated value of \$1 per share.

11. The authority granted by this order to issue stock will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In other respects the effective date of this order shall be thirty days after the date hereof.

Dated DEC 18 1979, at San Francisco, California.



John S. Suran
President
James P. Stegeman
Charles D. Howell
Alfred J. Friedman
James H. Smith
Commissioners

Iron Horse Equipment Corp., 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 in the counties of Los Angeles and Orange subject to the following restrictions:

Whenever Iron Horse Equipment Corp. engages other carriers for the transportation of the property of Iron Horse Equipment Corp. or James Golson, Wade M. Golson or James Patrick Sandoval, or Blue Star Ready-Mix, Inc. or customers or suppliers of said individuals or corporations, Iron Horse Equipment Corp. shall not pay such other carriers rates and charges less than the rates and charges published in Iron Horse Equipment Corp.'s tariffs on file with the Commission.

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 91135, Application 59056.