

SW/NB

91385 MAR 4 1980

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of ROSSI TRANSPORTATION, INC., to)
Transfer, and of BAXMAN GRAVEL)
COMPANY, INC. to Acquire Control)
of a Certificate of Public)
Convenience and Necessity to)
Operate as a Cement Carrier.)

Application No. 59258
(Filed November 7, 1979)

O P I N I O N

Rossi Transportation, Inc., a California corporation, (seller) seeks authority to sell and transfer, and Baxman Gravel Company, Inc., a California corporation, (purchaser) seeks authority to purchase and acquire a cement carrier certificate of public convenience and necessity (certificate). The application is filed pursuant to Sections 851-854 and Sections 1061-1067 of the Public Utilities Code.

The certificate was granted by Resolution No. 13835 dated June 30, 1964, and amended by Resolution No. 18047 dated July 3, 1979, and authorizes transportation to and between all points within Mendocino County. Copies of the resolutions are attached to the application as Exhibit 1.

Purchaser presently holds dump truck and radial highway common carrier permits issued by this Commission under file T-118090.

Pursuant to the agreement of the parties as set forth in Exhibit 2 attached to the application and dated October 22, 1979, the purchase price for the certificate is \$750 payable upon approval of the transfer by the Commission.

Purchaser's unaudited financial statements dated November 30, 1978 are attached to the application as Exhibit 3. Its balance sheet shows a net worth or stockholder's equity of \$564,658, of which \$125,000 is for 12,500 shares of its common stock issued and outstanding and \$439,658 is retained earnings. Its statement of income for the year ended November 30, 1978 indicates a net income after provision for income taxes of \$63,834.

According to the application, seller wishes to terminate operations under the provisions of the certificate and to sell the certificate at this time. Purchaser wishes to purchase the certificate in order to enable it to continue operations authorized by the certificate. A letter to the hearing officer dated December 26, 1979 indicates that purchaser possesses the necessary equipment to provide such services. Transfer of the certificate will allow the purchaser to continue to provide the services presently being provided by seller, and denial of the transfer may result in loss of this available service.

The application states that seller is not a party to any through route or joint rate or fare, and the only existing carrier known to the applicant, with which the proposed service is likely to compete, is Northern Redwood Transport.

Notice of the filing of the application appeared in the Commission's Daily Calendar of November 9, 1979. The certificate of service attached to the application shows service of the application on Northern Redwood Transport and California Trucking Association. The amended certificate of service, filed December 24, 1979, shows that copies of the application have been served on 10 principal cement manufacturers in this State.

The filing of the application was noted in Caltrux, the official publication of the California Truckers Association, on November 19, 1979, under the heading "New Filings". No protests to the application have been received.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest and a public hearing is not necessary; and concludes that the request to transfer the certificate should be granted. The order which follows will provide for, in the event that the transfer is completed, the revocation of the certificate presently held by Rossi Transportation, Inc., and the issuance of an in lieu certificate in appendix form to Baxman Gravel Company, Inc.

Baxman Gravel Company, Inc. 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 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 granted. 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. Rossi Transportation, Inc. may sell and transfer the operative rights referred to in the application to Baxman Gravel Company, Inc. This authorization shall expire if not exercised by July 1, 1980, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer, 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 cement 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. In the event the transfer authorized by Ordering Paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by Ordering Paragraph 3, a certificate of public convenience and necessity is granted to Baxman Gravel Company, 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 Resolution No. 13835, and amended by Resolution No. 18047, is revoked effective concurrently with the effective date of the tariff filings required by Ordering Paragraph 3.

6. Purchaser shall comply with the safety rules of the California Highway Patrol, and 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 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.

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.

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

Dated MAR 4 1980, at San Francisco, California.

John E. Byron
President
Thomas L. Stinson
Michael W. Stovall
Commissioners

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

Baxman Gravel Company, 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 in the County of Mendocino, subject to the following restrictions:

This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

Whenever Baxman Gravel Company, Inc. engages other carriers for the transportation of property of Baxman Gravel Company, Inc., or subsidiaries, divisions or affiliates thereof or customers or suppliers of said corporation or subsidiaries, divisions or affiliates thereof, Baxman Gravel Company, Inc. shall not pay such other carriers rates and charges less than the rates and charges set forth in Baxman Gravel Company's tariffs on file with the Commission for the transportation actually performed by such other carriers.

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision No. 91385, Application No. 59258.