

Decision No. 91703 APR 15 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Henry Burtschi,	)	
dba Bradley-Burtschi, to transfer	)	
his Cement Carrier Certificate	)	Application No. 59365
and Burtschi Transport, Inc., a	)	(Filed January 7, 1980)
California corporation, to acquire	)	
said Certificate (Public Utilities	)	
Code 851).	)	

O P I N I O N

Henry Burtschi, an individual, doing business as Bradley-Burtschi, (seller), seeks authority to sell and transfer and Burtschi Transport, Inc., a California corporation, (purchaser), seeks authority to purchase and acquire a cement carrier certificate authorizing operations to and between all points in the Counties of Fresno, Madera, Merced, Stanislaus and Tulare. The certificate was granted to seller by Resolution No. 18055, dated August 28, 1979, GCC 23.

Burtschi Transport, Inc., is a newly established corporation organized for the purpose of acquiring and operating the cement carrier authority of Henry Burtschi who is the president and majority stockholder of the purchaser corporation.

Purchaser's balance sheet of December 21, 1979 filed with the application shows assets of \$291,800 which includes cash, highway vehicles and other operating equipment, liabilities of \$91,800 and net worth totaling \$200,000.

Seller presently participates in tariffs published by West Coast Freight Tariff Bureau, Inc. for rates to cover operations under the certificate to be transferred. Purchaser proposes to adopt the tariffs. The applicants have submitted a copy of a shipping document evidencing operations under the seller's certificate.

Applicants request relief from the provisions of the Commission's Rules of Practice and Procedure requiring wide dissemination of the application. Notice of the filing of the

application appeared in the Commission's Daily Calendar of January 8, 1980. A copy of the application has been served on the California Trucking Association, the major cement producers in this State, certain cement carriers and other parties. 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 concludes that it and the requested relief from its Rules of Practice and Procedure, 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 Burtschi, doing business as Bradley-Burtschi, and the issuance of an in-lieu certificate in appendix form to Burtschi Transport, Inc., a corporation.

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 value of the rights authorized to be transferred.

ORDER

IT IS ORDERED that:

1. Henry Burtschi, an individual, doing business as Bradley-Burtschi, may sell and transfer the operative rights referred to in the application to Burtschi Transport, Inc., a corporation. This authorization shall expire if not exercised by October 1, 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 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 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 Burtschi Transport, Inc., a 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 18055, GCC 23 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 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 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 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. The 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 APR 15 1980, at San Francisco, California.

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President

*James L. Sturgeon*  
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*Richard D. Howell*  
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*Charles T. Phillips*  
\_\_\_\_\_  
*Samuel M. Jensen*  
\_\_\_\_\_  
Commissioners

Commissioner John E. Bryson,  
being necessarily absent, did  
not participate.

Burtschi Transport, 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 in the following counties, subject to the following restrictions:

Fresno, Madera, Merced, Stanislaus and Tulare

RESTRICTIONS:

1. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.
2. Whenever Burtschi Transport, Inc., engages other carriers for the transportation of the property of Burtschi Transport, Inc., a corporation, Burtschi Enterprises, Inc., a corporation, Henry Burtschi, an individual, or Bradley-Burtschi Wholesale Hay, or customers or suppliers of said individual, company or corporations, Burtschi Transport, Inc., shall not pay such carriers so engaged less than 100 percent of the rates and charges published in Burtschi Transport, Inc.'s tariffs on file with the Commission.

(END OF APPENDIX A)

Issued by the California Public Utilities Commission.

Decision 91703, Application 59365.