

Decision No. 91757 MAY 6 1980

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of B.C.B.M. Transport, Inc.,)
a California corporation, to)
exchange with Peters Trucking)
Service, Inc., a California)
corporation, a Certificate of)
Public Convenience and Necessity)
authorizing the transportation)
of cement.)

Application No. 59353
(Filed December 24, 1979)

O P I N I O N

B.C.B.M. Transport, Inc., a California corporation, and Peters Trucking Service, Inc., a California corporation, request authority to exchange a portion of their certificates of public convenience and necessity authorizing operations as cement carriers.

The certificate held by B.C.B.M. Transport, Inc., was granted by Decision 87097, dated March 15, 1977, in Application 56972 and authorizes cement carrier operations to and within the Counties of Alameda, Contra Costa, Sacramento, San Mateo and Santa Clara. Peters Trucking Service, Inc., holds a cement carrier certificate granted by Decision 78325, dated February 22, 1971, in Application 52050, as amended by Decision 79051, dated August 24, 1971 and Decision 83848, dated December 17, 1974. The certificate authorizes operations to and within the Counties of Colusa, Nevada, Placer, Sacramento, San Francisco, San Mateo, Santa Clara and Sutter.

Pursuant to the Agreement of Sale and Exchange, dated October 29, 1979, between the applicants, B.C.B.M. Transport, Inc., will exchange that portion of its certificate authorizing operations to and within the County of Alameda for the portion of Peters Trucking Service, Inc.'s certificate authorizing transportation to and within the County of Placer. The mutual exchange of such certificated authority is the sole consideration for the transaction.

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The applicants indicate that they desire to continue to conduct operations as cement carriers. However, due to changes in the business of both corporations, it is desirable and in the public interest that they exchange a portion of their certificates. The authorization of the sale by way of exchange will insure that the public will continue to receive service in the counties involved.

The reason given by each applicant for entering into the proposed transaction is that B.C.B.M. Transport, Inc., has obtained business which will necessitate a certificate for Placer County while its business in Alameda County has decreased. The business of Peters Trucking Service, Inc., in Placer County has decreased and it anticipates potential business in Alameda County. Thus, the public will be served by the granting of the application.

The applicants have submitted copies of shipping documents evidencing operations under their certificates during the past year and copies of the application have been furnished to the principal cement manufacturers in this State, to the California Trucking Association and other parties. 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 December 28, 1979. No protests to the application have been received.

After consideration, the Commission finds that the proposed transfers would not be adverse to the public interest and concludes that said transfers, as well as the requested relief from the Commission's Rules of Practice and Procedure, should be granted. A public hearing is not necessary. The order which follows will provide for, in X
the event the partial transfers are completed, the revocation of the certificates presently held by both applicants and the issuance of in-lieu certificates, in appendix form, to B.C.B.M. Transport, Inc., and Peters Trucking Service, Inc.

Applicants are 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.

O R D E R

IT IS ORDERED that:

1. B.C.B.M Transport, Inc., a California corporation, and Peters Trucking Service, Inc., a California corporation, may sell and transfer the operative rights referred to in the application to each other. This authorization shall expire if not exercised by October 31, 1980, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer, the applicants shall each file with the Commission a written acceptance of their certificate and true copy of the bill of sale or other instrument of transfer involved.

3. Applicants shall amend or reissue their tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred, to show that they have adopted or established, as their 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 authorities granted by this decision.

4. In the event the transfers authorized in paragraph 1 are completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, certificates of public convenience and necessity are granted to B.C.B.M. Transport, Inc., a corporation, and Peters Trucking Service, Inc., a corporation, authorizing them to operate as cement carriers as defined in Section 214.1 of the Public Utilities Code between the points set forth in Appendices A and B of this decision, respectively.

5. The certificates of public convenience and necessity granted by Decisions 87097 and 78335, as amended, are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

7. Purchasers shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Purchasers shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchasers elect not to transport collect on delivery shipments, they 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 MAY 6 1980, at San Francisco, California.

John E. Bryan
President

William L. Stinson

Richard W. Howell

Clare J. [unclear]

Francis W. [unclear]
Commissioners

B.C.B.M. Transport, Inc., a corporation, 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, to any and all points within the Counties of Contra Costa, Placer, Sacramento, San Mateo and Santa Clara from any and all points of origin, subject to the following restrictions:

Restrictions:

1. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.
2. Whenever B.C.B.M. Transport, Inc. engages other carriers for transportation of property of Bay Cities Building Materials Co., Inc., or customer or suppliers of said corporation, B.C.B.M. Transport, Inc., shall pay such other carriers not less than the rates and charges published in B.C.B.M. Transport, Inc's., tariffs on file with this Commission.

(END OF APPENDIX A)

Issued by the California Public Utilities Commission.
Decision 91757, Application 59353.

Peters Trucking Service, Inc., a corporation, 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 any and all points within the Counties of Alameda, Colusa, Nevada, Sacramento, San Francisco, San Mateo, Santa Clara and Sutter, subject to the following restrictions:

Restrictions:

1. Whenever Peters Trucking Service, Inc., a corporation, engages other carriers for the transportation of property of Concrete Service Co. or customers or suppliers of said company, Peters Trucking Service, Inc. shall not pay such other carriers rates and charges less than the rates and charges published in Peters Trucking Service, Inc.'s tariffs on file with the Commission for the transportation actually performed by such other carriers.
2. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision 91757, Application 59353.