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Decision No. 91764 MAY 6 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application
of SEQUOIA ROCK COMPANY, a
corporation, to sell and
transfer a certificate of public
convenience and necessity
authorizing the transportation
of cement to RYEL, INC., a
corporation, doing business
as WESTERN CEMENT TRANSPORT.

Application No. 59413
(Filed January 29, 1980)

O P I N I O N

Applicant Sequoia Rock Co. (Sequoia), a corporation, and Ryel, Inc., a corporation, doing business as Western Cement Transport (Western), request the Commission to transfer to Western that part of Sequoia's cement carrier certificate authorizing the transportation of cement to and within the counties of Los Angeles, Orange, and Ventura. The application shows that copies of the application were served on the California Trucking Association, eight carriers with whom the combined operations would be competitive, and eight cement-producing companies. No protests to the application have been received.

Sequoia presently conducts operations under a certificate granted to it in Commission Resolution No. 18055, dated August 28, 1979 authorizing it to transport cement to and within the counties of Fresno, Kern, Los Angeles, Kings, Madera, Orange, and Ventura. Sequoia's tariffs covering those operations are published by Western Motor Tariff Bureau, Inc. Western presently conducts operations under a certificate issued in Decision No. 88446, dated January 31, 1978, authorizing it to transport cement to and within the counties

of Fresno, Kern, Kings, Madera, Mariposa, Merced, and Tulare. Western also operates as a radial highway common carrier and an agricultural carrier.

By contract dated January 15, 1980 Western agreed to purchase from Sequoia that part of Sequoia's cement operating authority covering operations to and within the counties of Los Angeles, Orange, and Ventura for the sum of \$3,000 of which \$1,000 has been paid as a deposit and the balance of \$2,000 to be due and payable thirty days after the order authorizing the purchase. As of November 30, 1979 Western had a net worth of \$40,000 with current assets of approximately \$80,000 and current liabilities of \$55,000. For the year ending on that date Western grossed \$104,000 for a net profit of \$10,000.

Western contends that it has the necessary equipment and financial ability to conduct the proposed operation and that it is familiar with and experienced in the transportation of cement in bulk. Western stands ready, willing, and able to conduct and perpetuate the service provided the public by Sequoia.

The Commission finds that the proposed transfer of certificate authority is not adverse to the public interest and concludes that the application should be granted. No public hearing is necessary. The order which follows will provide for the revocation in the event the transfer is completed, of the certificates presently held by Western and Sequoia and the issuance of new certificates in appendix form to Western and Sequoia.

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

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. Sequoia Rock Co. (Sequoia) may sell and transfer the operative rights referred to in the application to Ryel, Inc., doing business as Western Cement Transport. This authorization shall expire if not exercised by September 30, 1980, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer applicants shall file with the Commission written acceptance of the certificates and the purchaser shall file with the Commission a true copy of the bill of sale or other instrument of transfer.

3. Applicants shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the authority granted by the decision 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 shall comply with the Commission's General Order No. 117-Series. Failure to comply with the provisions of the General Order No. 117-Series may result in 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. A certificate of public convenience and necessity is granted to Sequoia, as set forth in Appendix A.
- b. An in lieu certificate of public convenience and necessity is granted to Ryel, Inc., doing business as Western Cement Transport, as set forth in Appendix B.
- c. The certificates of public convenience and necessity granted by Decision No. 88446 and Resolution No. 18055, GCC No. 8, of August 28, 1979 are revoked.

5. Applicants are placed on notice that if they accept the certificates they will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

6. Applicants 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.

7. Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they 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 **MAY 6 1980** , at San Francisco, California.

John E. Burns
President
Thomas J. Strigony
Richard D. Hoyle
Clair J. [unclear]
Donald W. [unclear]
Commissioners

Sequoia Rock Co., 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 Fresno, Kern, Kings and Madera, subject to the following restrictions:

1. Whenever Sequoia Rock Co. engages other carriers for the transportation of property of Ryel, Inc., or Sequoia Rock Co., or Vicon, subsidiaries or affiliates thereof, or customers or suppliers of said corporations and/or companies, subsidiaries or affiliates thereof, Sequoia Rock Co., shall not pay such carriers less than 100% of the rates and charges published in Sequoia Rock Co.'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 A)

Issued by California Public Utilities Commission.

Decision 91764, Application 59413.

Ryel, 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 any and all points within the Counties of Fresno, Kern, Kings, Los Angeles, Madera, Mariposa, Merced, Orange, Tulare and Ventura, subject to the following restrictions:

1. Whenever Ryel, Inc. engages other carriers for the transportation of property of Ryel, Inc., or Sequoia Rock Co., or Vicon, subsidiaries or affiliates thereof, or customers or suppliers of said corporations and/or companies, subsidiaries or affiliates thereof, Ryel, Inc. shall not pay such carriers less than 100% of the rates and charges published in Ryel, 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.

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