

Decision No. 91995 JUL 2 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PETER J. RADONICH and ANDREW J. RADONICH,)
a partnership doing business as RADONICH)
BROTHERS TRUCKING, to sell and transfer)
a certificate of public convenience and)
necessity authorizing the transportation)
of cement to FORTIER TRANSPORTATION)
COMPANY, LIMITED, a California corporation)
doing business as FORTIER TRANSPORTATION.)

Application No. 59430
(Filed February 4, 1980)

O P I N I O N

Applicants Peter J. Radonich and Andrew J. Radonich (Radonich), a partnership doing business as Radonich Brothers Trucking, by a certificate granted in Resolution No. 18055 issued August 28, 1979, are authorized to transport cement as a certificated carrier from any and all points of origin to any and all points in the following counties located in the State of California:

Alpine	Merced	San Mateo
Alameda	Napa	Santa Clara
Butte	Placer	Siskiyou
Calaveras	Plumas	Sonoma
Contra Costa	Sacramento	Stanislaus
Kings	San Francisco	Yolo
Marin	San Joaquin	Yuba
Mariposa	San Luis Obispo	

Radonich has complied with the conditions of the resolution and has filed rates with Western Motor Tariff Bureau, Inc.

Applicant Fortier Transportation Company, Limited (Fortier) operates as a radial highway common carrier and a dump truck carrier under authority of this Commission found under File No. T 120,917. A certified copy of its Articles of Incorporation are on file with this Commission.

On or about January 15, 1980, Fortier and Radonich entered into an agreement, a copy of which is attached to the application as Exhibit A, whereby Fortier agreed to purchase a portion of Radonich's certificate of public convenience and necessity, hereinabove identified, which authorizes transportation of cement from any and all points of origin to any and all points in Kings and Merced Counties, at and for the purchase price of \$1,000, \$100 of which has been paid as a deposit on said purchase price and \$900 of which shall be paid within 30 days after the order of this Commission is administratively final.

Fortier submits that it is in a financial position to purchase the portion of Radonich's certificate above described and to conduct the operations thereunder. Exhibit B attached to the application, which is a balance sheet of Fortier as of November 30, 1979 and a statement of earnings for the period from January 1 to November 30, 1979, shows assets of \$284,780.78, liabilities of \$247,597.28, capital and retained earnings of \$37,183.50 as of November 30, 1979, and earnings before taxes for the period from January 1 to November 30, 1979 of \$29,341.92. Attached to the application as Exhibit C is a list of Fortier's motor vehicle equipment which Fortier presently operates pursuant to its existing authority. Fortier will purchase additional equipment if it is necessary to conduct the proposed operation. Fortier stands ready, willing, and able to conduct and perpetuate the service heretofore provided the public by Radonich pursuant to its certificate to operate in Kings and Merced Counties.

At all times subsequent to the issuance of Resolution No. 18055 dated August 28, 1979, Radonich has conducted substantial operations in and for the transportation of cement to and between various points in the State of California. Radonich desires to cease and terminate the transportation of cement to Kings and Merced Counties,

and applicants herein request permission from this Commission pursuant to Section 851 of the Public Utilities Code for Radonich to sell and Fortier to purchase the portion of Radonich's certificate of public convenience and necessity authorizing the transportation of cement from any and all points of origin to any and all points within Kings and Merced Counties. Approval of this application will prevent the creation of any transportation gap in this particular field and continue to make available to the public an efficient and responsive service such as that heretofore provided by Radonich. Both applicants submit that it would be in the public interest that the sale as proposed be approved by the Commission.

The applicants allege that the transfer and sale will have no effect upon the environment.

If the application is approved Fortier will adopt, amend, or reissue the tariffs of Radonich and otherwise file and publish the necessary rates for the transportation of cement to the subject counties.

Inasmuch as the application is verified by applicants and the applicants allege that the transfer proposed herein will not adversely affect competitive carriers, applicants request that the authority requested herein be granted ex parte. The application was served upon California Trucking Association, nine competing carriers, and eight cement manufacturing companies. Notice of the filing of the application was published in the Commission's Daily Calendar on February 7, 1980. No protests have been filed with the Commission.

Findings of Fact

1. The proposed transfer will not be adverse to the public interest.

2. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. A public hearing is not necessary.
2. The proposed transfer should be authorized as provided in the order which follows.

The order which follows will provide for the issuance of a certificate in appendix form to Fortier and for the revocation of the certificate of Radonich insofar as it relates to the transportation of cement from any and all points of origin to any and all points in the counties of Kings and Merced.

Fortier 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.

The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. Peter J. Radonich and Andrew J. Radonich, a partnership doing business as Radonich Brothers Trucking, may sell and transfer the operative rights referred to in the application to Fortier Transportation Company, Limited (Fortier). 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 Fortier 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. Fortier 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 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 certificate of public convenience and necessity is granted to Fortier Transportation Company, Limited, authorizing it to operate as a cement carrier, as defined in Section 241.1 of the Public Utilities Code, between the points set forth in Appendix A of this decision.

5. Fortier is placed on notice that if it accepts the certificate it 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. Fortier 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 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.

7. Fortier shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Fortier elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

8. Concurrently with the effective date of the transfer the certificate of public convenience and necessity granted to applicants Peter J. Radonich and Andrew J. Radonich, a partnership doing business as Radonich Brothers Trucking, by Resolution No. 18055 dated August 28, 1979, is revoked insofar as it relates to the transportation of cement from any and all points of origin to any and all points in the counties of Kings and Merced. Said applicants shall amend or reissue their tariffs on file with this Commission to show that they are no longer authorized to transport cement between such points by eliminating such points from their tariffs. 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.

9. Upon completion of the transfers authorized by this Commission pursuant to Decision No. 91994 issued JUL 2 1980 in Application No. 59429, Decision No. 91995 issued JUL 2 1980 in Application No. 59430, and Decision No. 91996 issued JUL 2 1980 in Application No. 59431 the certificate of public convenience and necessity granted to applicants Peter J. Radonich and Andrew J. Radonich (Radonich), a partnership doing business as Radonich Brothers Trucking, by Resolution No. 18055 dated August 28, 1979, is revoked in its entirety. If the transfer authorized by this decision is not consummated on or before September 30, 1980 or within such additional time as may be authorized by the Commission, Radonich shall promptly file an application for an in lieu certificate to cover such operating authority under their certificate of public convenience and necessity granted by Resolution No. 18055 dated

August 28, 1979, as may continue to exist by reason of the failure to consummate the transfer authorized by this decision.

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

Dated JUL 2 1980, at San Francisco, California.

John E. Guyon
President
William L. Stevenson
Michael D. Gervelle
Clair J. DeWick
Terrence W. Jenkins
Commissioners

Fortier Transportation Company, Limited, 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 and within the counties of Kings and Merced, subject to the following restriction:

RESTRICTION:

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 91995, Application No. 59430.