

ORIGINAL

Decision No. 92126 AUG 19 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
MARIO A. MONTESANO, doing business )  
as MONTE-SANO STONE CRAFT, to sell )  
and transfer a certificate of public )  
convenience and necessity authorizing )  
the transportation of cement to )  
COMMERCIAL TRANSFER, INC., a )  
California corporation. )

Application No. 59432  
(Filed February 4, 1980)

O P I N I O N

Applicant Mario A. Montesano (Montesano), doing business as Monte-Sano Stone Craft, by a certificate granted in Resolution No. 18055, dated August 28, 1979, is authorized to transport cement as a certificated cement carrier from any and all points of origin to any and all points in the following counties located in the State of California:

- |              |                |                 |
|--------------|----------------|-----------------|
| Alameda      | Kings          | San Francisco   |
| Colusa       | Madera         | San Luis Obispo |
| Contra Costa | Merced         | Santa Clara     |
| Fresno       | Sacramento     | Solano          |
| Kern         | San Bernardino | Sonoma          |

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

Commercial Transfer, Inc. (CTI), a California corporation, presently is conducting operations under a certificate of public convenience and necessity duly issued by this Commission in Decision No. 82086 dated November 7, 1973, in Application No. 54307, authorizing the transportation of cement from any and all points of origin to any and all points in the following counties located in the State of California:

Alameda	Mendocino	Santa Clara
Butte	Merced	Santa Cruz
Colusa	Monterey	Shasta
Contra Costa	Napa	Solano
El Dorado	Sacramento	Sonoma
Fresno	San Benito	Stanislaus
Kern	San Francisco	Tehama
Kings	San Joaquin	Tulare
Madera	San Mateo	Yolo
Marin		

The Commission takes official notice that by Decision No. 91994 issued July 2, 1980 in Application No. 59429 the Commission has authorized CTI to acquire a portion of a certificate held by Peter J. Radonich and Andrew J. Radonich (Radonich), a partnership doing business as Radonich Brothers Trucking whereby CTI, when it has complied with the order of Decision No. 91994, will also be authorized to transport cement as a certificated cement carrier from any and all points of origin to any and all points in the following additional counties located in the State of California:

Alpine	Plumas
Calaveras	Siskiyou
Mariposa	Yuba
Placer	

CTI also operates as a radial highway common carrier, a dump truck carrier, and a petroleum contract carrier under authority of this Commission found under File No. T-77228. A certified copy of its Articles of Incorporation are on file with this Commission.

On or about January 1, 1980, Montesano and CTI entered into an agreement, a copy of which is attached to the application as Exhibit A, whereby CTI agreed to purchase a portion of Montesano'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 the counties of San Bernardino and San Luis Obispo at and for the purchase price of \$2,000, \$500 of which has been paid as a deposit on said purchase price and \$1,500 of which shall be paid within 30 days after the order of this Commission is ~~administratively final~~ *following order is effective*

CTI submits that it is in a financial position to purchase the portion of Montesano's certificate above-described and to conduct operations thereunder. Exhibit B attached to the application, which is a balance sheet of CTI as of September 30, 1979 and a statement of revenues and expenses for the twelve-month period ended September 30, 1979, shows assets of \$1,560,988, liabilities of \$1,225,791, capital and retained earnings of \$335,197 as of September 30, 1979, and net income of \$171,887 for the twelve-month period ended September 30, 1979. Attached to the application as Exhibit C is a list of CTI's motor vehicle equipment which it operates pursuant to its existing authority. CTI will purchase additional equipment if it is necessary to conduct the proposed operation. CTI is familiar with the transportation of cement and stands ready, willing, and able to conduct and perpetuate the service heretofore provided the public by Montesano in San Bernardino and San Luis Obispo Counties.

At all times subsequent to the issuance of Resolution No. 18055 dated August 28, 1979, Montesano has conducted substantial operations in and for the transportation of cement to and between various points in the State of California. Montesano desires to cease and terminate the transportation of cement in San Bernardino and San Luis Obispo Counties, and applicants herein request permission from this Commission pursuant to Section 851 of the Public Utilities Code for Montesano to sell and CTI to purchase the portion of Montesano'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 such counties. Approval of the 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 Montesano. 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 CTI will adopt, amend, or reissue the tariffs of Montesano and otherwise file and publish the necessary rates for the transportation of cement to the subject counties.

A grant of the transfer of authority which is the subject of this application would result in CTI's holding two certificates of public convenience and necessity to operate as a cement carrier. It is, therefore, requested that, in the event this application is granted, an in lieu certificate be issued to CTI encompassing the rights it presently holds as well as the rights granted by any decision in this proceeding.

Inasmuch as this 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, eight 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, in the event the transfer is completed, for the revocation of the certificates presently held by CTI and Montesano and the issuance of "in lieu" certificates in appendix form to CTI and Montesano reflecting the transfer of authority to transport cement from any and all points of origin to any and all points in the counties of San Bernardino and San Luis Obispo to CTI.

CTI and Montesano 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.

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. Mario A. Montesano (Montesano), doing business as Monte-Sano Stone Craft, may sell and transfer the operative rights referred to in the application to Commercial Transfer, Inc. (CTI). 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 CTI shall file with the Commission written acceptance of the certificate and shall file with the Commission a true copy of the bill of sale or other instrument of transfer.

3. CTI and Montesano shall amend or reissue the 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 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, certificates of public convenience and necessity are granted to Commercial Transfer, Inc. and Mario A. Montesano, 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, respectively, of this decision.

5. The certificate of public convenience and necessity granted to Commercial Transfer, Inc., by Decision No. 91994 issued July 2, 1980 in Application No. 59429 filed February 4, 1980, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. CTI and Montesano 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.

7. CTI and Montesano 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. CTI and Montesano shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If they elect not to transport collect on delivery shipments, they will make the appropriate tariff filings as required by the General Order.

9. Concurrently with the effective date of the transfer, the certificate of public convenience and necessity granted to

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applicant Mario A. Montesano, doing business as Monte-Sano Stone Craft, by Resolution No. 18055 dated August 28, 1979, is revoked.

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

Dated     AUG 19 1980    , at San Francisco, California.

John E. Byron  
President  
Thomas L. Sturgeon

Charles J. DeFilio  
Samuel J. ...  
Commissioners

Commissioner Richard D. Cravello, being necessarily absent, did not participate in the disposition of this proceeding.



Commercial Transfer, Inc., a California 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 and within all points of destination in the following counties, subject to the restriction shown below:

Alameda	Mendocino	Santa Clara
Alpine	Merced	Santa Cruz
Butte	Monterey	Shasta
Calaveras	Napa	Siskiyou
Colusa	Placer	Solano
Contra Costa	Plumas	Sonoma
El Dorado	Sacramento	Stanislaus
Fresno	San Benito	Tehama
Kern	San Bernardino	Tulare
Kings	San Francisco	Yolo
Madera	San Joaquin	Yuba
Marin	San Luis Obispo	
Mariposa	San Mateo	

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 92126, Application No. 59432.

Mario A. Montesano  
(an individual)  
doing business as  
MONTE-SANO STONE CRAFT

Mario A. Montesano, an individual, doing business as Monte-Sano Stone Craft, 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 all points of destination in the following counties subject to the restrictions shown below:

Alameda	Kern	Sacramento
Colusa	Kings	San Francisco
Contra Costa	Madera	Santa Clara
Fresno	Merced	Solano
		Sonoma

RESTRICTION:

1. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.
2. Whenever Mario A. Montesano, doing business as Monte-Sano Stone Craft, engages other carriers for the transportation of property of Mario A. Montesano or Monte-Sano Stone Craft or customers or suppliers of said individual or company, Mario A. Montesano shall not pay such other carriers rates and charges less than the rates and charges published in the tariffs of Mario A. Montesano, an individual, on file with the Commission.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Amended by Decision 92126; Application 59432.