

ORIGINAL

Decision No. 92128 AUG 19 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
CHARRO TRANSPORTATION to sell and)
transfer a portion of its)
certificate of Public Convenience)
and Necessity authorizing the)
transportation of cement to)
FOOTHILL BULK TRANSPORT, INC.)

Application No. 59642
(Filed May 8, 1980)

O P I N I O N

Applicant Charro Transportation (Charro) presently conducts operations under a certificate of public convenience and necessity granted to it by this Commission in Resolution No. 18055, dated August 28, 1979, authorizing the transportation of cement from any and all points of origin to all points and places within the counties of Alameda, Contra Costa, Fresno, Marin, Napa, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, and Sonoma. Charro also has authority for statewide cement carrier operations restricted to independent contract subhauling operations only.

Charro has complied with the conditions of the resolution and has filed rates with the Commission; however, said filing was received on March 19, 1980, which was after the March 1, 1980 deadline for establishing the authorized service and filing a tariff prescribed by Resolution No. TS-372. The order which follows will provide for an extension of time for such filing to March 19, 1980.

Foothill Bulk Transport, Inc. (Foothill) currently operates under a certificate of public convenience and necessity also granted

to it by the Commission in Resolution No. 18055, supra, authorizing the transportation of cement from any and all points of origin to any and all points in the following counties: Alameda, Butte, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Marin, Mariposa, Mendocino, Merced, Monterey, Placer, Sacramento, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Shasta, Solano, Sonoma, Stanislaus, Yolo, and Yuba. Both Charro and Foothill hold other operative rights issued by the Commission (see Files T-116331 and T-103,526, respectively). A certified copy of their Articles of Incorporation is on file with this Commission. ✓

On or about April 1, 1980, Charro and Foothill entered into an agreement whereby Foothill agreed to purchase a portion of Charro's certificate of public convenience and necessity, heretofore identified, which authorizes the transportation of cement from any and all points to any and all points in the county of Santa Barbara for the purchase price of \$2,000 to be paid upon approval of the sought transfer by the Commission. A copy of said agreement is attached to the application and marked Exhibit "A".

Foothill submits that it is in a financial position to purchase Charro's certificate, heretofore described, and to conduct operations thereunder. Exhibit "B" attached to the application, which is a balance sheet of Foothill as of December 31, 1979, and an income statement of Foothill for the year ending December 31, 1979, showed assets of \$204,010, liabilities of \$60,485, and stockholders' equity of \$143,525 as of December 31, 1979; and total income of \$645,112, total expenses of \$662,165, and a net loss of \$17,053 for the year ending December 31, 1979. Attached to the application as Exhibit "C" is a list of Foothill's motor vehicle equipment which it operates pursuant to its existing authority.

If it is necessary to purchase additional equipment to conduct the proposed operation, Foothill will purchase such additional equipment.

Charro and Foothill request permission of this Commission pursuant to Section 851 of the Public Utilities Code, for Charro to sell and Foothill to purchase a portion of Charro'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 the county of Santa Barbara.

At all times subsequent to the issuance of Resolution No. 18055 dated August 28, 1979, Charro has conducted operations in and for the transportation of cement to and between various points in the State of California. Charro desires to cease and terminate the transportation of cement to Santa Barbara County. Foothill's management and operating personnel are familiar with the transportation of cement and stand ready, willing, and able to conduct and perpetuate the service heretofore provided the public by Charro. Approval of the subject application will prevent a transportation lapse in this particular area and continue to make available to the public an efficient and responsive service such as that heretofore provided by Charro. Both applicants submit that it would be in the public interest that the sale as proposed herein be approved by the Commission.

Charro and Foothill allege that the transfer and sale will have no effect upon the environment.

If the application is approved, Foothill will forthwith amend its current tariff by filing the necessary rates for the transportation of cement to Santa Barbara County, all as prescribed by this Commission. Further, Foothill will continue to comply with all the requirements of this Commission governing the transportation here involved.

A grant of the transfer of authority, which is the subject of this application, would result in Foothill'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 Foothill encompassing the rights it presently holds as well as the rights it seeks herein to secure.

Inasmuch as this application is verified by Charro and Foothill and the transfer proposed herein will not adversely affect competitive carriers, Charro and Foothill request that the authority requested herein be granted ex parte. The application was served upon California Trucking Association, twelve competing carriers, and eight cement manufacturing companies. Notice of the filing of the application was published in the Commission's Daily Calendar on May 12, 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 Foothill and by Charro and the issuance of an in lieu certificate in appendix form to Foothill and to Charro reflecting the transfer of authority to transport cement from any and all points of origin to any and all points in the county of Santa Barbara.

Foothill and Charro 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. Charro Transportation (Charro) may sell and transfer the operative rights referred to in the application to Foothill Bulk Transport, Inc. (Foothill). 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 Foothill 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. Foothill and Charro 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 Foothill Bulk Transport, Inc., and to Charro Transportation, 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 certificates of public convenience and necessity granted to Foothill and to Charro by Resolution No. 18055, dated August 28, 1979, are revoked effective concurrently with the effective date of the transfer.

6. Foothill and Charro 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. Foothill and Charro 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. Foothill and Charro 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.

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9. The time limit for Charro to establish the service authorized by Resolution No. 18055, dated August 28, 1979, and to file a tariff, as prescribed in Resolution No. TS-372, is hereby extended to March 19, ~~1980~~ 1981.

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
Richard D. Gravello

Paul T. DiGirolamo
Richard W. Jones
Commissioners

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

Charro Transportation, a California corporation, by the certificate of public convenience and necessity granted by the certificate noted in the margin, is authorized to conduct operations as a cement carrier as described in Section 214.1 of the Public Utilities Code from any and all points of origin to any and all points in the following counties subject to the following restriction:

Alameda	San Francisco
Contra Costa	San Joaquin
Fresno	San Mateo
Marin	Santa Clara
Napa	Santa Cruz
Sacramento	Sonoma

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.

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Foothill Bulk Transport, 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 described in Section 214.1 of the Public Utilities Code from any and all points of origin to any and all points of destination in the following counties subject to the following restriction:

Alameda	Placer
Butte	Sacramento
Contra Costa	San Francisco
El Dorado	San Joaquin
Fresno	San Luis Obispo
Glenn	San Mateo
Kern	Santa Barbara
Kings	Santa Clara
Lake	Santa Cruz
Marin	Shasta
Mariposa	Solano
Mendocino	Sonoma
Merced	Stanislaus
Monterey	Yolo
	Yuba

RESTRICTION

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 92128, Application 59642.