

ALJ/jn

ORIGINAL

Decision No. 92284 OCT 8 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of RICHARD ROWAN and BURL SOUSA,)
partners under the partnership)
name of SOUSA READY MIX, to trans-)
fer a certificate of public)
convenience and necessity to)
transport cement to points in)
Shasta County to SOUSA READY MIX,)
INC., a California corporation.)

Application No. 59691
(Filed May 23, 1980)

O P I N I O N

Applicants Richard Rowan and Burl Sousa (Sousa), a partnership doing business as Sousa Ready Mix, by a certificate granted by Decision No. 86695 issued November 30, 1976, in Application No. 56708, are authorized to transport cement as a certificated cement carrier from any and all points of origin to any and all points in the county of Shasta. Exhibit F attached to the application is a copy of two freight bills showing that such authority has been exercised within the twelve months immediately preceding the date of filing of this application.

Sousa Ready Mix, Inc. (Sousa, Inc.), is a corporation organized under the laws of the State of California. Exhibit C attached to the application is a copy of the articles of incorporation of Sousa, Inc.

By this application Sousa seeks authority pursuant to Section 851 of the Public Utilities Code for Sousa to transfer the cement certificate they hold to Sousa, Inc.

Applicants allege that the requested transfer is necessary because Sousa have changed their status from a partnership to a corporation and Sousa, Inc. is desirous of continuing to engage in the same type of activity that Sousa engaged in, i.e., the operation as a cement carrier as defined in Section 214.1 of the Public Utilities Code. The application is not for the purchase and sale of the certificate but for the transfer of the certificate. There is no transfer document to effectuate the transfer.

Applicants allege that the proposed transfer of the certificate will be in the public interest for the following reasons:

1. On or about April 1978, Sousa changed their status from a partnership to a corporation by forming Sousa, Inc. Through inadvertency no application for a transfer of the certificate to operate as a cement carrier from Sousa to Sousa, Inc., was made until the present application was filed. If the transfer is authorized, Sousa, Inc. will continue to perform and engage in a similar business as did Sousa.
2. There will be no change in the rates or other charges now assessed to the public.
3. The proposed transfer will assure the continuance of adequate service to the public without adverse effect on any other cement carrier.

Exhibit E attached to the application is a balance sheet of Sousa, Inc., as of March 3, 1980, which shows assets of \$436,623.13, liabilities of \$289,389.62 and capital of \$147,233.51, and an income statement for the twelve months ending March 31, 1980 which shows income from operations less discount allowed of \$1,079,350.53, total expenses of \$1,007,001.53, net profit from operation of \$72,349.00 and net profit of \$100,045.55.

Applicants request that the authority requested herein be granted ex parte. The application was served upon three competing cement carriers, California Trucking Association, Western Motor Tariff Bureau, Inc., and seven cement manufacturing companies. Notice of the filing of the application was published in the Commission's Daily Calendar on May 28, 1980. No protests have been filed.

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.

Sousa, Inc. 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 holders 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. Richard Rowan and Burl Sousa (Sousa), a partnership doing business as Sousa Ready Mix, may transfer the operative rights referred to in the application to Sousa Ready Mix, Inc. (Sousa, Inc.). This authorization shall expire if not exercised by December 31, 1980, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer, Sousa, Inc. shall file with the Commission written acceptance of the certificate and shall file with the Commission a true copy of the instrument of transfer.

3. Sousa, Inc., 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 Sousa Ready Mix, Inc. authorizing it to operate as a cement carrier as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendix A.

5. The certificate of public convenience and necessity granted to Sousa by Decision No. 86695 issued November 30, 1976 in Application No. 56708 is revoked effective concurrently with the effective date of the transfer.

6. Sousa, Inc. 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.

7. Sousa, Inc. 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.

8. Sousa, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If it elects not to transport

A.59691 ALJ/jn

collect on delivery shipments, it will 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 OCT 8 1980, at San Francisco, California.

John E. Boyer
President
Vernon L. Stinson
Richard D. Howell
Samuel M. Smith
Commissioners

Commissioner Claire T. Dadrick, being necessarily absent, did not participate in the disposition of this proceeding.

Sousa Ready Mix, 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 to and within the County of Shasta from any and all points of origin, subject to the following restrictions:

RESTRICTIONS:

1. Whenever Sousa Ready Mix, Inc., a corporation, or Richard Rowan or Burl Sousa, individuals, engage other carriers for the transportation of the property of Sousa Ready Mix, Inc. or Richard Rowan or Burl Sousa or customers or suppliers of said corporation or individuals, Sousa Ready Mix, Inc. or Richard Rowan or Burl Sousa shall not pay such other carriers rates and charges less than the rates and charges published in the tariffs of Sousa Ready Mix, Inc. a corporation, or Richard Rowan or Burl Sousa, individuals, 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 92284, Application 59691.