

Decision No. 92322 OCT 22 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of (a) Roland F. Mason, an
individual doing business as Valley
Transportation Company, to sell,
and Soledad Canyon Trucking, Inc.,
a California corporation, to
purchase, that portion of a cement
carrier's certificate authorizing
service to and within the counties
of Kern, Los Angeles, Orange,
Riverside, San Bernardino, San
Diego, Santa Barbara and Ventura
in the State of California;
(b) Soledad Canyon Trucking, Inc.,
a California corporation, to issue
shares of its common capital stock;
(c) Roland F. Mason, an individual
doing business as Valley
Transportation Company, to transfer
to Fairburn Transportation, Inc.,
a California corporation, that
portion of a cement carrier
certificate authorizing service to
and within the County of Imperial,
in the State of California.

ORIGINAL

Application No. 59570
(Filed April 3, 1980;
amended July 7, 1980)

O P I N I O N

By this application Roland F. Mason, an individual doing business as Valley Transportation Company, seeks authority to sell or transfer and Soledad Canyon Trucking, Inc. (Soledad) and Fairburn Transportation, Inc. (Fairburn) seek authorization to purchase and acquire portions of a certificate of public convenience and necessity to operate as a cement carrier. Soledad also seeks authority to issue common stock.

Since the caption of this application does not reflect the true identity of one of the applicants, an amendment was filed to show

that Roland F. Mason is not an individual, but a corporation doing business as Valley Transportation Company (Mason).

Mason is the owner and holder of a cement carrier certificate issued in Resolution No. 13821, dated June 23, 1964, in A.46414, as amended by D.69371 dated July 7, 1965 in A.47542 and further amended by D.77851 dated October 20, 1970 in A.52120. That cement carrier certificate authorizes the transportation of cement to and within the counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura.

Soledad was incorporated as a California corporation on February 7, 1980. Soledad does not hold any operating authority or conduct any motor carrier operations whatsoever under the jurisdiction of this Commission.

Fairburn is the owner and holder of a cement carrier certificate granted by D.88633 dated March 21, 1978, as amended by D.88814 dated May 16, 1978 in A.57672. That cement carrier certificate authorizes the transportation of cement to and within the counties of Fresno, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura. In addition, Fairburn is engaged in business as a highway permit carrier pursuant to permits issued in File No. T-119652.

As cement carriers, Mason and Fairburn both participate in the rates set forth in Western Motor Tariff Bureau, Inc. Agent, Local Freight Tariff No. 17 (CPUC No. 21), M. J. Nicolaus, issuing officer. Both Soledad and Fairburn propose to adopt that portion of the tariff of Mason relating to the portion of the cement carrier certificate to be acquired by each.

By this application, Mason seeks authority to sell, and Soledad seeks authority to purchase, pursuant to Sections 851-853 of the California Public Utilities Code, that portion of the cement

carrier certificate of Mason which authorizes service to and within the counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura.

The purchase agreement (Exhibit "B" to the application) dated March 17, 1980, between Mason and Soledad, provides for the sale and purchase of that portion of Mason's cement carrier certificate described above for the sum of \$30,000 payable in cash on consummation.

Mason also seeks authority to transfer, and Fairburn seeks authority to acquire, pursuant to Sections 851-853 of the Code, that portion of the Mason cement carrier certificate which authorizes service to and within the county of Imperial, California, by oral agreement without any consideration.

The Articles of Incorporation of Soledad provide for the issuance of one million shares of common capital stock which, under the current corporate laws of the State of California, is neither described as par value nor no par value. This is the only class of shares authorized, and the corporation presently has no shares of stock issued or outstanding. Soledad seeks, pursuant to Sections 816-830 of the Code, authority to issue 20,000 shares of its common capital stock to Ben W. Curtis, its president and chief executive officer; and 20,000 shares of its common capital stock to Terry L. Holman, its vice-president, in consideration of the payment of \$20,000 cash each, which cash will be used for the initial capitalization of Soledad. Exhibit "G" attached to the application is a pro forma balance sheet of Soledad which gives effect to the issuance of stock in the purchase of the described portion of Mason's cement carrier certificate. It is alleged that the provisions of Rule 17 of our Rules of Practice and Procedure are not applicable to Soledad for the reason that it is a newly formed corporation, and that it has not conducted any business of any kind or character.

Soledad believes that the initial \$40,000 cash to be realized from the proposed issuance of its stock will be sufficient capitalization for the new corporation since the purchase price for its portion of the Mason cement carrier certificate is \$30,000 cash payable on consummation. In addition, Soledad proposes to use motor vehicle equipment leased from its shareholders rather than purchase such equipment. Therefore, Soledad will retain \$10,000 in cash as working capital, which should be adequate to establish and maintain operations for a period of at least six months. In the event that additional funds are required from time to time, one or more of the proposed shareholders of the corporation will make such funds available to Soledad by way of a loan to the corporation secured by a demand note.

Ben W. Curtis, president and chief executive officer of Soledad, is authorized to conduct dump truck operations under a dump truck permit issued in File No. T-125464. In addition, he is the president and chief executive officer of Canyon County Enterprises, which, with its copartner Curtis Construction Company, does business as Curtis Sand & Gravel. Accordingly, Ben W. Curtis, as the president and chief executive officer of Soledad, is familiar with the transportation of cement.

Fairburn is engaged in business as a cement carrier providing service within the counties of Fresno, Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura. The purpose of the instant application is to authorize Fairburn to provide transportation to and within the county of Imperial. By reason of its present operations, and the equipment which it owns and operates, it is fully qualified to expand its operations to include the county of Imperial.

Applicants request relief from the provisions of Rule 37(a) of our Rules of Practice and Procedure, which Rule requires service of the application on all competing carriers. Applicants allege that

the cost of reproducing and mailing copies of the application to each of the 80 carriers involved would involve considerable expense. Instead, applicants have mailed copies of their joint application to all of the principal cement mills in California and to the offices of the California Trucking Association (CTA). It is also alleged that CTA publishes in its weekly magazine, CALTRUX, a summary of all applications currently filed with the Commission involving cement carriers. It is further alleged that virtually all cement carriers are members of CTA and, therefore, publication in CALTRUX will give adequate notice to all of the cement carriers in competition with Mason. We will grant applicant's request. ✓

Applicants allege that the proposed transfer of the Mason cement carrier certificate to Soledad and Fairburn and the issuance of shares of common capital stock by Soledad will be in the public interest for the following reasons:

1. Soledad will be able to continue the cement motor carrier operations of Mason without interruption in service. Soledad proposes to lease motor vehicle equipment suitable for transporting cement, in bulk, from its shareholders.
2. Ben W. Curtis, the president and chief executive officer and one of the proposed shareholders of Soledad, is familiar with motor carrier service as he is presently a dump truck carrier.
3. Fairburn is now engaged in business as a cement carrier in eleven counties. It proposes to acquire from Mason the authority to operate in the county of Imperial which will enable it to expand its operations to include cement carrier service to points in that contiguous county. It is well qualified to do so by reason of adequate financing, equipment, and managerial experience.
4. There will be no change in rates and other charges now assessed to the public.
5. The sale and transfer to Soledad of the described portion of the Mason cement carrier certificate for \$30,000 cash is reasonable; and, in the event

that additional working capital is required beyond the sum of \$10,000, one or more of Soledad's shareholders is prepared to advance it. As noted, no consideration is to be paid by Fairburn to Mason for Fairburn's acquisition of its portion of the Mason cement carrier certificate.

It is requested that this matter be decided without formal hearing. No protests have been received.

Findings of Fact

1. The proposed transfers are not adverse to the public interest. ✓
2. A public hearing is not necessary.
3. The proposed security issue is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the security authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or income.
4. Mason has complied with Rule 37(c) of our Rules of Practice and Procedure.

Conclusion of Law

The transfer of portions of Mason's certificate to Soledad and to Fairburn, as proposed herein, should be authorized.

The order which follows will provide for, in the event the transfers are completed, the revocation of the certificate presently held by Mason, the issuance of a certificate in appendix form to Soledad, and a restatement of the certificate of Fairburn.

Inasmuch as Soledad is affiliated with certain other companies through common ownership, an alter ego restriction will be included in Soledad's certificate which will govern the level of rates and charges which Soledad must pay to subhaulers engaged by it to transport property in which Soledad has a direct or indirect financial interest.

Soledad Canyon Trucking, Inc. and Fairburn Transportation, Inc. 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. Roland F. Mason, Inc., doing business as Valley Transportation Company, may sell and transfer the operating rights referred to in the application, as amended, to Soledad Canyon Trucking, Inc. and to Fairburn Transportation, 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, the purchasers shall file with the Commission written acceptance of the certificates and a true copy of the bill of sale or other instrument of transfer.

3. Purchasers 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 made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 117-Series. Failure to comply with the provisions of General Order No. 117-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfers authorized in paragraph 1 are completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, certificates of public

convenience and necessity are granted to Soledad Canyon Trucking, Inc. and to Fairburn Transportation, Inc., 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 of this decision.

5. The certificates of public convenience and necessity granted to Roland F. Mason, Inc. in Resolution No. 13821 dated June 23, 1964 in A.46414, as amended by D.69371 dated July 7, 1965 in A.47542 and further amended by D.77851 dated October 20, 1970 in A.52120, and granted to Fairburn Transportation, Inc. by D.88633 dated March 21, 1978, as amended by D.88814 dated May 16, 1978 in A.57672, are both revoked effective concurrently with the date of the tariff filings required by paragraph 3.

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

9. On or after the effective date of this order and on or before December 31, 1980, for the purposes specified in this proceeding, purchaser Soledad may issue not exceeding 40,000 shares of its common capital stock having a stated value of \$1 per share.

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

11. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

12. The authority granted by this order to issue securities will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$80. In all other respects, the effective date of this order shall be thirty days after the date hereof.

Dated OCT 22 1980, at San Francisco, California.

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

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

John E. Bays

President

Robert D. Hood

Samuel J. ...

Commissioners

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
102221
OCT 31 1980
80.
By *[Signature]*

Soledad Canyon Trucking, 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 all points in the following counties, subject to the restrictions shown below:

Kern	San Bernardino
Los Angeles	San Diego
Orange	Santa Barbara
Riverside	Ventura

Restrictions:

1. Whenever Soledad Canyon Trucking, Inc. engages other carriers for the transportation of property of Canyon County Enterprises; or Curtis Construction Company; or Curtis Sand & Gravel; or subsidiaries, affiliates, customers, or suppliers of said corporations or companies; Soledad Canyon Trucking, Inc. shall not pay such other carriers any rates or charges which are less than the rates and charges published in Soledad Canyon Trucking, Inc.'s tariffs on file with this Commission.
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 ~~92322~~, Application 59570.

Fairburn Transportation, 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 all points in the following counties, subject to the restriction shown below:

Fresno	Riverside
Imperial	San Bernardino
Inyo	San Diego
Kern	San Luis Obispo
Los Angeles	Santa Barbara
Orange	Ventura

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 92322, Application 59570.