

ORIGINAL

Decision No. : 92388 NOV 4 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Miles Tank Lines)
to transfer its cement carrier)
certificate and RBJ Transport,)
Inc., a California corporation)
to acquire said certificate)
(Public Utilities Code § 851).)

Application No. 59787
(Filed July 1, 1980)

O P I N I O N

Miles Tank Lines (Miles) is a California corporation authorized to conduct operations as a cement carrier from any and all points of origin to any and all points located in the counties of Merced and San Joaquin, under authority of Commission Decision No. 90077 dated March 13, 1979 in Application No. 58575. Exhibit B attached to the application is a copy of a freight bill showing that Miles has exercised its authority within the twelve months immediately preceding the date of filing this application.

RBJ Transport, Inc. (RBJ) is a corporation organized under the laws of the State of California. Exhibit A attached to the application is a copy of the articles of incorporation of RBJ.

The parties have applied herein to sell the Miles operating authority to RBJ for \$2,000 pursuant to Section 851 of the Public Utilities Code. The transfer agreement is attached to the application as Exhibit C.

It is alleged that the majority of the Miles shareholders have elected to go out of business and to sell all of the corporate assets. The Miles cement carrier certificate will be sold with the other assets. It is further alleged that the officers of RBJ average more than thirty years in the trucking business, several were formerly employed by Miles, and are familiar with the latter's operation. RBJ will continue the hauling operation of Miles at

approximately the same rates. RBJ is presently operating as a petroleum contract carrier under authority of a permit dated January 17, 1979. The financial statement of RBJ is attached to the application.

Applicants have requested that the requirements of mailing and notice provided in Rule 37 of the Commission's Rules of Practice and Procedure be waived, since California Trucking Association, Western Motor Tariff Bureau, Inc., and a group of carriers and cement suppliers have already been served a copy of the application and the business will be operated as it was under the prior owner. Notice of the application appeared in the Daily Calendar on July 3, 1980. ✓

Findings of Fact

1. The proposed transfer would not be adverse to the public interest.
2. No protests have been filed; a public hearing is not necessary.

Conclusions of Law

1. The requirements of Rule 37 are waived.
2. The application should be granted.
3. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Miles and the issuance of a certificate in appendix form to RBJ.

RBJ 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.

O R D E R

IT IS ORDERED that:

1. Miles Tank Lines may sell and transfer the operative rights referred to in the application to RBJ Transport, Inc. This authorization shall expire if not exercised by January 1, 1981, or within such additional time as may be authorized by the Commission.
2. Within thirty days after the transfer RBJ Transport, Inc. 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. RBJ Transport, 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 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. On or before the end of the third month after the transfer, RBJ Transport, Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of Miles Tank Lines for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. 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 RBJ Transport, 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 of this decision.

6. The certificate of public convenience and necessity granted by Decision No. 90077 dated March 13, 1979 in Application No. 58575 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. RBJ Transport, Inc. 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.

8. RBJ Transport, 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.

9. RBJ Transport, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If RBJ Transport, Inc. elects not to transport collect on delivery shipments, it shall 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 NOV 4 1980, at San Francisco, California.

John E. Guyson President
Kenneth L. Shugart
Richard W. Swalle
Charles T. Rediff
James M. Jones Commissioners

RBJ Transport, Inc., 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 defined in Section 214.1 of the Public Utilities Code, from any and all points of origin to all points in the Counties of Merced and San Joaquin, subject to the following 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 92388, Application 59787.