

Decision No. 92942

APR 21 1981

ORIGINAL TD-23

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Earl W. Hudson, Doing Business as )  
 Hudson Trucking, for authority to )  
 execute and deliver an Agreement )  
 encumbering its highway common )  
 carrier certificate of public )  
 convenience and necessity, and )  
 Lodi Truck Sales for authority to )  
 acquire control of the certificates )  
 of Earl W. Hudson, Doing Business as )  
 Hudson Trucking. )

Application No. 59740  
 (Filed June 16, 1980;  
 amended October 6, 1980)

INTERIM OPINION AND ORDER

Applicant Earl W. Hudson (Hudson), an individual doing business as Hudson Trucking seeks authority to transfer his cement carrier certificate and highway common carrier certificate issued under Public Utilities Code Section 1063.5, and applicant, Lodi Truck Sales (Lodi), a California corporation, seeks authority to acquire the certificates of Hudson through acquisition of all of his assets.

Hudson operates as a cement carrier pursuant to a certificate of public convenience and necessity granted by Decisions Nos. 78761 and 82831. The certificate authorizes him to engage in the transportation of cement, hydraulic, masonry, natural or Portland, in bulk or in packages to and within those counties named from any and all points of origin:

- Counties: Alameda, Amador, (R) Alpine, Butte, (R) Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, (R) Humboldt, Lake, Lassen, Madera, Marin, (R) Mariposa, Mendocino, Merced, Modoc, Mono, Napa, Nevada, Placer, Plumas, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, (R) Sutter, Tehama, (R) Trinity, Tuolumne, (R) Yolo, Yuba.

(R) Restriction: Shipments shall be transported in pneumatic bulk cement semitrailers pulled by dual-drive heavy-duty tractors.

Hudson also holds and operates pursuant to a highway common carrier certificate of public convenience and necessity issued under Public Utilities Code Section 1063.5 and a statewide Highway Contract Carrier Permit issued in File T-15161.

Lodi is a California corporation, incorporated on March 3, 1980. Lodi proposes to purchase all assets and authorities of Hudson in accordance with the terms of an Agreement of Sale dated February 29, 1980 for a total price of \$71,000. The purchase price will be paid with \$7,000 cash and the balance by an unsecured note bearing 10 percent simple interest and personally guaranteed by Lester T. Calkins.

Applicants state that the granting of this application would be in the public interest since Hudson desires to withdraw from participation in the company's management and operations due to health and age considerations. The applicants further state that Lester T. Calkins, sole stockholder, director, and officer of Lodi will provide active and more vigorous management, all to the benefit of the shipping public.

The amendment to the application contains a freight bill showing that the authority to be transferred has been exercised within the 12 months immediately preceding the date of filing.

Applicants also request relief under the provisions of Rule 87 for waiver of Rule 37(a) of the Rules of Practice and Procedure in connection with service on competing carriers for the purpose of avoiding expensive costs of such service. Applicants allege that the granting of this application will have no significant effect upon the quality of the human environment. A copy of the application has been forwarded to the California Trucking Association. Notice of the filing of the application appeared on the Commission's Daily Calendar of June 18, 1980. There are no protests to the application.

Findings of Fact

1. The proposed transfer of the cement carrier certificate would not be adverse to the public interest.

2. Transfer of the highway common carrier certificate issued under Public Utilities Code Section 1063.5 will be deferred until the Commission arrives at some policy determinations on a transfer of such certificate between third parties.

3. The following order complies with the guidelines in the Commission's Energy Efficiency Plan.

On the basis of the above findings the application should be granted with respect to the cement carrier certificate and the transfer of the Section 1063.5 certificate should be deferred. The transfer of the contract carrier permit will be accomplished under a separate application. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the cement carrier certificate held by Hudson and the issuance of a certificate in appendix form to Lodi.

Lodi is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as a element of value in rate fixing for any amount of money in excess of that originally paid to the State as a 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.

IT IS ORDERED that:

1. Earl W. Hudson, doing business as Hudson Trucking, may sell and transfer the certificate of public convenience and necessity to operate as a cement carrier and property referred to in the application to Lodi Truck Sales. This authorization shall expire if not exercised by September 30, 1981, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer purchaser 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. Purchaser 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. 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 Lodi Truck Sales, 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.

5. The certificates of public convenience and necessity granted by Decisions Nos. 78761 and 82831 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

9. Transfer of the highway common carrier certificate issued under Section 1063.5 will be deferred, pending a policy determination by this Commission on a transfer of such certificate between third parties.

10. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

The effective date of this order is the date of signature since there is no known opposition and there is no reason to delay granting the relief requested.

Dated APR 21 1981, at San Francisco, California.

John E. Boyer  
President

William H. Powell

Donald J. Smith

Victor K. Adams

Theresa C. Adams  
Commissioners

Lodi Truck Sales, 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 and places in the counties shown below, subject to the following restrictions:

Alameda	Marin	San Mateo
Amador	*Mariposa	Santa Clara
*Alpine	Mendocino	Shasta
Butte	Merced	Sierra
*Calaveras	Modoc	Siskiyou
Colusa	Mono	Solano
Contra Costa	Napa	Sonoma
El Dorado	Nevada	Stanislaus
Glenn	Placer	*Sutter
*Humboldt	Plumas	Tehama
Lake	Sacramento	*Trinity
Lassen	San Francisco	Tuolumne
Madera	San Joaquin	*Yolo
		Yuba

Restrictions:

- \* 1. Shipments to these counties shall be transported in pneumatic bulk cement semitrailers pulled by dual heavy-duty tractors.
- 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 92942, Application 59740.