

ORIGINAL

Decision No. 73096

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of EARL F. ANDERS and CLIFTON)
SHIFFLET, doing business as)
SHIFFLET BROS., for authority)
to transfer assets; and)
))
SHIFFLET BROS., INC., a)
California Corporation, for)
authority to acquire assets,)
assume liabilities, and issue)
stock.)

Application No. 49623
Filed August 21, 1967

O P I N I O N

This is an application for an order of the Commission (1) authorizing Earl F. Anders and Clifton Shifflet, doing business as Shifflet Bros., to sell and transfer cement carrier certificates of public convenience and necessity and a warehouseman prescriptive operative right, together with certain related assets, to Shifflet Bros., Inc., and (2) authorizing the latter, in acquiring said assets subject to certain liabilities, to issue 6,000 shares of its \$10 par value capital stock.

Earl F. Anders and Clifton Shifflet, doing business as Shifflet Bros., are engaged in operations as a cement carrier to and within Butte and Sutter Counties pursuant to certificates of public convenience and necessity referred to in Resolution No. 13825, Sub. No. 14, dated June 23, 1964 and in Decision No. 68807, dated March 30, 1965, as modified, in Application

No. 47322. The latter proceeding involved the acquisition of a cement carrier certificate originally granted to Emery P. Biehle by Resolution No. 13925, Sub. No. 24, dated June 23, 1964. Other trucking activities are conducted under permits issued by this Commission.

The partners also hold a prescriptive warehouseman operative right acquired pursuant to Decision No. 67763, dated August 25, 1964, in Application No. 46770. Said right, which was originally determined in the order dated August 30, 1960 in Case No. 6908, authorizes the operation of 5,000 square feet of storage or warehouse floor space at Chico, exclusive of the expansion permissible under Section 1051 of the Public Utilities Code.

In the present proceeding Earl F. Anders and Clifton Shifflet request authority to sell and transfer said cement carrier certificates and warehouseman operative right, together with certain related assets, to Shifflet Bros., Inc., a California corporation. The latter proposes to acquire said assets, subject to certain liabilities, in exchange for \$60,000 aggregate par value of its capital stock.

A pro forma balance sheet dated as of March 1, 1967, giving effect to the transfer proposed herein, is attached to the application as Exhibit F. Said balance sheet shows total assets of \$328,966.28 offset by current and long-term liabilities of \$124,841.89 and \$123,808.80, respectively, and by net worth of \$80,315.59.

The Commission has considered this matter and finds that: (1) the proposed transactions will not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose specified herein; and (3) such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income. On the basis of these findings we conclude that the application should be granted. A public hearing is not necessary.

The action taken herein shall not be construed as a finding of the value of the operative rights and other assets to be transferred. So far as the rights are concerned, the authorization herein granted is for the transfer of the cement carrier certificates of public convenience and necessity and the warehouseman prescriptive operative right only. Any transfer of permitted operative rights must be the subject of a separate application or applications.

Shifflet Bros., Inc. is hereby 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. On or after the date hereof and on or before December 31, 1967, Earl F. Anders and Clifton Shifflet may sell and transfer, and Shifflet Bros., Inc. may purchase and acquire, the cement carrier certificates of public convenience and necessity, the prescriptive warehouseman operative right and other assets referred to in this proceeding.

2. Shifflet Bros., Inc., on or after the date hereof and on or before December 31, 1967, for the purpose of acquiring said certificates, warehouseman operative right and other assets, subject to the liabilities referred to in this proceeding, may issue 6,000 shares of its \$10 par value capital stock.

3. Shifflet Bros., Inc. shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

4. Within thirty days after the consummation of the transfer herein authorized, Shifflet Bros., Inc. shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

5. Shifflet Bros., Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the cement carrier and warehouseman operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than ten days after the date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. 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 Orders Nos. 61-A and 117.

6. Concurrently with the effective date of the tariff filings for warehouseman operations required by Ordering Paragraph No. 5 hereof, the prescriptive operative right as a public utility warehouseman originally determined by the order in Case No. 6908, which right was subsequently transferred in accordance with Decision No. 67763, is hereby revoked and, in place and stead thereof, a prescriptive operative right as a public utility warehouseman is hereby stated for Shifflet Bros., Inc., as more particularly set forth in Appendix A attached hereto.

7. In the event the transfer authorized in Ordering Paragraph No. 1 hereof is consummated, a certificate of public convenience and necessity is granted to Shifflet Bros., Inc., authorizing it to operate as a cement carrier, as defined in

Section 214.1 of the Public Utilities Code, between the points particularly set forth in Appendix B attached hereto and made a part hereof.

8. The certificate of public convenience and necessity granted in Ordering Paragraph No. 7 of this order shall supersede the certificates of public convenience and necessity referred to in Resolution No. 13825, Sub. Nos. 14 and 24, and in Decision No. 68807, which certificates shall be revoked effective concurrently with the effective date of the tariff filings required by Ordering Paragraph No. 5 hereof.

9. In providing service pursuant to the cement carrier certificate herein granted, Shifflet Bros., Inc. shall comply with and observe the following service regulations:

- (a) Within thirty days after the date hereof, Shifflet Bros., Inc. shall file a written acceptance of the certificate herein granted. Shifflet Bros., Inc. is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-D. Failure to comply with and observe the safety rules, or the provisions of General Order No. 100-D, may result in a cancellation of the operating authority granted by this decision.

(b) Shifflet Bros., 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 March 31 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.

10. On or before the end of the third month after the consummation of the transfer as herein authorized, Shifflet Bros., 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 the sellers for the period commencing with the first day of the current year to and including the effective date of the transfer.

11. The effective date of this order is the date hereof.

Dated at San Francisco, California,
this 19th day of SEPTEMBER, 1967.

[Signature]
President

[Signature]

William M. Bennett, Jr.

[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Shifflet Bros., Inc. possesses a prescriptive operative right as a public utility warehouseman for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>No. of Square Feet of Floor Space</u>
Chico	5,000

(The floor space shown above is exclusive of the expansion permissible under Section 1051 of the Public Utilities Code.)

(End of Appendix A)

Issued by California Public Utilities Commission.

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Shifflet Bros., Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a cement carrier from any and all points of origin to any and all points of destination within the Counties of Butte and Sutter.

(End of Appendix B)

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