

**ORIGINAL**Decision No. 73809

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 WILLIAM B. GROVER, Trustee of the )  
 Estate of Nunnemaker Transportation )  
 Company, dba EUREKA FREIGHT LINES, )  
 bankrupt, to sell and transfer )  
 cement carrier certificate, and for )  
 FOSTER DRAYAGE COMPANY, a Califor- )  
 nia corporation, to purchase and )  
 acquire said cement carrier certif- )  
 icate and remove suspension. )

Application No. 49944

O P I N I O N

William B. Grover, Trustee of the Estate of Nunnemaker Transportation Company, doing business as Eureka Freight Lines, bankrupt, requests authority to sell and transfer and Foster Drayage Company requests authority to purchase and acquire a cement carrier certificate.

The certificate is prescriptive in nature and was set forth in Resolution No. 13821, Sub. No. 34, dated June 23, 1964, in Application No. 46386. It authorizes operations from any and all points of origin to all points and places in the Counties of Humboldt, Del Norte and Trinity. Said certificate is presently under suspension for failure to comply with the necessary insurance requirements.

The parties have agreed to the transfer of the certificate for a cash consideration of \$800. The sale has been confirmed by the Referee in Bankruptcy in Docket No. 102522, before the District Court of the United States, in and for the Northern District of California.

Applicant buyer is presently operating pursuant to a radial highway common carrier permit duly issued by the Commission. As of December 31, 1967, applicant buyer indicated a net worth in the amount of \$161,577.

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

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by William B. Grover, Trustee of the Estate of Nunnemaker Transportation Company, dba Eureka Freight Lines, bankrupt, and the issuance of a certificate in appendix form to Foster Drayage Company.

Foster Drayage Company 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 over a particular route. 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 before August 1, 1968, William B. Grover, Trustee of the Estate of Nunnemaker Transportation Company, dba Eureka Freight Lines, bankrupt, may sell and transfer, and Foster Drayage Company may purchase and acquire, the operative rights referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, Foster Drayage Company 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.
3. Foster Drayage Company shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier 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 thirty days after the effective date of this order on not less than thirty 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 Order No. 117. Failure to comply with and observe the provisions of General Order No. 117 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 consummation of the transfer as herein authorized, Foster Drayage Company 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 seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. Concurrent with the tariff filings required by ordering paragraph 3 hereof, the suspension of the authority herein considered is hereby removed.

6. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Foster Drayage Company authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A attached hereto and made a part hereof.

7. The certificate of public convenience and necessity granted in paragraph 6 of this order shall supersede the certificate of public convenience and necessity granted by Resolution No. 13821 Sub. No. 34, dated June 23, 1964, in Application No. 46386, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

8. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant 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.
- b. Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Charts 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.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 5<sup>th</sup> day of MARCH, 1968.

President

*William L. Bennett*

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*Augusta*

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*William Seymour J.*

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*Jack P. Morissett*

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Foster Drayage Company, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a cement carrier to and within the Counties of Del Norte, Humboldt and Trinity from any and all points of origin.

Issued by the California Public Utilities Commission.

Decision No. 73809, Application No. 49944.