

ORIGINAL

Decision No. 74059

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of:

H. NORMAN JOHNSON, JR. and E. MOE
MCCOOK, a copartnership, doing
business as J & M Trucking Co.
to sell and transfer, and of
J-M CEMENT CARRIERS, INC., a
California corporation, to
acquire, a cement carrier
certificate (now voluntarily
suspended); to lift said
suspension; and for authority
for said J-M Cement Carriers, Inc.
to issue stock. (Public Utilities
Code Sec. 816-830, and Section 851
et seq.)

Application No. 50144
Filed April 4, 1968

O P I N I O N

This is an application for an order of the Commission (1) authorizing H. Norman Johnson, Jr. and E. Moe McCook, doing business as J & M Trucking Co., to transfer a cement carrier certificate of public convenience and necessity to J-M Cement Carriers, Inc., (2) authorizing J-M Cement Carriers, Inc. to issue 50 shares of its \$100 par value capital stock and (3) lifting the suspension of the cement carrier certificate proposed to be transferred.

Pursuant to authority granted by Decision No. 70252, dated January 18, 1966, in Application No. 48068, H. Norman Johnson, Jr. and E. Moe McCook acquired a certificate of public convenience and necessity pertaining to operations as a cement carrier to and within the Counties of Contra Costa, Fresno,

Imperial, Kern, Los Angeles, Marin, Merced, Napa, Orange, Riverside, San Bernardino, San Diego, San Francisco, San Joaquin, Santa Barbara, Sonoma and Ventura.

On November 25, 1967, the Commission suspended said certificate. By Resolution No. R-192, dated February 20, 1968, the Commission continued said cement carrier certificate in suspension until August 1, 1968, unless sooner canceled, modified or extended by order of the Commission.

J-M Cement Carriers, Inc., a California corporation organized on or about March 21, 1968, requests authority to issue 50 shares of its \$100 par value capital stock for \$5,000 cash which will be used for necessary equipment and working capital. No value is assigned to operative rights.

After consideration the Commission 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 purposes specified herein; (3) such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; and (4) good cause appears for vacating the suspension of said certificate. 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 to be transferred. So far as the rights are concerned, the authorization herein granted is for the transfer of the cement carrier certificate of public convenience and necessity only. Any transfer

of permitted operative rights must be the subject of a separate application or applications.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by H. Norman Johnson, Jr. and E. Moe McCook and the issuance of a certificate in appendix form to J-M Cement Carriers, Inc.

J-M Cement Carriers, 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 as a cement carrier. 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. The suspension of the cement carrier certificate of public convenience and necessity ordered by Resolution No. R-192, dated February 20, 1968, is hereby vacated concurrently with the effective date of the tariff filings required by Ordering Paragraph No. 6 hereof.

2. On or after the date hereof and on or before August 31, 1968, H. Norman Johnson, Jr. and E. Moe McCook may sell and transfer, and J-M Cement Carriers, Inc. may purchase and acquire, the cement carrier certificate of public convenience and necessity referred to in this proceeding.

3. J-M Cement Carriers, Inc., on or after the date hereof and on or before August 31, 1968, may issue and sell, at par for cash, not exceeding 50 shares of its \$100 par value capital stock for the purposes specified herein.

4. J-M Cement Carriers, 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.

5. Within thirty days after the consummation of the transfer herein authorized, J-M Cement Carriers, 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.

6. J-M Cement Carriers, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the cement 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 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 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.

7. In the event the transfer authorized in Ordering Paragraph No. 2 hereof is consummated, a certificate of public convenience and necessity is granted to J-M Cement Carriers, Inc. authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code and as provided in Appendix A 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 certificate of public convenience and necessity granted by Decision No. 70252, dated January 18, 1966, in Application No. 48068, which certificate is revoked effective concurrently with the effective date of the tariff filings required by Ordering Paragraph No. 6 hereof.

9. In providing service pursuant to the certificate herein granted, J-M Cement Carriers, Inc. 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 date hereof, J-M Cement Carriers, Inc. shall file a written acceptance of the certificate herein granted. J-M Cement Carriers, 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.
- b. J-M Cement Carriers, 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. The Secretary is directed to mail a copy of this decision to Western Motor Tariff Bureau, Inc., Agent.

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

Dated at San Francisco, California, this 30th day of

APRIL, 1968

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

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

J-M Cement Carriers, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport cement from all points of origin within the State of California to all points located in the following counties:

Contra Costa, Fresno, Imperial, Kern,
Los Angeles, Marin, Merced, Napa, Orange,
Riverside, San Bernardino, San Diego,
San Francisco, San Joaquin, Santa Barbara,
Sonoma and Ventura.

Whenever J-M Cement Carriers, Inc. engages other carriers for the transportation of property of J-M Cement Carriers, Inc., H. Norman Johnson, Jr. and/or E. Moe McCook or Fourth Street Rock Crusher or customers or suppliers of said individuals, partnership, companies or corporations, J-M Cement Carriers, Inc. shall not pay such other carriers rates and charges less than the rates and charges published in J-M Cement Carriers, Inc.'s tariffs on file with the Commission for the transportation actually performed by such other carriers.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 74059, Application No. 50144.