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**ORIGINAL**

Decision No. 75128

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
DAVILLA TRUCKING CO., INC., a  
corporation, to sell and transfer a  
certificate of public convenience  
and necessity authorizing the  
transportation of cement to JAMES M.  
WHITTY, dba J. M. WHITTY TRUCKING.

Application No. 50675  
(Filed November 8, 1968)

O P I N I O N

Davilla Trucking Co., Inc. requests authority to sell and transfer, and James M. Whitty, doing business as J. M. Whitty Trucking, requests authority to purchase and acquire, certain operating authority.

The certificated authority was issued by Commission Resolution No. 13825, Sub. No. 27 dated June 23, 1968 in File No. T-67,744, and authorizes the transportation of cement to and within the Counties of Alameda, Contra Costa, Fresno and Sonoma.

The agreed cash consideration is \$4,500. As of October 1, 1968, applicant buyer indicated a net worth in the amount of \$42,785.

It is alleged that applicant seller desires to withdraw from the transportation of cement; and that applicant buyer has been engaged in the transportation business for many years and has the necessary equipment and ability to provide service under the authority to be transferred.

The application was listed on the Commission's Daily Calendar of November 12, 1968. No objection to granting of the application has been received.

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 Davilla Trucking Co., Inc. and the issuance of a certificate in appendix form to James M. Whitty.

James M. Whitty 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.

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

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1969, Davilla Trucking Co., Inc. may sell and transfer, and James M. Whitty may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, James M. Whitty 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. James M. Whitty shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that he has adopted or established, as his 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. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to James M. Whitty authorizing him 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.

5. The certificate of public convenience and necessity granted in paragraph 4 of this order shall supersede the certificate of public convenience and necessity granted by Resolution No. 13825, Sub. No. 27, in File No. T-67,744, which certificate is revoked concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

6. In providing service pursuant to the certificate herein granted, James M. Whitty shall comply with and observe the following 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, James M. Whitty shall file a written acceptance of the certificate herein granted. James M. Whitty is placed on notice, that, if he accepts the certificate of public convenience and necessity herein granted, he 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-E.
- b. James M. Whitty shall maintain his 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 his 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 20th day of DECEMBER, 1968.

William J. Evans, Jr.  
President

Sheel P. Monassey  
Commissioners

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

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

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Appendix A

JAMES M. WHITTY

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James M. Whitty, 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 Alameda, Contra Costa, Fresno and Sonoma from any and all points of origin.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 75128, Application No. 50675.