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ORIGINAL

Decision No. 76009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
E. S. FOOTE, an individual, to  
transfer and of G. WESLEY FREE, an  
individual, doing business as FREE  
BUILDERS SUPPLY, to acquire a  
Certificate of Public Convenience  
and Necessity and certain property.

Application No. 51169  
(Filed June 16, 1969)

O P I N I O N

E. S. Foote requests authority to sell, and G. Wesley Free requests authority to purchase, a certificate of public convenience and necessity authorizing operations as a cement carrier and certain property in addition thereto.

The certificate was granted by Decision No. 70145, dated December 21, 1965, in Application No. 47911. The property consists of a truck and trailer. The total consideration is \$12,500, \$8,250 of which is to be paid in cash. The balance of \$4,250 represents encumbrances upon the equipment, which applicant purchaser has agreed to assume. A value of \$6,000 has been placed upon the equipment, a value of \$1,000 has been placed upon the certificate and the balance represents good will. As of May 1, 1969, applicant purchaser indicated a net worth in the amount of \$40,047.

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 E. S. Foote, an individual, and the issuance of a certificate in appendix form to G. Wesley Free, an individual, doing business as Free Builders Supply.

G. Wesley Free 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, these 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 before May 1, 1970, E. S. Foote may sell and transfer, and G. Wesley Free may purchase and acquire, the operative rights and property referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, G. Wesley Free 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. G. Wesley Free 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 ten days after the effective 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.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, G. Wesley Free 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. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to G. Wesley Free, 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.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 70145, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. Within thirty days after the effective date hereof, purchaser shall file a written acceptance of the certificate herein granted. Purchaser 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 insurance requirements of the Commission's General Order No. 100-E.

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8. Purchaser 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.

9. 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, he shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 12th day of AUGUST, 1969.

William J. ...  
President

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Commissioners

Commissioner J. P. Valenzin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

G. Wesley Free dba Free Builders Supply 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 from any and all points of origin to and within the county of San Diego, subject to the following restrictions:

1. Whenever G. Wesley Free engages other carriers for the transportation of property of G. Wesley Free or Free Builders Supply or customers or suppliers of said individual or company, G. Wesley Free shall not pay such other carriers rates and charges less than the rates and charges published in G. Wesley Free's tariffs on file with this Commission.
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 the California Public Utilities Commission .

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