

**ORIGINAL**

Decision No. 76049

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Marvin Henry Finch, an individual )  
doing business under the firm name )  
and style of R.C.P. COMPANY, to )  
transfer operating authority, and )  
HERCULES DRAYAGE CO., INC., a )  
California corporation, for )  
authority to acquire and to oper- )  
ate a Cement Carrier Certificate. )

Application No. 51210  
(Filed July 1, 1969)

O P I N I O N

Marvin Henry Finch requests authority to sell and transfer and Hercules Drayage Co., Inc., requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier from any and all points of origin to any and all points in the County of San Diego.

The certificate was set forth in Resolution No. 13823, Sub. 28, dated June 23, 1964, in Application No. 46398. The agreed consideration is \$5,000, payable in monthly installments of \$475 with interest at the rate of 6 percent per annum. Purchaser has the option of making payments in cash, or by selling to applicant seller an amount of volcanic ash, cement or expanded shale of the equivalent cash value or by transportation services of an equivalent cash value.

Applicant purchaser is presently engaged as a permitted carrier. It owns and operates 16 units of equipment and as of April 30, 1969, indicated a net worth in the amount of \$56,720.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and that the money, property or labor to be procured or paid for by the

indebtedness herein authorized is necessarily required for the purposes specified herein, and such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. 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 Marvin Henry Finch and the issuance of a certificate in appendix form to Hercules Drayage Co., Inc.

Hercules Drayage Co., 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, 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.

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

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1970, Marvin Henry Finch may sell and transfer, and Hercules Drayage Co., Inc., may purchase and acquire, the operative rights referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, purchaser shall notify the Commission, in writing,

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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. Purchaser 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 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, purchaser 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 Hercules Drayage Co., Inc., a corporation, 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.

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 Resolution No. 13823, Sub. 28, dated June 23, 1964, in Application No. 46398, 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, 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 insurance requirements of the Commission's General Order No. 100-E.

8. Applicant 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.

9. Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

10. After the effective date hereof, applicants may execute a promissory note in the amount of \$5,000. In the event applicant purchaser should discharge its indebtedness on other than a cash basis applicant seller shall keep records that shall show conclusively that any transportation service has been charged for at rates

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which are not less than the applicable minimum rates governing the transportation in question. A copy of such records shall be filed with this Commission when applicant purchaser's obligation has been satisfied.

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

Dated at San Francisco, California, this 19th day of AUGUST, 1969.

William S. Jones, Jr.  
President

August 19, 1969

J. P. [unclear]  
[unclear]

[unclear]  
Commissioners

Hercules Drayage Co., Inc., a corporation, 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 any and all points in the County of San Diego subject to the following restrictions:

1. Whenever Hercules Drayage Co., Inc., engages other carriers for the transportation of property of Marvin H. Finch or R.C.P. Company or Hercules Drayage Co., Inc. or customers or suppliers of said individual, company or corporation, Hercules Drayage Co., Inc. shall not pay such other carriers rates and charges less than the rates and charges published in Hercules Drayage Co., Inc.'s tariffs on file with the Commission.

2. This certificate of public convenience and necessity shall lapse and terminate if not exercised for one year.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 76049, Application No. 51210.