

ORIGINAL

Decision No. 76990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 FOSTER DRAYAGE COMPANY, a California)
 corporation, to sell and transfer)
 cement carrier certificate and for)
 CLYDE H. NUNNEMAKER, an individual)
 dba CHUB NUNNEMAKER TRUCKING, to)
 purchase and acquire said cement)
 carrier certificate.)

Application No. 51598
(Filed January 5, 1970)

O P I N I O N

This is an application by Foster Drayage Company, a corporation (hereinafter referred to as Foster), to sell, and Clyde H. Nunnemaker, an individual, doing business as Chub Nunnemaker Trucking (hereinafter referred to as Nunnemaker), to purchase a certificate of public convenience and necessity authorizing operations as a cement carrier from any and all points of origin to all points and places in the Counties of Humboldt, Del Norte, and Trinity, in California.

Foster was authorized to operate as a cement carrier by Decision No. 73809, dated March 5, 1968, in Application No. 49944. The application relates that Nunnemaker has operated as a radial highway common carrier since 1968, and that he has been actively engaged in the trucking business since 1952. The application further relates that Nunnemaker seeks to operate as a cement carrier because it is a natural outgrowth of his present business and that it results from requests made by his present customers. The application shows that as of October 31, 1969, Nunnemaker had total assets of \$55,365.

The agreed purchase price is \$1,050. No other assets of Foster are concerned in this sale.

Service of this application was made upon the California Trucking Association and nine likely affected cement carriers. Notice of the application was published in the Commission's Daily Calendar on January 7, 1970. No protests have been filed.

After consideration, the Commission finds as follows:

1. A public hearing is not necessary.
2. The transfer and sale of Foster's operating authority would not be adverse to the public interest.

The Commission concludes that the application should be granted as provided by the order which follows.

Clyde H. Nunnemaker 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 June 30, 1970, Foster Drayage Company may sell and transfer, and Clyde H. Nunnemaker 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, 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 he has adopted or established, as his own, said rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five 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 Clyde H. Nunnemaker, doing business as Chub Nunnemaker Trucking, authorizing him to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points 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. 73809, 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 transfer herein authorized is consummated, 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.

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

A. 51598 ms

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 24th day of MARCH, 1970.

William Sprouss Jr.
President

J. R. [Signature]

[Signature]

[Signature]
Commissioners

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

Clyde H. Nunnemaker, an individual, doing business as Chub Nunnemaker Trucking, 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 as defined in Section 214.1 of the Public Utilities Code from any and all points of origin to all points and places in the counties of Humboldt, Del Norte and Trinity, subject to the following restriction:

- (a) 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 California Public Utilities Commission.

Decision No. 76990, Application No. 51598.