

Decision No. 77590

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of McKAY TRUCKING COMPANY (Corporation) to sell and transfer a certificate of public convenience and necessity as a cement carrier to Newman Black, an individual, doing business as WESTERN CEMENT TRANSPORT.

Application No. 51989
(Filed June 24, 1970)

O P I N I O N

McKay Trucking Company requests authority to sell and transfer, and Newman Black, doing business as Western Cement Transport, requests authority to purchase and acquire a portion of a certificate of public convenience and necessity authorizing operations as a cement carrier.

The certificate was granted by Resolution No. 13821 (Sub. 37), dated June 23, 1964, and authorizes the transportation of shipments of cement from all points of origin in California to all points and places within the Counties of Alameda, Contra Costa, Fresno, Kern, Kings, Los Angeles, Merced, Monterey, Orange, Sacramento, San Benito, San Luis Obispo, Santa Barbara, Solano, Stanislaus, Ventura and Yolo.

The proposed transfer is limited to that portion of the certificate authorizing operations to all points and places within the County of Kern. The proposed cash consideration is \$1,000. Applicant buyer is presently conducting operations as a cement carrier within the Counties of Contra Costa, Fresno, Kings, Madera, Mariposa and Tulare. As of December 31, 1969, he indicated a net worth in the amount of \$28,337.

According to the application applicant seller has continuously conducted operations in the County of Kern. Attached to the application is a copy of a freight bill indicating the transportation of a shipment of cement on March 13, 1970 from Lucerne Valley to Bakersfield.

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 certificates presently held by McKay Trucking Company and Newman Black and the issuance of certificates in appendix form to McKay Trucking Company and Newman Black.

Applicants are 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.

O R D E R

IT IS ORDERED that:

1. On or before December 1, 1970, McKay Trucking Company may sell and transfer, and Newman Black 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 one day after the effective date of this order on not less than one day's 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, unless seller continues operations under a certificate or under a permit with revenues requiring the filing of an annual report on the operations retained.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, certificates of public convenience and necessity are

granted to McKay Trucking Company and Newman Black, authorizing them to operate as cement carriers, as defined in Section 214.1 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendices A and B, respectively, attached hereto and made a part hereof.

6. The certificates of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificates of public convenience and necessity granted by Resolution No. 13821 (Sub. 37), dated June 23, 1964, and Decision No. 74876, dated October 29, 1968, in Application No. 50547 which certificates are 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, applicants shall file written acceptances of the certificates herein granted. Applicants are placed on notice that, if they accept the certificates of public convenience and necessity herein granted, they 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-F.

8. Applicants shall maintain their 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, annual reports of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

9. Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of

collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 11th day of AUGUST 1, 1970.

Argator Chairman

William Synors Jr.

Max [unclear]

James L. Stinson Commissioners

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

McKay Trucking Company, 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 as defined in Section No. 214.1 of the Public Utilities Code from any and all points of origin to any and all points within the Counties of Alameda, Contra Costa, Fresno, Kings, Los Angeles, Merced, Monterey, Orange, Sacramento, San Benito, San Luis Obispo, Santa Barbara, Solano, Stanislaus, Ventura and Yolo, subject to the following restriction:

"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.

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doing business as
Western Cement Transport

Newman Black, 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 any and all points within the Counties of Contra Costa, Fresno, Kern, Kings, Madera, Mariposa and Tulare, subject to the following restrictions:

1. Whenever Newman Black, an individual, engages other carriers for the transportation of property of Newman Black or Black's Concrete Pipe Co. or Western Cement Transport or customers or suppliers of said individual or companies, Newman Black shall not pay such other carriers rates and charges less than the rates and charges published in Newman Black's tariffs on file with the Commission for the transportation actually performed by such other carriers.
2. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

END OF APPENDIX B

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