

ORIGINAL

Decision No. 79274

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PHILLIPS TRUCKING CORP., a corporation, to transfer, and GEORGE E. SACK, JR., an individual, to acquire a Cement Carrier Certificate.

Application No. 52691
(Filed June 14, 1971)

In the Matter of the Application of GEORGE E. SACK, JR., an individual, to transfer, and NEWMAN TRUCKING COMPANY, INC. a corporation, to acquire a Cement Carrier Certificate.

Application No. 52695
(Filed June 14, 1971)

O P I N I O N

By Application No. 52691, Phillips Trucking Corp. (Phillips) requests authority to sell and transfer, and George E. Sack, Jr., (Sack) requests authority to purchase and acquire, a portion of a certificate of public convenience and necessity authorizing operations as a cement carrier.

By Application No. 52695, George E. Sack, Jr., requests authority to sell and transfer, and Newman Trucking Company, Inc. (Newman) requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a cement carrier.

There are no protests to either application.

The certificate which is the subject of Application No. 52691 was granted and placed in suspension by Decision No. 79140, dated September 8, 1971, in Application No. 52761. Said certificate authorizes operations in a number of counties within the state including the 18 counties which are the subject of Application No. 52691. The agreed consideration is \$13,500. Said consideration contemplates a condition that Sack receives authority to dispose of

his present cement carrier authority to a third party. Such authority is sought in Application No. 52695.

The certificate which is the subject of Application No. 52695 was granted by Decision No. 78227, dated January 26, 1971, in Application No. 52386. Said certificate authorizes operations in the Counties of Kern, Los Angeles, Orange and Ventura. The agreed consideration is \$7,000.

The portion of the certificate which Sack seeks to purchase from Phillips includes the four counties covered in the certificate for which Sack seeks authority to sell to Newman. An affidavit filed by the treasurer of Phillips discloses that at the time of negotiating for the acquisition of that portion of the cement carrier certificate covered in Application No. 52691, George E. Sack, Jr., was desirous of eliminating the Counties of Los Angeles, Orange, Ventura and Kern, since the said George E. Sack, Jr., already possessed certificated authority to serve said Counties pursuant to Decision No. 78227, dated January 26, 1971, in Application No. 52368 and that Phillips was not amenable to eliminating the said four counties and reducing the purchase price and, as a consequence, refused to enter into any agreement for the purchase and sale of the corporate cement common carrier authority, other than as a "package", or as a "unit" transaction via disposition of the 18 counties as a unit. Said affidavit is hereby received in evidence as Exhibit 1 in Application No. 52691. An affidavit was also filed by the president of Newman which discloses that he is aware that Sack is seeking to acquire certain cement carrier authority from Phillips, which authority includes service to and within the four Counties of Kern, Los Angeles, Orange, and Ventura. Said affidavit is hereby received in evidence as Exhibit 1 in Application No. 52695.

As of April 30, 1971, Sack indicated a net worth of \$132,470. The balance sheet of Newman was filed on September 20, 1971, and is hereby received in evidence as Exhibit 2 in Application

No. 52695. It indicates a net worth of \$8,364.75 as of September 1, 1971.

After consideration the Commission finds that the proposed transfers would not be adverse to the public interest, and a public hearing is not necessary. The Commission concludes that the applications should be granted.

The order which follows will provide for, in the event the transfers are consummated, the revocation of the certificate presently held by George E. Sack, Jr., a revision of the certificate presently held by Phillips Trucking Corp., and the issuance of certificates in appendix form to George E. Sack, Jr., and Newman Trucking Company, Inc.

Phillips Trucking Corp., George E. Sack, Jr., and Newman Trucking Company, Inc., 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, 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 July 1, 1972, Phillips Trucking Corp. may sell and transfer, and George E. Sack, Jr., may purchase and acquire, the operative rights referred to in Application No. 52691.
2. On or before July 1, 1972, George E. Sack, Jr., may sell and transfer, and Newman Trucking Company, Inc., may purchase and acquire the operative rights referred to in Application No. 52695.

3. Within thirty days after the consummation of the transfers herein authorized, purchasers 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.

4. Applicants shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that they have adopted or established, as their 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.

5. The certificate of public convenience and necessity granted to Phillips Trucking Corp. by Decision No. 79140 is amended as set forth in Appendix A, attached hereto and made a part hereof, effective concurrently with the tariff filings required to be filed by George E. Sack, Jr., by paragraph 4 hereof. Said certificate shall remain in suspension as set forth in Decision No. 79140 and Phillips Trucking Corp. shall comply with all conditions of the suspension and with all requirements set forth in Decision No. 79140 before resuming operations.

6. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to George E. Sack, Jr., 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 B, attached hereto and made a part hereof.

7. In the event the transfer authorized in paragraph 2 hereof is consummated, a certificate of public convenience and necessity is granted to Newman Trucking Company, Inc., authorizing it 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 C, attached hereto and made a part hereof.

8. The certificate of public convenience and necessity granted in paragraph 7 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 78227, which certificate is revoked effective concurrently with the effective date of the tariff filings required to be filed by Newman Trucking Company, Inc., by paragraph 4 hereof.

9. Within thirty days after each 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.

10. 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, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

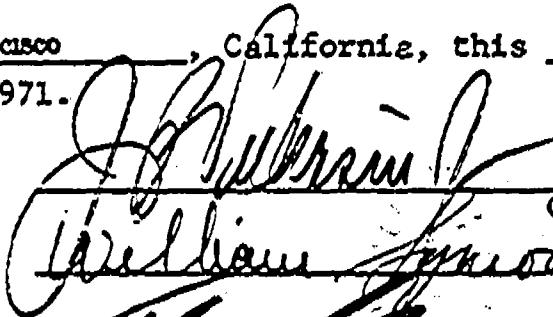
11. Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport

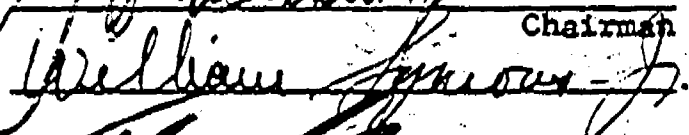
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collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

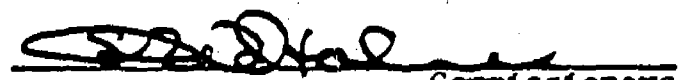
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 27th day of OCTOBER, 1971.



Chairman






Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Phillips Trucking Corp., by the certificate of public convenience and necessity granted by Decision No. 79140, as amended 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 in the counties of:

Alameda
Humboldt
Lake
Marin
Napa
Sacramento

San Francisco
San Joaquin
Solano
Yolo

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.

Decision No. 79274, Application No. 52691.

George E. Sack, Jr., 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 in the counties of:

Fresno	Riverside
Imperial	San Benito
Inyo	San Bernardino
Kern	San Diego
Kings	San Luis Obispo
Los Angeles	Santa Barbara
Madera	Santa Clara
Monterey	Tulare
Orange	Ventura

Restriction: This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision No. 79274, Application No. 52691.

Newman Trucking Company, Inc., 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 Kern, Los Angeles, Orange and Ventura, 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 C)

Issued by California Public Utilities Commission.

Decision No. 79274, Application No. 52695.