

Decision No. 81408**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HERCULES DRAYAGE CO., INC., a)
 corporation, to sell and transfer,)
 and FWS DEVELOPMENT CO., INC., a)
 corporation, doing business as)
 FWS TRUCKING, to buy and acquire a)
 Certificate of Public Convenience)
 and Necessity as a Cement Carrier)
 Pursuant to Sections 851-853 of the)
 California Public Utilities Code.)

Application No. 53804
 (Filed January 23, 1973)

O P I N I O N

Hercules Drayage Co., Inc. (seller) and FWS Development Co., Inc. (buyer) request authority to sell and transfer a certificate of public convenience and necessity as a cement carrier.

There are no protests.

By oral agreement buyer will pay seller \$800 for the cement carrier operating authority of the seller, authorizing service embracing San Bernardino and San Diego Counties.

A balance sheet for buyer dated September 30, 1972 showed assets of \$581,049 and an income statement for two months ending September 30, 1972 showed income of \$10,096.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. 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 as a cement carrier held by Hercules Drayage Co., Inc. and the issuance of a certificate in appendix form to FWS Development Co., Inc.

FWS Development 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, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. Inasmuch as the purchaser's principal place of business is located in Yuma, Arizona, FWS Development Co., Inc. is further placed on notice that if it does not keep books, accounts, papers, and records pertaining to intrastate service in an office in a county of this State it shall make such documents available to the Commission at its request at a place designated within this State for examination. In the alternative, purchaser shall reimburse the Commission for the actual expense of examining such documents at a place outside of the State where such documents are kept.

O R D E R

IT IS ORDERED that:

1. On or before June 29, 1973, Hercules Drayage Co., Inc. may sell and transfer, and FWS Development Co., Inc. may purchase and acquire, the operative rights referred to in the application.
2. A grant of this application will not have any significant effect on the environment and therefore does not require an Environmental Impact Report nor payment of any fee in connection therewith.
3. 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.
4. 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.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity as a cement carrier is granted to FWS Development Co., 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 A attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 4 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 80442, 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 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-Series.

8. Purchaser 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. 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, it shall make the appropriate tariff filings as required by the General Order.

10. 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. ✓

11. Whenever FWS Development Co., Inc. engages other carriers for the transportation of property of FWS Development Co., Inc., or property of its customers or suppliers, it shall not pay such other carriers rates and charges less than the rates and charges published in FWS Development Co., Inc.'s tariffs on file with this Commission. ✓

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 22nd day of MAY, 1973.

Veronica L. Sturgeon
President
William J. Symons, Jr.
William J. Symons, Jr.
William J. Symons, Jr.
William J. Symons, Jr.
Commissioners

FWS Development Co., Inc., doing business as FWS 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 any and all points in the counties of San Bernardino and San Diego, subject to the following restrictions:

Whenever FWS Development Co., Inc., doing business as FWS Trucking, engages other carriers for the transportation of property of FWS Development Co., Inc., or customers or suppliers of said corporation, FWS Development Co., Inc., doing business as FWS Trucking, shall not pay such other carriers rates and charges less than the rates and charges published in FWS Development Co., Inc., doing business as FWS Trucking's tariffs on file with this Commission.

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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