

ORIGINAL

Decision No. 85385

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of JAMES M. WHITTY, dba J. M.)
WHITTY TRUCKING to sell and)
transfer a certificate of public)
convenience and necessity au-)
thorizing the transportation of)
cement to ARLEN H. ALBERTS, dba)
A & A TRANSPORTATION COMPANY)

Application No. 56016
(Filed October 21, 1975,
Amended December 17, 1975)

OPINION

James M. Whitty, an individual, doing business as J. M. Whitty Trucking (seller), requests authority to sell and transfer, and Arlen H. Alberts, an individual, doing business as A & A Transportation Company (purchaser), requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier to and within all points and places in the Counties of Alameda, Contra Costa, Fresno, Sacramento, Santa Clara and Sonoma.

The certificate was granted by Decision No. 79461, dated December 14, 1971, in Application No. 52938. The agreed consideration is \$5,700, payable in full following the Commission's final order of approval of the requested transfer. Applicant seller has submitted copies of a shipping document and freight bill indicating that he has exercised his cement authority within the last year.

Applicant purchaser presently holds highway carrier permits issued by this Commission. His financial statement as of August, 1975 shows net worth of \$165,195 and his highway equipment includes seven vehicles.

Applicant seller participates in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17 (Cal. P.U.C. No. 21) which applicant purchaser proposes to adopt effective with consummation of the proposed transfer.

Applicants have requested relief from the provisions of the Commission's Rules of Practice and Procedure, which require that copies of the application be widely disseminated. It is alleged that copies of the application were mailed to the California Trucking Association and the principal cement mills in this State. Notices of the filing of the application and its amendment were made in the Commission's Daily Calendar of October 22, and December 19, 1975, respectively. No protests to the application have been received.

The Commission finds that the deviation from its Rules of Practice and Procedure should be authorized, that the proposed transfer would not be adverse to the public interest and concludes that the application should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by James M. Whitty and the issuance of a certificate in appendix form to Arlen H. Alberts.

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

Purchaser is 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.

O R D E R

IT IS ORDERED that:

1. On or before June 1, 1976, James M. Whitty may sell and transfer the operative rights referred to in the application to Arlen H. Alberts.

2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that he has adopted or established, as his own, the 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 transfer. 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-Series. Failure to comply with the provisions of General Order No. 117-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Arlen H. Alberts, authorizing him to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted to James M. Whitty, by Decision No. 79461 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and insurance requirements of the Commission's General Order No. 100-Series.


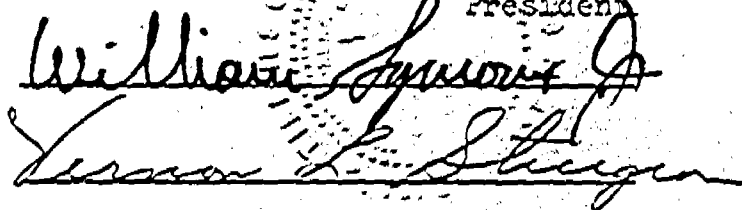
7. Purchaser shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

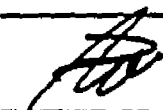
9. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested.

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

Dated at San Francisco, California, this 20th day of January, 1976.


President



Commissioner



-4- Commissioners
Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

ARLEN H. ALBERTS
(an individual)
doing business as
A & A TRANSPORTATION COMPANY

Arlen H. Alberts, by the certificate of public convenience and necessity granted in 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 Alameda, Contra Costa, Fresno, Sacramento, Santa Clara and Sonoma, 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.

Decision No. 85265, Application No. 56016.