

Decision No. 85977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of NEWMAN BLACK, an individual)
 doing business as WESTERN CEMENT)
 TRANSPORT, to sell and transfer)
 a certificate of public conven-)
 ience and necessity authorizing)
 the transportation of cement to)
 B.C.B.M. TRANSPORT INC., a cor-)
 poration.)

Application No. 56324
 (Filed March 10, 1976)

In the Matter of the Application)
 of CENTRAL CONCRETE SUPPLY CO.,)
 INC., a corporation, to sell and)
 transfer a certificate of public)
 convenience and necessity author-)
 izing the transportation of)
 cement to B.C.B.M. TRANSPORT)
 INC., a corporation.)

Application No. 56358
 (Filed March 26, 1976)

OPINION

By these applications Newman Black, an individual doing business as Western Cement Transport requests authorization to sell and transfer its authority to transport cement to and within the County of Contra Costa and Central Concrete Supply Co., Inc., a California corporation, (sellers) requests authorization to sell and transfer its authority to transport cement to and within the Counties of Alameda and Santa Clara and B.C.B.M. Transport, Inc., a California corporation (purchaser) requests authorization to purchase and acquire those authorities. The certificates of public convenience and necessity authorizing sellers to operate as cement carriers within the counties noted below were granted by:

1. Newman Black, Decision 78505, dated April 2, 1971, in Application 52449, Contra Costa, Fresno, Kern, Kings, Madera, Mariposa, Merced and Tulare.

2. Central Concrete Supply Co., Inc., Resolution 13827, dated June 23, 1964, Alameda and Santa Clara.

Purchaser presently holds a cement carrier certificate for the County of San Mateo issued by Decision 85029, dated October 21, 1975, in Application 55460.

Consideration for the sale and transfer is \$1300 to Newman Black and \$1000 to Central Concrete Supply Co., Inc. Purchaser's balance sheet of September 30, 1975 shows assets of \$130,553 and liabilities of \$56,257 for a net worth of over \$74,000. Sellers participate in Western Motor Tariff Bureau, Inc., Agent tariff publications which purchaser proposes to adopt.

Applicants sellers have submitted copies of shipping documents evidencing operations during the last year under the authorities to be transferred.

The applicants allege that purchaser has the financial ability, and equipment necessary to conduct such operations and to provide expanded facilities where necessary; that purchaser is familiar with the transportation of cement and stands ready, willing and able to conduct and perpetuate the service heretofore provided the public by sellers and that the transfers would be in the public interest.

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. Copies of the application were mailed to the California Trucking Association, to various cement producers in this State and other parties. Notice of the filing of the application was made in the Commission's Daily Calendars of March 11, 1976 (Newman Black) and March 29, 1976 (Central Concrete Supply Co., Inc.). No protests to the applications have been received.

The Commission finds that the deviation from its Rules of Practice and Procedure should be authorized, that the proposed

transfers would not be adverse to the public interest and concludes that the applications should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfers are completed, the revocation of the certificates presently held by Newman Black, Central Concrete Supply Co., Inc., and B.C.B.M. Transport, Inc., and the issuance of certificates in appendix form to Newman Black and B.C.B.M. Transport, Inc. 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 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 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 October 1, 1976, Newman Black, an individual, and Central Concrete Supply Co., Inc., a California corporation, may sell and transfer the operative rights referred to in the application to B.C.B.M. Transport, Inc., a California corporation.
2. Within thirty days after the transfer Newman Black and B.C.B.M. Transport, Inc., shall file with the Commission written acceptance of the certificates and B.C.B.M. Transport, Inc., shall file a true copy of the bill of sale or other instrument of transfer.
3. Applicants Newman Black and B.C.B.M. Transport, Inc., shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the authority granted by this

decision to show that they have adopted or established, as their 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 shall comply the Commission's General Order 117-Series. Failure to comply with the provisions of General Order 117-Series may result in cancellation of the operating authority granted by this decision.

4. In the event the transfers authorized in paragraph 1 are completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, certificates of public convenience and necessity are granted to Newman Black and B.C.B.M. Transport, Inc., a California corporation, authorizing them to operate as cement carriers, as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendices A and B, respectively attached hereto and made a part hereof.

5. The certificates of public convenience and necessity granted to applicants by Decisions 78505, 85029 and Resolution 13827 in so far as it pertains to Central Concrete Supply Co., Inc. are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Newman Black and B.C.B.M. Transport, Inc., shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. Newman Black and B.C.B.M. Transport, Inc., 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.


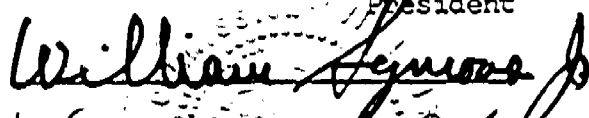

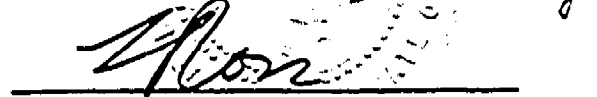
A. 56324 and A. 56358 - GM*

8. Newman Black and B.C.B.M. Transport, Inc., shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If they elect not to transport collect on delivery shipments, they 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 22nd day of June, 1976.


President



Commissioners

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 Counties of Fresno, Kern, Kings, Madera, Mariposa, Merced 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 others 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 A)

Issued by California Public Utilities Commission.

Decision 85977, Applications 56324 and 56358.

B.C.B.M. Transport, Inc., 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 214.1 of the Public Utilities Code, to any and all points and within the Counties of Alameda, Contra Costa, San Mateo and Santa Clara from any and all points of origin, subject to the following restrictions:

Restrictions:

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

Whenever B.C.B.M. Transport, Inc. engages other carriers for transportation of property of Bay Cities Building Materials Co., Inc., or customers of suppliers of said corporation, B.C.B.M. Transport, Inc. shall pay such other carriers not less than the rates and charges published in B.C.B.M. Transport, Inc., tariffs on file with this Commission.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision 85977, Applications 56324 and 56358.