

ORIGINAL

Decision No. 86024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application)
 of Clyde H. Nunnemaker, an indi-)
 vidual dba CHUB NUNNEMAKER)
 TRUCKING, to sell and transfer)
 cement carrier certificate and)
 for John C and Mary B Dias,)
 a partnership, dba J & M TRANS-)
 PORTATION CO., to purchase and)
 acquire said cement carrier cer-)
 tificate.)

Application No. 56414
 (Filed April 20, 1976)

OPINION AND ORDER DISMISSING
APPLICATION TO TRANSFER CEMENT CARRIER CERTIFICATE

By this application Clyde H. Nunnemaker, an individual, doing business as Chub Nunnemaker Trucking (seller), requests authority to sell and transfer a cement carrier certificate of public convenience and necessity to the partnership of John C. Dias and Mary B. Dias, co-partners, doing business as J & M Transportation Co. (purchasers).

The certificate was granted by Decision 76990, dated April 13, 1970, in Application 51598, and authorizes transportation to and within the Counties of Humboldt, Del Norte and Trinity. Said certificate was suspended on March 2, 1975, for failure to keep on file with the Commission evidence of adequate liability insurance protection as required by General Order 100-H. The certificate has continuously been in suspension since that date.

Section 1065.2 of the Public Utilities Code provides that a cement carrier certificate not exercised for a period of one year lapses and terminates. In its Decision 85029, dated October 21, 1975, in Application 55459, the Commission held that placing a cement carrier certificate in voluntary suspension by Commission

order tolls the effect of Section 1065.2 of the Public Utilities Code for the period of such suspension. Such effect does not apply, however, when the Commission, pursuant to its mandatory duty to protect the public from personal injury and property damage, suspends an operating authority as a result of a carrier's failure to meet Commission orders or statutory requirements.

At the time the application in this proceeding was filed, the purchasers paid, in addition to the regular filing fee, various outstanding fines and fees due the Commission from seller in the amount of \$786.98. On May 13, 1976, the purchasers filed a request for withdrawal of the application and for a refund of the filing fee of \$150.00 and the \$786.98 which they had paid for the account of the seller.

After consideration, the Commission finds:

1. Section 1065.2 of the Public Utilities Code provides for lapse and termination and mandatory revocation of a cement carrier certificate of public convenience not exercised for a period of one year.
2. The certificate of public convenience and necessity granted by Decision 76990 to Clyde H. Nunnemaker was suspended March 2, 1975, pursuant to the Commission's General Order 100-Series for failure to maintain on file evidence of adequate liability insurance coverage.
3. The suspension of an operating authority by the Commission for failure to meet statutory requirements or the Commission's orders does not toll the effect of Section 1065.2 of the Public Utilities Code.
4. The certificate of public convenience and necessity granted to Clyde H. Nunnemaker by Decision 76990 has not been exercised since March 2, 1975 and has lapsed and terminated.
5. Purchasers have submitted a total of \$936.98 to the Commission in filing fees, and fines and penalties in connection with the application in this proceeding.

The Commission concludes:

1. The certificate of public convenience granted by Decision 76990 has lapsed and terminated by operation of law.
2. The application filed in this proceeding is moot and should be dismissed.
3. All monies paid by purchasers to the Commission in connection with the application in this proceeding should be refunded.

A public hearing is not necessary.

IT IS ORDERED that:

1. Application 56414 is hereby dismissed.
2. The sum of \$936.98 is hereby ordered to be refunded to John C. Dias and Mary B. Dias, co-partners doing business as J & M Transportation Co.
3. The certificate of public convenience and necessity granted by Decision 76990 is revoked.

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

Dated at San Francisco, California, this 29th day of June, 1976.

President
William J. Lyons Jr.

Vernon L. Sturgeon

Robert B. Baker
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.