

ORIGINAL

Decision 82 02 111 FEB 17 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of John Cummings Trucking, a (corporation) to acquire, and John Cummings (individual) to transfer a Common Carrier Certificate T-62487 (and certain property pursuant to Sections 851, et seq., of the California Public Utilities Code).

Application 61079 (Filed November 27, 1981)

O P I N I O N

John I. Cummings requests authority to transfer his certificate of public convenience and necessity to John Cummings Trucking, a newly formed California corporation of which John I. Cummings is president and sole stockholder. The certificate, issued under Public Utilities (PU) Code § 1063.5 in Application GC 9136, File T-62487, authorizes the transportation of general commodities within the State. (The corporation's T-number is 132,305.)

Section 1063.5 authorizes holders of radial highway common carrier permits to convert their permits to highway common carrier certificates. In Decision 89575 dated October 31, 1978, as amended, the Commission held that during the 5-year period after their § 1063.5 certificates become effective, carriers should be allowed to expand or contract their operations conducted under such certificates by making appropriate tariff filings. This procedure preserves the carriers' opportunity, formerly available to radial permit holders, to develop and shape their operations based upon managerial objectives. PU Code § 1064.5 prohibits the transfer of § 1063.5 certificates during that 5-year period except to the extent of operations actually conducted as a prime carrier. By Resolution 18049 dated July 31, 1979 the

Commission recognized that businesses often change their legal form while continuing the same operations, and it held that some transfers of § 1063.5 certificates were not transfers within the meaning of § 1064.5. Therefore, when a transfer of a § 1063.5 certificate is required by a change in the form of the business entity, such as the incorporation of a proprietorship or partnership where the beneficial ownership interests remain substantially the same, the transfer will be authorized without compliance by the applicants with the service rules relating to transfers. This application involves such a transfer.

Findings of Fact

1. There is no change in the beneficial ownership of the § 1063.5 common carrier authority.
2. The proposed transfer would not be adverse to the public interest. A public hearing is not necessary.
3. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusion of Law

The application should be granted.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1982 John I. Cummings may transfer to John Cummings Trucking, a California corporation, the operating authority issued under PU Code § 1063.5 in Application GC 9136.
2. Within 30 days after the transfer John Cummings Trucking shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

3. John Cummings Trucking shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established the rates and rules as its own. The tariff filings shall be made effective not earlier than 5 days after the effective date of this order on not less than 5 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 under this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Orders Series 80 and 147. Failure to comply with the provisions of General Orders Series 80 and 147 may result in cancellation of the operating authority granted by this decision.

This order becomes effective 30 days from today.

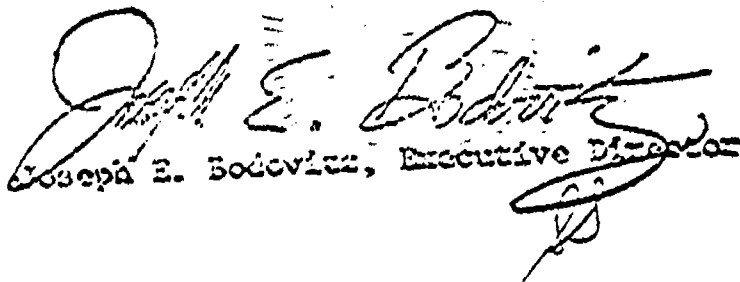
Dated FEB 17 1982, at San Francisco, California.

RICHARD D GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

Commissioner JOHN E. BRYSON

Present but not participating.

**I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS FOR ME.**

  
Joseph E. Bodevitz, Executive Director