

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of	)	
NOSS BROS. TRUCKING, a corporation,	)	
to acquire, and N. J. NOSS and	)	Application 61087
J. L. NOSS (NOSS BROS. TRUCKING) a	)	(Filed November 27, 1981)
partnership, to transfer a common	)	
carrier certificate.	)	

O P I N I O N

N. J. and J. L. Noss, a partnership, doing business as Noss Bros. Trucking, request authority to transfer a certificate of public convenience and necessity to Noss Bros. Trucking, a newly formed California corporation of which they are officers and sole stockholders. The certificate, issued under Public Utilities (PU) Code § 1063.5 in Application GC 1824, File T-39,405, authorizes the transportation of general commodities within the State.

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, N. J. and J. L. Noss, a partnership, may transfer to Noss Bros. Trucking, a California corporation, the operating authority issued under PU Code § 1063.5 in Application GC 1824.
2. Within 30 days after the transfer Noss Bros. Trucking shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.
3. Noss Bros. 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

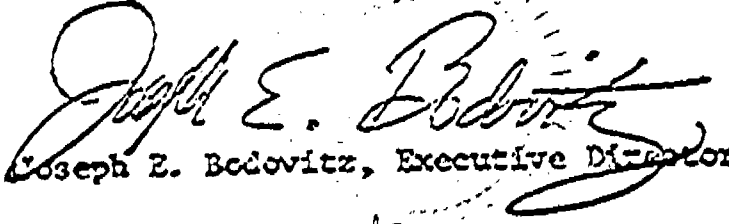
established, as its own, the rates and rules. The tariff filings shall be made effective on not earlier than 5 days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the transfer. The tariff filings made under this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order Series 80 or 147. Failure to comply with the provisions of General Order Series 80 or 147 may result in cancellation of the operating authority granted by this decision.

This order becomes effective 30 days from today.

Dated MAR 2 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. CRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bedovitz, Executive Director