

ORIGINAL

Decision 82 04 100 APR 2 1 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of CUNHA DRAYING, INC., a)
California Corporation, to)
transfer its Section 1063.5)
Highway Common Carrier Certificate,)
and Joseph J. Cunha, doing business)
as CUNHA, to acquire this)
Certificate (Public Utilities)
Code 851 and 1064.5).)

Application 82-01-04
(Filed January 4, 1982;
amended January 4, 1982)

O P I N I O N

Cunha Draying, Inc. (CDI) requests authority to transfer a certificate of public convenience and necessity to Joseph J. Cunha, doing business as Cunha. The certificate, issued April 30, 1980 under Public Utilities (PU) Code § 1063.5 in Application GC 766, File T-120,635, authorizes the transportation of general commodities within the State of California.

Cunha and his wife are the sole shareholders of CDI. As a result of marital discord, CDI's certificate has become inactive. A receiver of the assets of CDI was appointed by order dated January 21, 1981 in Alameda County Superior Court Action H-71389-4. As part of the receivership proceeding, a sale of personal property, including the § 1063.5 certificate, to Cunha was approved by the court by order dated October 16, 1981. Cunha will reactivate the certificate upon approval of the transfer and continue to operate, control, and manage the company. The only change is that his wife will no longer have a one-half community property interest, and he will be the single owner.

Section 1063.5 authorized 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 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.

A change in ownership from a one-half community property interest to 100% resulting from a court proceeding involving marital discord, when there is no change in the operation, control, and management of the business, comes within the purview of Resolution 18049.

Because the certificate is and will remain inactive until the transfer is authorized, the order should be made effective immediately.

Findings of Fact

1. There is no substantial 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

1. The application should be granted.

2. The order should be effective on the date signed because the certificate will not be activated until the transfer is consummated.

O R D E R

IT IS ORDERED that:

1. On or before August 30, 1982, Cunha Draying, Inc. may transfer to Joseph J. Cunha the operating authority issued under PU Code § 1063.5 in Application GC 766.

2. Within 30 days after the transfer Cunha shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

3. Cunha 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 them as his 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

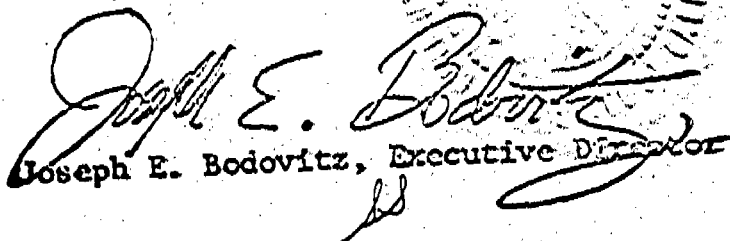
with General Orders Series 80 and 147 (regulations governing the construction and filing of tariffs). Failure to comply may result in cancellation of the operating authority granted by this decision.

This order is effective today.

Dated APR 21 1982, at San Francisco, California.

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

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


Joseph E. Bodovitz, Executive Director