

Decision 82 03 030 [AUG -4 1982]

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of Xavier Trucking, Inc., a)	
corporation, to acquire, and Dan)	
Xavier, Xavier Trucking to transfer)	Application 82-03-77
a Common Carrier Certificate)	(Filed March 22, 1982)
GC 3367.)	

O P I N I O N

Joe Xavier and Dan Xavier, co-partners doing business as Xavier Trucking, request authority to transfer a certificate of public convenience and necessity to Xavier Trucking, Inc., a newly formed California corporation of which Dan Xavier is president and majority stockholder. The certificate, issued April 30, 1980 under Public Utilities (PU) Code § 1063.5 in Application GC 3367, File T-126,915, authorizes the transportation of general commodities within the State.

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, 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.

It appears that in going from a partnership, with two co-partners, to a corporation with Dan Xavier being the majority shareholder, there is some change in control or extent of ownership. However, since the parties (shareholders) are the same, we will treat this as an application to transfer without a change in beneficial ownership.

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 December 31, 1982, Joe Xavier and Dan Xavier may transfer to Xavier Trucking, Inc. the operating authority issued under PU Code § 1063.5 in Application GC 3367.
2. Within 30 days after the transfer Xavier Trucking, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

3. Xavier Trucking, Inc. 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 them 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 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.

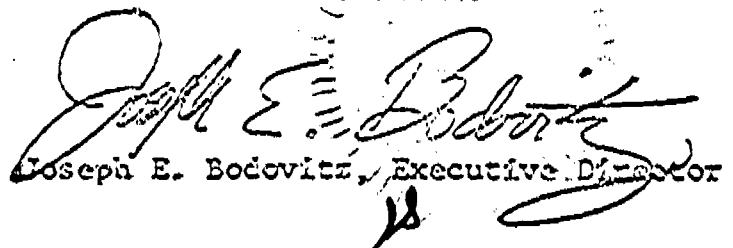
This order becomes effective 30 days from today.

Dated AUG 4 1982, at San Francisco,
California.

JOHN E. BRYSON
President
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
COMMISSIONERS

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

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


Joseph E. Bodovitz, Executive Director