

Decision No. 86614**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of James W. Foster, Jr. an in-)
dividual, doing business as: JIM)
FOSTER TRUCKING, to sell and)
transfer a Certificate of Public)
Convenience and Necessity author-)
izing the transportation of cement)
to JIM FOSTER TRUCKING, INC., a)
California corporation.)

Application No. 56522
(Filed June 2, 1976
Amended September 22, 1976
Amended October 4, 1976)

O P I N I O N

James W. Foster, Jr., an individual (seller) doing business as Jim Foster Trucking, seeks authority to sell and transfer his cement carrier certificate and operating equipment, and Jim Foster Trucking, Inc., (purchaser) requests authority to acquire said certificate and operating equipment.

The certificate was acquired by Decision 82859 dated May 15, 1974, in Application 54690. It authorizes transportation from any and all points of origin to all points within the County of Fresno. The agreed consideration is the sum of One Dollar (\$1.00) payable following the Commission's final order approving the transfer of the certificate.

Purchaser does not presently hold operating authority issued by this Commission. The transfer of highway carrier permits also held by transferor are the subject of a separate application presently pending before the Commission. The equipment to be transferred (Exhibit C to the Application) lists three tractors and seven trailers.

Purchaser's unaudited pro forma balance sheet of May 20, 1976 indicates a net worth of \$4500.00.

Seller participates in Pacific Coast Tariff Bureau, Agent, Local Freight Tariff 9, which purchaser proposes to adopt effective with consummation of the proposed transfer. The applicants have

submitted a copy of a shipping document evidencing operation during the last year under the certificate to be transferred.

Copies of the application have been served on various cement manufacturers in the State and on the California Trucking Association. Notice of the filing of the application was made in the Commission's Daily Calendars of June 3, September 22 and October 5, 1976, respectively. No protest to the application has been received.

The Commission finds that the equipment to be transferred is no longer necessary or useful in the duty of seller to the public as a public utility and that the transfer of said equipment and the certificate would not be adverse to the public interest and concludes that the application should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Jim Foster Jr., and the issuance of a certificate in appendix form to Jim Foster Trucking, Inc., a California corporation. The action taken herein shall not be construed as a finding of value of the certificate of public convenience and necessity and equipment to be transferred.

Purchaser is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as consideration for the grant of such rights. Aside from their purely permissive aspects, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or cancelled at any time by the State which is not in any respect limited in the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before February 1, 1977, James W. Foster, Jr., an individual, may sell and transfer the operative rights and equipment referred to in the application to Jim Foster Trucking, Inc.

2. Within thirty days after the transfer, the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser 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 not earlier than one day after the effective date of this order on not less than one day's 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 pursuant to 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 117-Series. Failure to comply with the provisions of General Order 117-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Jim Foster Trucking, Inc., authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

5. The certificate acquired by Decision 82859 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and insurance requirements of the Commission's General Order 100-Series.

7. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before


April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time shall prescribe.

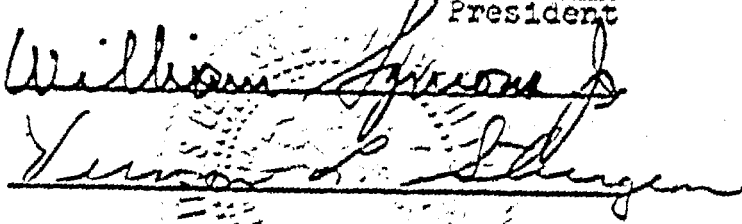
8. Purchaser shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as prescribed by the General Order.


9. The applicants are granted a deviation from Rule 37 of the Commission's Rules of Practice and Procedure.

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

Dated at San Francisco, California, this 9th day of November, 1976.



President




Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

CORRECTION

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THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

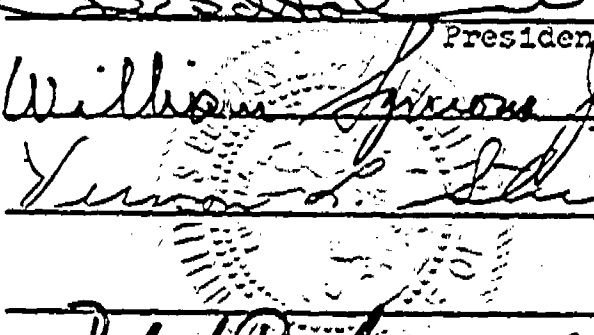
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Dated at San Francisco, California, this 9th day of November, 1976.



President
William J. Gross

Vernon L. Sturgeon

Robert P. Brown
Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

Jim Foster Trucking, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a cement carrier as defined in Section 214.1 of the Public Utilities Code, from any and all points of origin to all points and places in the County of Fresno, subject to the following restriction:

"This certificate shall lapse and terminate if not exercised for a period of one year."

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 86614, Application 56522.