

ORIGINAL

Decision No. ~~80099~~ NOV 8 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Aurora Transportation, a)
corporation, to transfer and)
Jimmie D. Johnson DBA J & D)
Trucking to acquire a cement)
carrier certificate.)

Application No. 57442
Filed July 13, 1977

O P I N I O N

Aurora Transportation, Inc., a California corporation, (seller), seeks authority to sell and transfer, and Jimmie D. Johnson, an individual, doing business as J & D Trucking, (purchaser), requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier from any and all points of origin to all points and places within the Counties of Fresno and Kings. The certificate was granted pursuant to Resolution No. 13827 Sub. No. 3 dated June 23, 1964.

By the terms of a written agreement entered into by the parties on or about April 11, 1977, the total consideration is \$50,000. Of this amount \$6,000 is for the certificate and \$44,000 is for certain items of equipment as provided in the agreement. The consideration is payable as follows:

- \$11,150 payable on execution of the agreement.
- \$11,150 payable upon approval by the Commission.
- \$27,700 by a note in favor of Sue Lindley, the majority stockholder of Aurora Transportation Inc.

The note is payable, together with accrued interest at 8½% simple, in three annual payments beginning April 1, 1978 in the amount of \$9,233.33 each, plus accrued interest. The equipment constitutes collateral for the loan and carries a book value of \$29,000.

Applicant seller has submitted copies of a shipping document and a freight bill indicating that it has exercised its operating authority within the last year.

Applicant purchaser presently holds no operating authority from this Commission but has indicated considerable experience in the rock and sand business and proprietary transportation in connection therewith. His financial statement shows a net worth of \$50,776 as of December 31, 1976.

Seller participates in Pacific Coast Tariff Bureau, Agent, Local Freight Tariff No. 9 (Cal. PUC No. 30.) which purchaser proposes to adopt effective with consummation of the proposed transfer.

Applicants have requested relief from the provisions of the Commission's Rules of Practice and Procedure, which require that copies of the application be widely disseminated. Copies of the application were mailed to the California Trucking Association and the principal cement mills in this State. Notice of the filing of the application was made in the Commission's Daily Calendar of July 14, 1977. No protests to the application have been received.

After consideration the Commission finds that:

1. The proposed transfer would not be adverse to the public interest.
2. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.
3. The Commission's authorization is not required for the issuance of the promissory note.

On the basis of the foregoing findings, we conclude 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 Aurora Transportation, Inc. and the issuance of a certificate in appendix form to Jimmie D. Johnson dba J & D Trucking.

The authorization granted shall not be construed as a finding of the value of the rights and other assets authorized 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 the consideration for the grant of such rights. Aside from their purely permissive aspect, 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 as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before April 1, 1978, Aurora Transportation, Inc. may sell and transfer the operative rights and property referred to in the application to Jimmie D. Johnson dba J & D Trucking.

2. Within thirty days after the transfer, the purchaser shall file with the Commission a 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 he has adopted or established, as his own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five 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 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 No. 117-Series. Failure to comply with the provisions of General Order No. 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 Jimmie D. Johnson dba

J & D Trucking, authorizing him 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 of public convenience and necessity granted to Aurora Transportation, Inc., by Resolution No. 13827 Sub. No. 3 dated June 23, 1964 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 the insurance requirements of the Commission's General Order No. 100-Series.

7. Purchaser shall maintain his 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 his 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 No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, he shall make the appropriate tariff filings as required by the General Order.

9. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

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

Dated at San Francisco, California, this 8th day of NOVEMBER, 1977.

Robert Batmangchi

President

William S. Lyons

Gregory L. Ferguson

Richard D. Cavalle

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

JIMMIE D. JOHNSON
(an individual)
doing business as
J & D TRUCKING

Jimmie D. Johnson, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations 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 Counties of Fresno and Kings, subject to the following restriction:

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

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 88033, Application 57442.