

ORIGINAL

Decision No. 88633 MAR 21 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of KENNETH C. FAIRBURN to trans-)
fer and FAIRBURN TRANSPORTATION,)
INC. to purchase a cement carrier)
certificate.)

Application No. 57672
(Filed November 7, 1977)

O P I N I O N

Kenneth C. Fairburn, an individual (seller) seeks authority to sell and transfer and Fairburn Transportation, Inc., a California corporation, (purchaser) requests authority to purchase and acquire a cement carrier certificate of public convenience and necessity. The certificate was granted to Kenneth C. Fairburn pursuant to Resolution 13821, Sub No. 51 dated June 23, 1964, and authorizes the transportation of cement from any and all points of origin to all points in the counties of Fresno, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura. The seller also holds permitted authority.

Seller is changing the legal form of his business from an individual proprietorship to a corporation. The change also includes the permitted authority, which is the subject of a separate application, and various highway equipment and other assets. Seller participates in tariffs published by Western Motor Tariff Bureau, Inc., Agent, for rates and rules governing the operation under the certificate which the purchaser proposes to adopt. Purchaser's financial statement of April 1, 1977 shows a net worth of \$30,000.

In accordance with the terms of an agreement for purchase filed as Exhibit D to the application, seller will transfer all of his assets to the purchaser in exchange for 500 shares of no par value common capital stock and a negotiable promissory note in the amount of \$27,872. The note is for internal organization purposes arising from the incorporation, for tax and estate planning purposes, of a family owned business enterprise. It does not constitute an encumbrance on the utility property.

Applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. Notice of the filing of the application appeared in the Commission's Daily Calendar of November 8, 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 proposed stock issue and promissory note are for a proper purpose.
3. The money property or labor to be procured or paid for by the stock and the promissory note herein authorized are reasonably required for the purposes specified herein, which purposes are not, in whole or part, reasonably chargeable to operating expenses or to income.

The Commission concludes that the application should be granted. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the capital stock of Fairburn Transportation, Inc., or the certificate of public convenience and necessity, equipment or operating property to be transferred.

The order which follows will provide for in the event the transfer is completed, the revocation of the certificate presently held by Kenneth C. Fairburn, an individual and the issuance of a certificate in appendix form to Fairburn Transportation, Inc., a California corporation.

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 granting 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. Kenneth C. Fairburn, an individual, may sell and transfer the operative rights and equipment referred to in the application to Fairburn Transportation, Inc., a California corporation. This authorization shall expire if not exercised by September 1, 1978, or within such additional time as may be authorized by the Commission.

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 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 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 Fairburn Transportation, 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 Resolution 13821, Sub 51 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 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 to the extent requested in the application.

10. Fairburn Transportation, Inc., on or after the effective date hereof and on or before September 1, 1978, for the purposes specified in this proceeding may issue not exceeding a total of 500 shares of its no par value common stock to Kenneth C. Fairburn, an individual.

11. Fairburn Transportation, Inc. may issue a promissory note in the principal amount of \$27,872 to Kenneth C. Fairburn, an individual, as consideration for value received, which note shall be in substantially the same form as Exhibit G attached to the application.

12. Fairburn Transportation, Inc., shall file with the Commission a report or reports as required by General Order 24B, which order, insofar as applicable, is hereby made a part of this order.

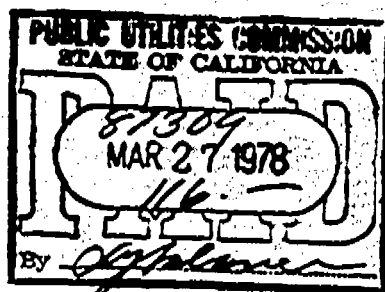
13. The authority granted in this order to issue stock and a promissory note, will become effective when Fairburn Transportation, Inc. has paid the minimum fee prescribed by Section 1904.1 of the

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Public Utilities Code, which fee is \$116. In other respects the effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 21st day of MARCH, 1978.

Robert Baber
President
William Gerson J.
Vernon L. Sturgeon
Richard D. Howell
Clair J. DeBriak
Commissioners



Fairburn Transportation, Inc., a California corporation, by the certificate of public convenience and necessity granted by 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 any and all points in the counties of:

Fresno
Kern
Los Angeles
Orange

Riverside
San Bernardino
San Diego
Ventura

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 88633, Application 57672.