

ORIGINAL

Decision No. 91878 JUN 3 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JIMMIE D. JOHNSON,  
 an individual doing business as  
 J & D Trucking, to transfer his  
 Cement Carrier Certificate; and  
 JOHNSON'S TRUCKING, INC., a  
 California corporation, to acquire  
 said Certificate (Public Utilities  
 Code Section 851).

Application No. 59488  
(Filed March 3, 1980)

O P I N I O N

Jimmie D. Johnson (transferor), an individual doing business as J & D Trucking, has applied to transfer a cement carrier certificate to Johnson's Trucking, Inc. (transferee), a California corporation, in which he and his wife are the sole shareholders. Transferor holds rights in King and Fresno County as defined in Commission Decision No. 88098, dated November 8, 1977, in Application No. 57442, filed on July 13, 1977.

Transferee was incorporated on November 30, 1979 for the purpose of acquiring the assets, authority, and properties of the transferor, as reflected in the transfer agreement dated December 1, 1979, which is attached to the application. The equipment list and financial statement of transferee are attached to the application.

Applicant transferor has submitted copies of a shipping document and a freight bill indicating that he has exercised his operating authority within the last year.

Applicants have requested that the requirements of mailing and notice provided in Commission Rule No. 37(a) be waived, since California Trucking Association and a group of carriers and cement suppliers have already been advised of the pendency of this action and that the Johnsons will still own and control the business as a new entity.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be granted. The requirements of Rule No. 37(a) are waived and 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 Jimmie D. Johnson, doing business as J & D Trucking, and the issuance of a certificate in appendix form to Johnson's Trucking, Inc.

Johnson's Trucking, Inc. is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as a 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 canceled 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. Jimmie D. Johnson (transferor) may transfer the operative rights referred to in the application to Johnson's Trucking, Inc.

(transferee). This authorization shall expire if not exercised by July 1, 1980, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer the transferee 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. Transferee 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 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 Johnson's 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 of this decision.

5. The certificate of public convenience and necessity granted by Decision No. 88098 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Transferee 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. Transferee 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. Transferee shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If transferee elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated JUN 3 1980, at San Francisco, California.

John E. Byron  
President  
William L. Stevenson  
Richard C. Hoelle  
Leonard W. Spence  
Commissioners

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

Johnson's Trucking, Inc., 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 91878, Application 59438.