

ORIGINAL

Decision No. 92462 DEC 2- 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of )  
 M.H.C. Trucking Co., Inc., a )  
 California corporation, to sell, and )  
 of Newton Transportation Company, a )  
 partnership consisting of )  
 John Patrick Newton, Michael D. Newton, )  
 and Noel R. Cody, to purchase cement )  
 carrier certificate authorizing )  
 service to and within the )  
 County of Ventura pursuant to )  
 Sections 851-853 of the California )  
 Public Utilities Code. )

Application No. 59871  
(Filed August 11, 1980)

O P I N I O N

M.H.C. Trucking Co., Inc. (MHC) requests authority to sell, and Newton Transportation Company (Newton), a partnership composed of John Patrick Newton, Michael D. Newton, and Noel R. Cody (the partners), requests authority to purchase the portion of the certificate held by MHC to transport cement to and within Ventura County. A copy of the application was served on the California Trucking Association (CTA). MHC and Newton request that Rule 37(a), pertaining to service of applications upon competitors, be waived. Notice of the filing of the application appeared on the Commission's Daily Calendar on August 13, 1980. No protests to the application have been received.

The application shows that MHC is the owner of a cement carrier certificate issued by Decision No. 84676 dated September 4, 1975 which authorizes MHC to transport cement to and within the counties of Los Angeles, Orange, San Luis Obispo, Santa Barbara, and Ventura. MHC states that there has been no suspension or discontinuance of service under the certificate during the preceding

three years. Attached to the application as Exhibit F is a copy of a bill of lading showing that MHC transported a load of cement from Victorville to a point in Ventura County on June 10, 1980. MHC participates in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17, Cal. P.U.C. No. 21, M. J. Nicolaus, Issuing Officer, but does not participate in through routes or joint rates with other carriers.

Newton is presently engaged in the transportation of property between points in California pursuant to a highway contract carrier permit and a highway common carrier certificate. Newton has had considerable experience in transporting building materials since 1977. The partners claim they have adequate financial resources presently available to satisfy the purchase price and that they will not need to borrow funds. Newton's balance sheet as of December 31, 1979 attached to the application shows that it had a net worth of \$61,000 and its income and expense statement for the year 1979 shows that it had a gross income from transportation of \$130,000 and a net profit before taxes of \$61,000. Newton operates three tractors and eight trailers. Newton intends to adopt the rates now charged by MHC.

The purchase agreement (Exhibit A to the application) shows that the sale price of the subject operating authority is \$2,500, to be paid by Newton on the closing date. Under the agreement Newton and MHC agree that Newton does not assume any obligations of MHC. The agreement covers only the sale of the subject operating authority.

MHC and Newton claim that the entry of Newton into the cement transportation business to and within Ventura County will be balanced by the withdrawal of MHC therefrom and, therefore, there will be no change in competitive relationships.

Findings of Fact

1. MHC requests authority to sell and Newton requests authority to purchase MHC's operating authority to transport cement to and within Ventura County for the sum of \$2,500.

2. There has been no suspension or discontinuance of service under the subject operating authority during the preceding three years.

3. One or more of the partners have resided in the State for more than 90 days.

4. Newton is financially able to pay the purchase price without adversely affecting its financial status.

5. Newton is experienced in the transportation business and has the personnel and equipment necessary to conduct operations under the subject operating authority.

6. Newton is ready, able, and willing to conduct the proposed service.

7. The entry of Newton into the cement transportation industry to and within Ventura County will be balanced by the withdrawal of MHC therefrom and, therefore, there will be no change in competitive relationships.

8. The proposed transfer will not adversely affect the public interest.

9. A public hearing is not necessary.

10. Adequate notice of the filing of the application has been given through service of the application on the CTA.

Conclusions of Law

1. The application should be granted.

2. The service requirements set out in Rule 37(a) should be waived.

The order which follows will provide for, in the event the transfer is completed, the partial revocation of the certificate

presently held by MHC and the issuance of a certificate in appendix form to Newton and the partners.

Newton and the partners are 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 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. M.H.C. Trucking Co., Inc. (MHC) may sell and transfer the operative rights referred to in the application to Newton Transportation Company (Newton), a partnership composed of John Patrick Newton, Michael D. Newton, and Noel R. Cody. This authorization shall expire if not exercised by March 1, 1981, or within such additional time as may be authorized by the Commission.

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

3. MHC and Newton shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the authority granted by this decision to show that they have adopted or established, as their 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 shall comply with the Commission's General Order No. 117-Series. Failure to comply with the provisions of the General Order No. 117-Series may result in 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) a certificate of public convenience and necessity is granted to Newton 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, and (b) an amended certificate of public convenience and necessity is issued to MHC authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between points set forth in Appendix B of this decision.

5. The certificate of public convenience and necessity granted by Decision No. 84676 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. MHC and Newton are placed on notice that if they accept the certificates they will be required, among other things, to 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. Newton 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.

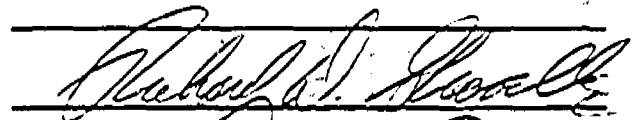
8. Newton shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If it elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

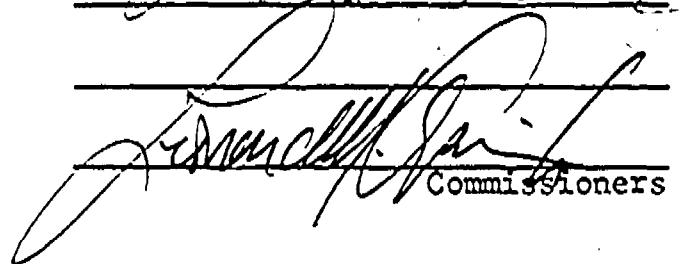
9. The requirements of Rule 37(a) are waived.

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

Dated DEC 2 - 1980, at San Francisco, California.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_

  
\_\_\_\_\_  
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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

Appendix A  
/ALJ/ec \*

JOHN PATRICK NEWTON,  
MICHAEL D. NEWTON,  
NOEL R. CODY,  
(co-partners)  
doing business as  
NEWTON TRANSPORTATION COMPANY

Original Page 1

John Patrick Newton, Michael D. Newton and Noel R. Cody, co-partners, doing business as Newton Transportation Company, by the certificate of public convenience and necessity granted by the decision noted in the margin, are 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 county of Ventura 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 92462, Application 59871.

M.H.C. Trucking Co., 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 all points in the Counties of Los Angeles, Orange, San Luis Obispo, and Santa Barbara subject to the following restrictions:

RESTRICTIONS:

1. Whenever M.H.C. Trucking Co., Inc., engages other carriers for the transportation of property of Gene E. Sawyer or Sawyer Building Materials or M.H.C. Trucking Co., Inc., or customers or suppliers of said individual, company or corporation, M.H.C. Trucking Co., Inc., shall not pay such other carrier rates and charges less than the rates and charges published in M.H.C. Trucking Co.'s tariffs on file with this Commission. ✓
2. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year. ✓

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision 92462, Application 59871.