

ORIGINALDecision No. 47280

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 J. P. BREEN to sell and J. P. BREEN) Application No. 33434
 CO. to purchase the Petroleum)
 Irregular Route Permit.)

O P I N I O N

The Commission is herein requested to authorize J. P. Breen (1) to sell and J. P. Breen Co. to purchase a certificate to operate as a petroleum irregular route carrier and certain equipment, tools, land, and buildings described in Exhibit A of the partnership agreement attached to the application.

J. P. Breen Co. is a partnership, formed on March 26, 1952, consisting of Jack P. Breen, Sr., Florence G. Breen, his wife, Jack P. Breen, Jr., their son, and Fern Joyce Breen, their daughter. The partnership assets will be owned by the parties share and share alike, but the partnership agreement states (paragraph 4) that certain of the partners have financed their respective shares by private loans evidenced by promissory notes. Upon the death or retirement of Jack P. Breen, Sr., the partnership will be dissolved in accordance with the provisions of law; if any other ~~other~~ partner retires, the surviving partners will purchase his interest by delivering to him the partnership's promissory note payable in eight equal semiannual installments with interest at five per cent (5%) per annum (paragraphs 20 and 21 of partnership agreement). *R.M.*

The application states that \$169,177.37 is to be paid for the property proposed to be transferred, of which amount \$149,177.37 represents the value of the equipment and \$20,000 represents the value of the operative right.

(1) Decision No. 44255 dated May 26, 1950.

Under the circumstances presented, we find that the proposed transfer is not adverse to the public interest, and therefore will be authorized. No public hearing appears to be necessary. However, the action taken herein is not to be construed to be a finding of the value of the properties or operative right involved, nor does such action constitute the approval of this Commission for the issuance of the promissory notes or the incurring of the indebtednesses provided for in paragraphs 4, 20 and 21 of the partnership agreement.

Jack P. Breen, Sr., Florence G. Breen, Jack P. Breen, Jr., and Fern Joyce Breen are hereby placed upon 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, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

An application having been filed and the Commission having found that the public interest would not be adversely affected,

IT IS ORDERED:

(1) That J. P. Breen, after the effective date hereof and on or before August 1, 1952, may sell and transfer to Jack P. Breen, Sr., Florence G. Breen, Jack P. Breen, Jr., and Fern Joyce Breen, as partners, the operative right and property referred to herein, and the latter may acquire and thereafter operate the same, such sale

and transfer to be made in accordance with the terms set forth in the application and the partnership agreement dated March 26, 1952.

(2) That within thirty (30) days after the completion of the transfer herein authorized, the transferees shall notify the Commission in writing of that fact and file with it a true copy of any bill of sale or other instrument of transfer executed to effect the same.

(3) That applicants shall file in triplicate, and concurrently make effective, appropriate tariffs and timetables within sixty (60) days after the effective date hereof and on not less than five (5) days' notice to the Commission and the public.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 17th day of June, 1952.

R. T. [Signature]
President
Justin J. [Signature]
Harold P. [Signature]
Samuel P. [Signature]
John E. [Signature]
Commissioners