

ORIGINAL

Decision No. 50246

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
)
 A. S. MENICK as Trustee in Bankruptcy)
 of Walter Scott Winans, doing business)
 as Winans Transportation to sell, and)
 of)
)
 RICHARD A. COWAN, JR. and MERRILL E.)
 ERSKINE, doing business as D & M)
 TANK LINE to purchase the Certificate)
 of Public Convenience and Necessity)
 authorizing the transportation of)
 petroleum products as an irregular)
 route common carrier.)
 -----)

Application
No. 35542

O P I N I O N

This is an application for an order of the Commission authorizing the transfer of operative rights from A. S. Menick, as Trustee in Bankruptcy of Walter Scott Winans, to Richard A. Cowan, Jr. and Merrill E. Erskine, partners doing business as D & M Tank Line.

The application shows that Walter Scott Winans, doing business as Winans Transportation, was adjudicated a bankrupt in the District Court of the United States and that A. S. Menick was regularly appointed as trustee. Among the assets of the estate is a certificate of public convenience and necessity granted by this Commission by Decision No. 44826, dated September 19, 1950, in Application No. 31526, authorizing the transportation of distillate and residual fuel oil, and liquid asphalt and hot road oils in insulated tanks, in tank trucks and tank trailers, between all points and places in Los Angeles, San Diego, Imperial, Riverside and Orange counties, and it is reported that pursuant to the order of the referee in bankruptcy said certificate was regularly offered for sale in open court and was sold to the highest bidder for the total sum of \$200, subject to the approval of

the Commission. The order of the court confirming the sale was dated December 22, 1953.

Richard A. Cowan, Jr. and Merrill E. Erskine purchased the certificate. They propose to place in operation at once two units of equipment and in the future to devote to the service such additional equipment as may be required. The application shows that they have the equipment on hand for the immediate operations, that they are experienced in the transportation and oil business and that financially they should be in a position to take over the business and to continue the operation. It appears to us, from the verified application, that the transfer of the certificate as now requested will not be adverse to the public interest. ✓

Applicants 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 as to the number of rights which may be given.

The action taken herein shall not be construed to be a finding of the value of the certificate of public convenience and necessity herein authorized to be transferred.

O R D E R

The Commission having considered the above entitled matter, and being of the opinion that a public hearing is not necessary and that the application should be granted, as herein provided; therefore,

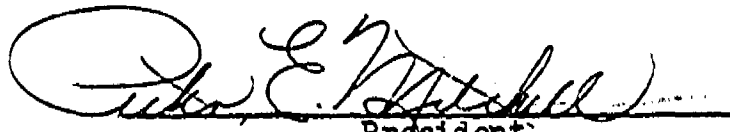
IT IS HEREBY ORDERED as follows:

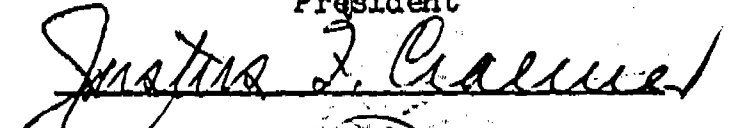
1. A. S. Menick, as Trustee in Bankruptcy of Walter Scott Winans, is authorized to transfer to Richard A. Cowan, Jr. and Merrill E. Erskine the certificate of public convenience and necessity referred to in the preceding opinion.


2. On not less than five days' notice to the Commission and to the public, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved to show that Walter Scott Winans has withdrawn or canceled and Richard A. Cowan, Jr. and Merrill E. Erskine have adopted or established as their own said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the filing and construction of tariffs set forth in the Commission's General Order No. 80.

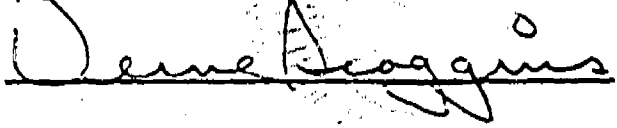
3. The authority herein granted will become effective upon the date hereof.

Dated at San Francisco, California, this 6th day of July, 1954.



President






Commissioners