

ORIGINALDecision No. 54059

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 P. R POWELL, an individual, to sell,)
 and MELVIN L. BECK, an individual)
 doing business as GRAMEL CO., to) Application No. 38205
 purchase a certificate of public)
 convenience and necessity as a)
 petroleum irregular route carrier.)

Ivan McWhinney, for applicants.
Phil Jacobson, for L. P. G. Transportation Corp.,
 protestant.
Mrs. P. R. Powell, for applicant Powell.

O P I N I O N

This application of P. R. Powell and Melvin L. Beck, filed June 17, 1956, requests authority for Powell to sell and for Beck to purchase the operative rights granted by a certificate of public convenience and necessity^{1/} which authorized Powell to transport, as a petroleum irregular route carrier, petroleum and petroleum products in tank trucks and tank trailers between all points and places in the State of California, for a consideration of \$750.

Public hearing was held before Examiner Rowe, in Los Angeles, on September 6, 1956, at which time evidence was adduced and the matter submitted for decision.

It appears that the seller has been conducting operations under the aforementioned certificate, but because of ill health is unable to continue. The buyer has been conducting operations as a permitted carrier under Commission authority for several years,

^{1/} Decision No. 44357, issued June 30, 1950, in Application No. 31156.

and now wishes to carry on business as a petroleum irregular route carrier. He presently owns and proposes continuing the use of two Kenworth Tank Trucks and two Fruehauf Tank Trailers in this business. He appears to be financially able and has adequate experience to assure a successful operation under the certificate sought to be acquired.

Pursuant to Rule 46 of the Commission's Rules of Practice and Procedure L.P.G. Transportation Corp. appeared as a protestant and participated in the proceeding, and sought to show that the seller did not own the certificate of public convenience and necessity above referred to.

The agreement attached to Application No. 37836 was introduced into evidence by reference to the proceeding in said application. Official notice is taken of Decision No. 53011, issued May 1, 1956, in said Application No. 37836, which authorized the transfer of Powell's operative rights to said protestant upon the payment of \$750 cash by L.P.G. Transportation Corp. to applicant Powell. An objection was sustained to an offer of proof that certain indebtedness owed by applicant Powell to Jack L. Clifford had been cancelled by said Clifford, president of L.P.G. Transportation Corp.

A carbon copy of a Notice of Rescission to rescind the contract between applicant Powell and L.P.G. Transportation Corp., stated to be based upon the ground of failure of consideration, was received in evidence. Objection was sustained to protestant's offer to prove that although the agreement dated February 6, 1956,^{2/} between applicant Powell and protestant L.P.G. Transportation Corp.

^{2/} Attached to Application No. 37836.

by its terms provided that said corporation would pay \$750 cash for said operative rights, the parties had, prior to executing said contract, verbally agreed that such payment was to be effected by the cancellation of a debt of applicant Powell to Mr. Clifford.

Counsel for Mr. Clifford argued that, under the provisions of Section 1701 of the Public Utilities Code, technical rules of evidence need not be applied in Commission hearings. This statutory provision does not prevent the Commission from applying recognized rules of evidence. While the Commission is of the opinion that evidence should not be received from protestants who seek to enlarge the issues, nevertheless, it appears from the record that, in order to grant the application, the Commission would be required to either reform, or recognize a rescission of the agreement presented in Application No. 37836 upon which Decision No. 53011 was issued. To do this would, obviously, permit proof of matters beyond the jurisdiction of the Commission, and which can only be properly decided by the courts.

The Commission is not the proper forum for reforming or for rescinding or annulling contracts for mistake or fraud, and in the light of the controversy shown by the record, the application should be denied.

O R D E R

Application therefor having been made, public hearing having been held and the Commission being of the opinion that the application should be denied,

IT IS ORDERED that Application No. 38205 be and it is denied.

The effective date of this decision shall be twenty days after the date hereof.

Dated at San Francisco, California, this 5th day of November, 1956.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner [Signature] did not participate in the disposition of this proceeding.