

**ORIGINAL**

Decision No. 55379

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
H. R. NELSON to assign irregular )	
petroleum route franchise to FRANK )	Application No. 37519
WILKINSON, JR., and FRED McDONALD, )	(Petition to Stay
copartners, doing business as )	Decision No. 54693)
SUPREME TANK LINE. )	

In the Matter of the Application of )	
CHARLES L. HESS, dba McCUTCHEN TANK )	
LINE, and FRANK J. WILKINSON, JR., )	Application No. 38979
and FRED McDONALD, copartners, dba )	
SUPREME TANK LINE, to transfer )	
certificate of public convenience )	
and necessity. )	

Julius Packer, for applicants and petitioners.

O P I N I O N

Decision No. 54693, dated March 19, 1957, in Application No. 37519, contained an Order Revoking Operative Rights of Frank Wilkinson, Jr., and Fred McDonald acquired from H. R. Nelson pursuant to the authority of Decision No. 52456, dated January 9, 1956, in Application No. 37518. The effective date of Decision No. 54693 was stayed by the timely filing on April 10, 1957, of a petition requesting stay of the order in said decision. Applicants Charles L. Hess, Fred McDonald and Frank Wilkinson, Jr., in Application No. 38979 filed also on April 10, 1957, seek authority for the transfer of the operative rights involved from Wilkinson and McDonald to Applicant Hess.

Public hearing was held on both matters in Los Angeles on June 20, 1957, before Examiner Rowe. Evidence was adduced and the matters are now submitted and ready for decision.

From the record in these proceedings it appears and the Commission finds that Applicants Wilkinson and McDonald had no intention of abandoning operations but their failure to carry on operations was occasioned by financial difficulties caused by lack of business. The proposed sale to Applicant Hess who is found to be adequately financed and sufficiently experienced to carry on this operation successfully will prevent the loss to the public of this needed transportation service. Applicant Hess testified that if he acquires this operative right he will either transfer or cancel his petroleum contract carrier permit. The certificated rights will enable him to carry for the government which has indicated to him that it only deals with carriers having certificated rights. Applicant Hess also testified that if he acquires those rights, he will continue with his present equipment and will acquire adequate new tank truck units should they be needed. The \$500 purchase price is the same as Applicants Wilkinson and McDonald paid for the rights. The purchaser proposes to become a party to the tariffs issued by Elmer Ahl, as agent, now on file with the Commission and to which applicants, sellers, are now parties.

After full consideration, the Commission is of the opinion that the operative rights of Frank Wilkinson, Jr., and Fred McDonald should not be canceled or revoked and that said rights should be permitted to be transferred to Applicant Hess. It is further found that the proposed transfer will not be adverse to the public interest. The action taken herein shall not be construed to be a finding of the value of the rights herein authorized to be transferred.

Charles L. Hess is hereby 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.

O R D E R

Application and request therefor having been filed, public hearing having been held and based upon the findings and conclusions in the foregoing opinion,

IT IS ORDERED:

(1) That the effective date of Decision No. 54693 is permanently stayed and the order of revocation and cancellation therein contained is vacated.

(2) That unless the following orders numbered (3) and (5) are complied with within sixty days after the effective date hereof or within the time such compliance is duly extended by the Commission, the above ordering paragraph numbered (1) shall be null and void.

(3) That Frank Wilkinson, Jr., and Fred McDonald after the effective date hereof and prior to sixty-one days thereafter may sell and transfer to Charles L. Hess, and the latter may acquire and purchase the operative rights above described for the total price of \$500 in cash.

(4) That within thirty days after the completion of the transfer herein authorized, Charles L. Hess shall notify the Commission of such transfer in writing and within said period shall file with it three copies of the instruments executed to effect such transfer.

(5) That applicants shall, effective concurrently with the consummation of such transfer, and on not less than five days' notice to the Commission and the public, supplement or reissue the tariffs

on file with the Commission naming rates, rules, and regulations governing the operative rights here involved to show that Fred McDonald and Frank J. Wilkinson, Jr., have withdrawn or canceled and Charles L. Hess has adopted or established as his own said rates, rules and regulations. 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. 80.

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

Dated at San Francisco, California, this 5th day of August, 1957.

[Signature]  
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 President

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 Commissioners

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.