

**ORIGINAL**

Decision No. 56068

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Morris Esacove, doing business as STATEWIDE TANK LINES, to sell and SUBURBAN FUEL CO., a California corporation, to buy petroleum irregular route common carrier rights between points in the State of California.

Application No. 39597

O P I N I O N

In this proceeding, the Commission is asked to make an order (1) authorizing Morris Esacove, doing business as Statewide Tank Lines, to transfer his operative rights and properties to Suburban Fuel Co., a corporation, and (2) authorizing Suburban Fuel Co. to issue \$20,000 par value of common stock, to assume outstanding obligations and to incur long-term indebtedness.

Applicant Esacove is engaged in business as a petroleum irregular route carrier throughout California under a certificate of public convenience and necessity acquired by him pursuant to authorization granted by Decision No. 51474, dated May 16, 1955. He has reported gross revenues from his operations at \$102,746 in 1956 and at \$73,475 in the first nine months of 1957 with net income of \$11,349 in 1956 and \$8,481 in the nine-months' period of 1957, after making provision for depreciation.

Applicant Suburban Fuel Co. is a California corporation which was organized on August 28, 1952, but which has not engaged in active business.

It now appears that applicant Esacove desires to retire from his petroleum irregular route carrier operations and devote his time to other activities and he has made arrangements to transfer his certificate of public convenience and necessity and his trucks, trailers and other tangible properties to Suburban Fuel Co. for the sum of \$103,000, of which \$500 is assigned to the operative rights.

Under the agreed terms, \$10,000 of the purchase price will be payable prior to the close of the escrow, \$10,000 will be payable on February 1, 1958 assuming the escrow is closed, \$48,270.84, representing the unpaid balance on motor vehicle equipment, will be assumed by the purchaser and \$34,729.16 will be payable to applicant Esacove in monthly installments of \$578.72. The indebtedness of \$48,270.84 is payable to Union Bank and Trust Company in monthly installments of \$2,561.84.

The application shows that the \$10,000 payment due February 1, 1958 will be represented by a promissory note and that, in addition, the new corporation will borrow \$12,000 from affiliated interests on short-term unsecured loans. None of these notes, however, need be approved by the Commission as each loan runs for a period of less than 12 months after its date.

The \$12,000 of borrowed money, together with the proceeds from the sale of the \$20,000 of stock which is requested in this application, will be utilized by the corporation in making its cash payments under the agreement with applicant Esacove and for working capital in its operations.

It appears that there will be no change in the operations as a result of the transfer and that the same service as is now given will continue after the transfer. The new corporation intends to operate under the fictitious name of Statewide Tank Lines.

It is recognized that at the outset the new corporation will have outstanding liabilities of more than \$83,000 as compared with common stock of \$20,000. However, such indebtedness, by its terms, will be paid off in monthly installments of approximately \$3,000 so that a more favorable relationship will develop with the passage of time within a relatively short period. Information before the Commission shows that the operations have been conducted at a profit and that the shareholders of the new corporation are financially in a position to meet the obligations with which they may be faced upon the consummation of the proposed transaction. Accordingly, we are of the opinion and so find, that the proposed transfer will not be adverse to the public interest.

In making our order herein, we hereby place applicants 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, 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 rights and properties 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, that the money, property or labor to be procured or paid for by the stock and indebtedness herein authorized is reasonably required for the purposes specified herein, and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Morris Esacove, doing business as Statewide Tank Lines, may transfer his certificate of public convenience and necessity as described in Decision No. 51474, dated May 16, 1955, and his equipment to Suburban Fuel Co. pursuant to the terms set forth in this application.

2. Suburban Fuel Co., in acquiring said certificate and equipment and in making provision for working capital, may issue and sell not to exceed \$20,000 of its common stock at par, for cash, may assume the payment of outstanding indebtedness due Union Bank and Trust Company in the amount of not exceeding \$48,270.84 and may incur long-term indebtedness in favor of Morris Esacove in the amount of not exceeding \$34,729.16.

3. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, 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 Morris Esacove, doing business as Statewide Tank Lines, has withdrawn or canceled and Suburban Fuel Co. has adopted or established, as its 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.

4. Suburban Fuel Co. shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

5. The authority herein granted will become effective when Suburban Fuel Co. has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$35.

Dated at San Francisco, California, this 14th day of January, 1958.

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

