

Decision No. 57797

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 1) EMPIRE TRANSPORTATION COMPANY, a)
 corporation, to sell and transfer)
 properties and operative authorities)
 to CITIES FUEL LINES, a corporation,)
 and for revocation of certificates)
 of public convenience and necessity;)
 and 2) CITIES FUEL LINES to issue)
 stock.)

Application No. 40636

Marvin Handler, for Empire Transportation Company
Otto E. Berg, for Cities Fuel Lines
Sidney J. Webb, for the Commission's staff

O P I N I O N

Empire Transportation Company (hereinafter at times referred to as Empire) requests authority to sell and Cities Fuel Lines (hereinafter at times referred to as Cities) requests authority to purchase certain operative rights and equipment as well as miscellaneous personal property, good will, accounts and notes receivable and leasehold interests.

A public hearing was held before Examiner Thomas E. Daly on December 19, 1958, at San Francisco and the matter was submitted.

Empire is presently engaged as a certificated carrier transporting petroleum products. Its certificated authority was granted by Decisions Nos. 42623, 44370 and 54013. Empire proposes to sell the operative rights created by Decision No. 54013, which authorized the transportation of acids, chemicals, fertilizers, insecticides and fungicides between points and places along designated routes, with the right to serve all points and places located laterally within a radius of 50 miles of said routes. Empire requests that the remainder of its certificated authority be revoked. Included in the sale will be

automotive equipment, trucks, trailers, stock of parts, tools, fuel and lubricating oils, accounts receivable, notes receivable, prepaid items of expense, office equipment and supplies, cash on hand, leaseholds, tradename, and good will. A value of \$250 is placed upon operative rights.

Cities, which is also engaged as a certificated carrier for the transportation of petroleum products, requests authority to acquire said property and the further authority to:

- (a) Declare a stock dividend of \$39,000 out of earned surplus and to issue 390 shares of its \$100 par value capital stock.
- (b) Issue 430 shares of its \$100 par value capital stock for cash in the sum of \$43,000.
- (c) Assume the liabilities attributable to the business and the outstanding balances on the equipment to be transferred by Empire.

The total purchase price is \$293,934.77. Of this amount \$203,934.77 represents the assumed liabilities and the balance of \$90,000 will be a cash consideration. Of the latter amount \$10,000 was paid upon the execution of the agreement; \$35,000 or more is to be paid within five days from the effective date of an order approving the transaction and \$45,000, or the then remaining balance, to be paid on or before April 1, 1959.

As of September 30, 1958, Cities indicated total assets in the amount of \$94,601.22, total liabilities amounting to \$53,070.89 and capital stock and earned surplus in the amount of \$41,530.33. For the nine months ending September 30, 1958, Cities realized a net profit of \$11,347.66.

Empire and Cities have entered into a lease agreement covering Empire's terminal at Bakersfield. The month to month tenancy by which Empire occupies terminal premises in Stockton has been assigned to Cities.

As justification for the authority sought it is asserted that due to a health problem of George R. Beggs, general manager and owner of all of the outstanding stock of Empire, he believes it to be to the best interest of himself, his family, the business and the shipping public that the transportation operations be sold. It is further asserted that Cities is qualified and prepared to immediately furnish all of the service presently being performed by Empire.

After consideration the Commission is of the opinion and so finds that public convenience and necessity no longer require . Empire's service pursuant to Decisions Nos. 42623 and 44370; that the proposed transfer would not be adverse to the public interest; that the money, property or labor to be procured or paid for through the issue of the stock herein authorized is reasonably required for the purposes set forth herein and that such purposes are not in whole or in part reasonably chargeable to operating expenses or to income; that the authorization herein granted shall not be construed as a finding of the value of the rights and equipment involved; that Cities may assume the obligations of Empire referred to hereinabove.

Because of Mr. Beggs' poor health it was requested that if the authority herein sought were granted that the order be made effective on or before January 1, 1959.

ORDER

Application having been filed and the Commission being informed in the premises,

IT IS ORDERED:

(1) That on or before June 1, 1959, Empire Transportation Company may sell and transfer and Cities Fuel Lines may purchase and acquire the operative rights and property set forth in Exhibit B attached to the application according to the terms contained therein.

(2) That within thirty days after the consummation of the transfer herein authorized, Cities Fuel Lines shall notify the Commission in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

(3) Effective concurrently with the consummation of the transfer, and on not less than five days' notice to the Commission and the public, Cities Fuel Lines shall establish the service herein authorized and shall file in triplicate, and concurrently make effective tariffs satisfactory to the Commission.

(4) That the operative rights created by Decisions Nos. 42623 and 44370 are hereby revoked, subject to the following conditions:

- (a) That Western Motor Tariff Bureau, Inc., is authorized and directed to cancel, on not less than five days' notice to the Commission and to the public, the participation of Empire Transportation Company from its Local Freight Tariff No. 3-D, Cal. P.U.C. No. 25.
- (b) That effective concurrently with the effective date of the tariff amendment directed in paragraph 4(a) hereof, power of attorney AF1 No. 3 issued by Empire Transportation Company in favor of Western Motor Tariff Bureau, Inc., is hereby canceled.
- (c) That the revocation of the operative rights created by Decisions Nos. 42623 and 44370 shall take effect concurrently with the effectiveness of the tariff amendment directed by paragraph 4(a) hereof.

(5) That Cities Fuel Lines may issue 390 shares of its \$100 par value capital stock as a stock dividend and concurrently therewith shall transfer \$39,000 out of earned surplus to its capital stock account.

(6) That Cities Fuel Lines may issue 430 shares of its \$100 par value capital stock for cash in the sum of \$43,000 to apply toward its purchase of the assets herein authorized to be acquired from Empire Transportation Company.

(7) That Cities Fuel Lines shall file with the Commission a report or reports, as required by General Order No. 24-A, which order in so far as applicable, is made a part of this order.

(8) That Cities Fuel Lines may assume the liabilities of Empire Transportation Company as set forth in Exhibit B attached to the application.

(9) That Cities Fuel Lines shall comply with the applicable uniform system of accounts as adopted and prescribed by this Commission.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 30th day of December, 1958

E. J. Fox
President
Paul L. Interwies
William J. ...
Herbert J. ...
Commissioners