

ORIGINALDecision No. 68567

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
THEODORE GIFFORD PENNINGTON for a
certificate of public convenience
and necessity to operate an
automobile freight service as a
petroleum irregular route carrier,
between all points in the State of
California, by reason of operations
conducted on and after September 1,
1949, under Radial Highway Common
Carrier Permit issued by the Public
Utilities Commission.

Application No. 31163

In the Matter of the Application of
THEODORE GIFFORD PENNINGTON to sell
and transfer, and of C & M TRUCK
LINES, INC., a California Corporation,
to purchase and acquire the operative
rights of THEODORE GIFFORD PENNINGTON,
conducted under and pursuant to
Decision No. 44471 dated 27 June 1950
in Application No. 31163.

Application No. 47045

William H. Kessler and Louis J. Seely, for
applicants.

O P I N I O N

Public hearing was held in these two applications in San Francisco before Examiner Power, on a consolidated record January 12, 1965 and was then submitted.

Theodore Gifford Pennington has a petroleum irregular route carrier certificate which he wishes to sell to C & M Truck Lines, Inc. who desires to acquire it. The certificate was granted by Decision No. 44471, dated June 27, 1950, in Application No. 31163 and authorizes service to all points and places in the State.

On October 13, 1964, the Commission issued Decision No. 68055 in Application No. 31163 conditionally revoking the certificate for allowing its liability insurance to lapse. The condition was that the revocation would be stayed if Pennington, in writing, requested a hearing within thirty days. He did so, through his attorney by a letter dated November 10 and received in the Commission office November 12, 1964, and also by the filing of Application No. 47045 on October 16, 1964.

The reason for the insurance lapse became obvious with the filing of Application No. 47045. The agreement of sale attached to Application No. 47045 was dated May 12, 1964 and Pennington considered himself out of business thereafter. There is nothing to indicate that Pennington conducted any operations without liability insurance in effect. When Application No. 47045 was filed, Pennington had been out of business so long that a financial statement could not be filed for him.

C & M Truck Lines, Inc. is a part of the Manuel S. Mancebo organization of Tulare, the most conspicuous unit of which is Kings County Truck Lines. This management has experience in bulk hauling for hire and in the proprietary transportation of petroleum products used by its own organizations. A financial statement of C & M Truck Lines, Inc. as of March 31, 1964 is attached to Application No. 47045. It reveals that C & M Truck Lines, Inc. has ample funds to make the purchase and perform the service formerly rendered by Pennington.

By the terms of the purchase agreement executed May 12, 1964, C & M Truck Lines, Inc. has agreed to pay \$250 for the Pennington right within ten days after the effective date of a decision by the Public Utilities Commission.

The Commission finds that:

1. The proposed sale and transfer of a highway common carrier certificate of public convenience and necessity for a cash consideration and under the circumstances set forth in this application would not be adverse to the public interest.

2. It is reasonable for transferee to adopt the transferor's presently approved tariff filings on thirty days' notice to the Commission and to the public.

The Commission concludes that the application should be granted.

The action taken herein shall not be construed to be a finding of the value of the operative rights and other assets to be transferred. So far as the rights are concerned, the authorization herein granted is for the transfer of the petroleum irregular route carrier certificate of public convenience and necessity only. The transfer of permitted operative rights must be the subject of a separate application or applications.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1965, Theodore Gifford Pennington may sell and transfer, and C & M Truck Lines, Inc. may purchase and acquire, the petroleum irregular route carrier certificate of public convenience and necessity referred to in the application, in accordance with the terms of the purchase agreement, a copy of which is attached to the application as Exhibit A.

2. Within thirty days after the consummation of the transfer herein authorized, C & M Truck Lines, Inc. 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. C & M Truck Lines, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates, rules, and regulations governing the petroleum irregular route carrier operations herein to show that it has adopted or established, as its own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than ten days after the date of this order on not less than thirty days' notice to the Commission and to the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. 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-A.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, C & M Truck Lines, Inc. shall cause to be filed with the Commission, in such form as it may prescribe, an annual report or reports, covering the period commencing with the first day of the current year to and including the effective date of the transfer.

5. Decision No. 68055, dated October 13, 1964, in Application No. 31163, is hereby vacated and set aside.

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

Dated at San Francisco, California, this 9th day of February, 1965.

Fredrick W. Helhoff
President
George H. Hoover
William M. DeWitt

Commissioners

-4- Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.