

ORIGINALDecision No. 68800

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
 Frank J. Kirkpatrick for authority)
 to sell and transfer petroleum)
 irregular route operative rights to)
 George Goudy.)

Application No. 47237

O P I N I O N

Frank J. Kirkpatrick^{1/} possesses a certificate of public convenience and necessity to operate as a petroleum irregular route carrier. This authority was created by Decision No. 44388 dated June 20, 1950, in Application No. 31231. The certificate authorizes the transportation of petroleum and petroleum products in tank trucks and tank trailers between all points and places in the State of California.

By the present application, Kirkpatrick seeks authority to sell his certificate to applicant, George Goudy, for \$200 in cash. The agreement of sale attached to the application contains the following provision:

"3. POSSESSION. Title shall be deemed to pass and Goudy shall have possession of said business upon the approval of the proposed transfer by the Public Utilities Commission of the State of California."

The above provision becomes important because the Kirkpatrick certificate is under suspension pursuant to Decision No. 68095 dated October 20, 1964, in Application No. 31231. Said decision recites that Kirkpatrick's tariff agent had suspended his participation on September 5, 1964.

^{1/} Kirkpatrick does business under the name of Airway Transportation.

Decision No. 68095 recites that it should become effective twenty days after its date unless a prior request for a public hearing was made. None was; therefore, the certificate stands suspended at this time. However, it has not yet been revoked.

It appears that this difficulty can be overcome by authorizing the transfer of the certificate, subject to the suspension and calling Goudy's attention to the fact that under Section 493 of the Public Utilities Code he cannot perform any transportation until his tariff filings have become effective. With such a notice, a public hearing will not be needed.

A financial statement attached to the application reveals that Goudy has ample financial resources to institute the proposed operation. He proposes to use one tank truck and one pull trailer. He alleges that he will participate in the presently filed tariffs of Western Motor Tariff Bureau, Inc.

The Commission finds that:

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

2. It is reasonable for transferee to adopt the presently approved tariff filings of Western Motor Tariff Bureau, Inc. on thirty days' notice to the Commission and 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.

George Goudy is placed on notice that no transportation may be performed under the operating authority herein authorized to be transferred until appropriate tariff filings have been made by him.

O R D E R

IT IS ORDERED that:

1. On or before July 1, 1965, Frank J. Kirkpatrick may sell and transfer, and George Goudy 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, George Goudy 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. Within one hundred twenty days after the effective date hereof, George Goudy shall file tariffs, in triplicate, in the Commission's office and shall reestablish the service herein authorized to be transferred to him. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.

4. Concurrently with the effective date of tariff filings required by ordering paragraph 3 hereof, Decision No. 68095 dated October 20, 1964, in Application No. 31231 is hereby vacated and set aside.

5. On or before the end of the third month after the consummation of the transfer as herein authorized, George Goudy 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.

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

Dated at San Francisco, California, this 30th day of March, 1965.

Fredrick B. Hallock
President

George W. Hoover

George W. Hoover

Augustus

William W. Bennett
Commissioners