

ORIGINAL

Decision No. 73371

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of)
))
PERCY C. FREDERICKSEN, KENNETH H.)
FREDERICKSEN, VIVIAN E.)
FREDERICKSEN, LORN W.)
FREDERICKSEN, CRYSTAL F. ADAMSON)
and VIRGINIA F. EISENBEISZ,)
Individually and doing business)
under the name of FREDERICKSEN)
TANK LINES, a partnership, to)
transfer a certificate of public)
convenience and necessity to)
operate as a petroleum irregular)
route carrier, and certain other)
public utility properties, to)
FREDERICKSEN TANK LINES INC., a)
California corporation; and of)
FREDERICKSEN TANK LINES INC., to)
acquire such certificate and)
utility properties and to issue)
convertible promissory notes,)
security agreement and stock.)

Application No. 49743
Filed October 18, 1967

O P I N I O N

This is an application for an order of the Commission (1) authorizing Percy C. Fredericksen, Kenneth H. Fredericksen, Vivian E. Fredericksen, Lorn W. Fredericksen, Crystal F. Adamson and Virginia F. Eisenbeisz to sell and transfer their petroleum irregular route carrier certificate of public convenience and necessity, together with related assets of their partnership, to Fredericksen Tank Lines Inc., and (2) authorizing the latter (a) to assume outstanding indebtedness, (b) to issue \$148,886 aggregate principal amount of notes, (c) to issue and sell

\$131,886 aggregate par value of capital stock, and (d) to execute and deliver a Security Agreement.

Pursuant to authority granted by Decision No. 68805, dated March 30, 1965, in Application No. 47314, the partners acquired a certificate of public convenience and necessity authorizing them to operate as a statewide petroleum irregular route carrier. In Exhibit F, attached to this application, the partners show a gross profit of \$198,838 for the first six months of 1967, and a corresponding net income of \$24,161. The assets and liabilities of the partnership as of June 30, 1967, as set forth in said Exhibit F, are summarized as follows:

Assets

Current assets	\$209,770
Fixed assets less allowance for depreciation	146,998
Other assets	<u>3,656</u>
Total	<u>\$360,424</u>

Liabilities

Current liabilities excluding notes payable	\$167,893
Notes payable - equipment	52,919
Capital	<u>139,612</u>
Total	<u>\$360,424</u>

Fredericksen Tank Lines Inc. is a California corporation organized on or about July 27, 1967. Its Articles of Incorporation provide for a capital stock authorization consisting of 131,886 shares of the par value of \$1 each and the aggregate par value of \$131,886.

Exhibit B, attached to the application, is a copy of an Agreement dated July 28, 1967, to which the applicants and the corporation's proposed shareholders are the parties. The partners have agreed to sell and transfer to the corporation all of their interest in the partnership, subject to its liabilities, for a total price of \$131,886, payable in the forms of cash, notes and stock in the aggregate amounts of \$22,000, \$98,886 and \$11,000, respectively.

In addition to the \$11,000 aggregate par value of capital stock, the corporation proposes to issue and sell 22,000 shares, at par for cash, for the purpose of obtaining the \$22,000 for meeting, in part, said purchase price. The promissory notes aggregating \$98,886, which the corporation contemplates issuing in connection with the acquisition, would consist of five convertible notes repayable in aggregate monthly installments of \$2,000 including principal and interest at the rate of 6% per annum. In the event of default, a note holder would have the option of (a) converting his or her note into shares of the corporation's capital stock at the rate of one share per \$1 of the remaining unpaid balance of the principal amount of the note and accrued interest thereon, and (b) purchasing for \$1 one additional share for each \$1 already paid on the principal of the note.

For the purpose of obtaining funds to liquidate an existing indebtedness in favor of Bank of America National Trust and Savings Association incurred by the partnership for equipment, the corporation proposes to execute and deliver

a Security Agreement and to issue a short-term note in favor of Crocker-Citizens National Bank in the principal amount of \$50,000 bearing interest at the rate of 6-1/2% per annum.

Generally, this Commission does not look with favor upon the creation of a relatively large indebtedness as a result of a transfer. However, in view of the circumstances set forth in this proceeding whereby the utilization of convertible notes would result in the elimination of such indebtedness in the event of default, we have no objection to the general terms of the proposed transfer as it pertains to a petroleum irregular route carrier.

The Commission has considered this matter and finds that: (1) Section 818 of the Public Utilities Code prohibits the issuance of stock by a public utility for a purpose reasonably chargeable to operating expenses or to income; (2) the proposed transactions will not be adverse to the public interest; (3) the money, property or labor to be procured or paid for by the issue of the stock and notes herein authorized is reasonably required for the purposes specified herein; and (4) such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. A public hearing is not necessary.

On the basis of the foregoing findings we conclude that the application should be (a) denied, insofar as it seeks authority to issue stock for accrued interest in the event of default in repaying convertible notes and (b) granted in all other respects.

The action taken herein shall not be construed as a finding of value of the properties 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. Any transfer of permitted operative rights must be the subject of a separate application or applications.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by Percy C. Fredericksen, Kenneth H. Fredericksen, Vivian E. Fredericksen, Lorn W. Fredericksen, Crystal F. Adamson and Virginia F. Eisenbeisz, doing business as Fredericksen Tank Lines, and the issuance of a certificate in appendix form to Fredericksen Tank Lines Inc.

Fredericksen Tank Lines Inc. 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. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business as a petroleum irregular route carrier. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or after the effective date hereof and on or before June 30, 1968, Percy C. Fredericksen, Kenneth H. Fredericksen, Vivian E. Fredericksen, Lorn W. Fredericksen, Crystal F. Adamson and Virginia F. Eisenbeisz may sell and transfer, and Fredericksen Tank Lines Inc. may purchase and acquire, the petroleum irregular route carrier certificate of public convenience and necessity and other assets referred to in this proceeding.

2. Fredericksen Tank Lines Inc. may assume the liabilities and obligations referred to in the application and, for the purposes specified in this proceeding, may issue its notes in the aggregate principal amount of not exceeding \$143,836, and may execute and deliver a Security Agreement, which documents shall be in the same form, or in substantially the same form, as those attached to the application with the deletion of "and accrued interest thereon" from line 10 of page 36 of Exhibit B.

3. Fredericksen Tank Lines Inc., for the purposes set forth in this proceeding, other than accrued interest, may issue and sell not exceeding 131,836 shares of its \$1 par value capital stock.

4. Fredericksen Tank Lines Inc. shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

5. Within thirty days after the consummation of the transfer herein authorized, Fredericksen Tank 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.

6. Fredericksen Tank Lines Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the petroleum irregular route carrier operations herein to show that it has adopted or established, as its own, said rates and rules. 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 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. Failure to comply with and observe the provisions of General Order No. 80-A may result in a cancellation of the operating authority granted by this decision.

7. On or before the end of the third month after the consummation of the transfer as herein authorized, Fredericksen Tank Lines Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the sellers for the period commencing with the first day of the calendar year in which the

transfer takes place to and including the effective date of the transfer.

8. In the event the transfer authorized in Paragraph No. 1 hereof is consummated, a certificate of public convenience and necessity is granted to Fredericksen Tank Lines Inc. authorizing it to operate as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, and as provided in Appendix A attached hereto and made a part hereof.

9. The certificate of public convenience and necessity granted in Paragraph No. 8 of this order shall supersede the certificate of public convenience and necessity acquired pursuant to authority granted by Decision No. 68805, which certificate is revoked effective concurrently with the effective date of the tariff filings required by Ordering Paragraph No. 6 hereof.

10. In providing service pursuant to the certificate herein granted, Fredericksen Tank Lines Inc. shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, Fredericksen Tank Lines Inc. shall file a written acceptance of the certificate herein granted. Fredericksen Tank Lines Inc. is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-D.

(b) Fredericksen Tank Lines Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

11. This application is denied insofar as it seeks authority to issue stock for accrued interest.

12. This order shall become effective when Fredericksen Tank Lines Inc. has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$149.

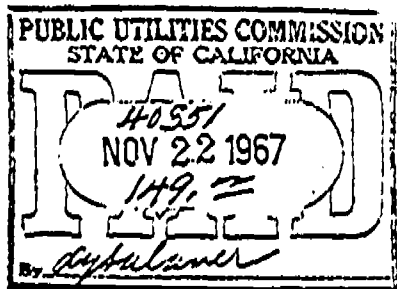
Dated at San Francisco, California, this 21st day of NOVEMBER, 1967.

D. E. Mitchell
President

Angela

William Bennett

David P. Monahan
Commissioners



Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Fredericksen Tank Lines Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a petroleum irregular route carrier for the transportation of petroleum and petroleum products in tank trucks and tank trailers between all points and places in the State of California.

Whenever Fredericksen Tank Lines Inc. engages other carriers for the transportation of property of Fredericksen Tank Lines Inc., or customers or suppliers of said corporation, carrier shall not pay such other carriers rates and charges less than the rates and charges published in said carrier's tariffs on file with the Commission.

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision No. 73371, Application No. 49743.