

ORIGINAL

Decision No. 79926

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of BARKLEY & GIBBONS, INC., a
corporation, to sell and transfer,

and of

MILES TANK LINES, INC., a
California corporation, to purchase
and acquire the cement hauling rights
in Fresno and Merced Counties of
BARKLEY & GIBBONS, INC., acquired
June 23, 1964, by Decision
No. 78502 and numbered 1572.

Application No. 53159
(Filed February 18, 1972)

O P I N I O N

Barkley & Gibbons, Inc. (hereinafter referred to as seller) requests authority to sell and transfer, and Miles Tank Lines, Inc. (hereinafter referred to as buyer) requests authority to purchase and acquire, a portion of a certificate of public convenience and necessity authorizing operations as a cement carrier.

The certificate authorizing transportation of cement to and within the Counties of Fresno, Merced, San Mateo and Santa Cruz was granted by Decision No. 79832, in Application No. 53070. The transfer sought herein relates to the Counties of Fresno and Merced only. The agreed cash consideration is \$2,000.

Applicant seller has requested and been granted authority to suspend operations pursuant to Decision No. 78502, in Application No. 46413. This suspension was extended to June 4, 1972 by Decision No. 79494.

Applicant buyer is presently transporting property as a permitted carrier and holds certificates as a highway common carrier and a petroleum irregular route carrier. As of December 31, 1971, applicant buyer indicated a net worth in the amount of \$93,319.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by Barkley & Gibbons, Inc., and a restatement of its operating authority in appendix form to reflect the transfer herein authorized. Miles Tank Lines, Inc. will be issued a certificate in appendix form.

Applicants are 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, these rights extend to the holder a full or partial monopoly of a class of business. 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 before December 11, 1972, Barkley & Gibbons, Inc. may sell and transfer, and Miles Tank Lines, Inc. may purchase and acquire, the operative rights referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, purchaser shall notify the Commission, in writing, of that fact and within said period shall file with the Commission true copies of any bills of sale or other instruments of transfer which may be executed to effect said transfer.
3. Applicants shall file, amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that they have adopted or established, as their own, said rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of

this order on not less than five 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 findings 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. 117. Failure to comply with and observe the provisions of General Order No. 117 may result in a cancellation of the operating authorities granted by this decision.

4. In the event the transfer authorized in paragraph 1 hereof is consummated, certificates of public convenience and necessity are granted to Barkley & Gibbons, Inc. and Miles Tank Lines, Inc., authorizing them to operate as cement carriers, as defined in Section 214.1 of the Public Utilities Code, between the points particularly set forth in Appendices A and B, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted to Barkley & Gibbons, Inc. in paragraph 4 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 79832, dated March 21, 1972, in Application No. 53070, which certificate is revoked concurrently with the effective date of the tariff filings required by paragraph 3 hereof. The certificate granted to Barkley & Gibbons, Inc. shall remain in suspension as set forth in Decision No. 78502, as amended by Decision No. 79494, and said carrier shall comply with all conditions of the suspension and with all requirements set forth in Decision No. 78502 before resuming operations.

6. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser 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 insurance requirements of the Commission's General Order No. 100-Series.

7. Applicants shall maintain their 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, annual reports of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 11th
day of APRIL, 1972.

[Signature]
Chairman
William Symons
[Signature]
Samuel L. Stanger
[Signature]
Commissioners

Barkley & Gibbons, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a cement carrier as defined in Section 214.1 of the Public Utilities Code, from any and all points of origin to any and all points in the Counties of San Mateo and Santa Cruz.

RESTRICTION: This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 79926, Application No. 53159.

Miles Tank Lines, Inc., a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a cement carrier as defined in Section 214.1 of the Public Utilities Code, from any and all points of origin to any and all points in the Counties of Fresno and Merced.

RESTRICTION: This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

(END OF APPENDIX B)