

af/am

ORIGINAL

Decision No. 82092

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)

RAY KURTZ, an individual, to
transfer, and MERLIN C. BECK
and L. E. PEABODY, a partnership
doing business as B.&M. TANK
LINES, to acquire a certificate
of Public Convenience and
necessity to operate as a
irregular route petroleum
carrier.

Application No. 54318
(Filed September 12, 1973)

O P I N I O N

Ray Kurtz, an individual, requests authority to sell, and Merlin C. Beck and L. E. Peabody, a partnership doing business as B.&M. Tank Lines, request authority to purchase a certificate of public convenience and necessity authorizing operations as a petroleum irregular route carrier. The certificate was previously acquired by Ray Kurtz by Decision No. 78809, dated June 22, 1971. The certificate was originally issued by Decision No. 44399, dated June 20, 1950. It authorizes the transportation of petroleum and petroleum products in tank trucks and tank trailers between all points and places in the State.

According to the verified application the certificate has been registered with the Interstate Commerce Commission by Certificate of Registration No. MC-120999 (Sub. No. 1) dated March 21, 1972. Both intrastate and interstate operations have been conducted since issuance of the authority, and operations are currently being conducted. The purchasers propose to acquire the combined operating authorities for the total purchase price of \$5,000, of which \$1,200 is allocated to the certificate of

public convenience and necessity. It is asserted that \$1,200 is less than the cost to transferor of acquiring that certificate.

Kurtz contends that he is desirous of retiring from the business for health and business reasons. The purchasers allege that they are fit, willing, and able to adequately perform transportation under the certificate involved. As of June 30, 1973 Beck had a net worth of \$24,050, and Peabody had a net worth of \$13,250. The partners have three tank trailers under lease. They have available approximately one and one-half acres of truck terminal facilities located at 12252½ Woodruff Avenue, Downey.

The application states that Beck and Peabody have no interest in or control of a certificated carrier in California, and that no certificated carrier has an interest in their business. Applicants assert that this is a matter in which other carriers would have little or no interest. They ask that the matter be handled ex parte. The purchasers request authority to adopt the tariff of transferor.

Service of the application was made upon the California Trucking Association at its Los Angeles office. Notice of the application was published in the Commission's Daily Calendar on September 14, 1973. No objection to the granting of the application has been received.

Findings

1. The proposed transfer and sale would not be adverse to the public interest.
2. A public hearing is not necessary.
3. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that the application should be granted and the certificate reissued as provided by the order which follows.

Merlin C. Beck and L. E. Peabody, a partnership doing business as B.&M. Tank Lines, 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, such 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.

C R D E R

IT IS ORDERED that:

1. On or before June 1, 1974, Ray Kurtz may sell and transfer, and Merlin C. Beck and L. E. Peabody, a partnership doing business as B.&M. Tank Lines, may purchase and acquire the operative rights referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, purchasers 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. Purchasers shall 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 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-Series. Failure to comply with and observe the provisions of General Order No. 80-

Series may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchasers 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 seller for the period commencing with the first day of the current year to, and including, the effective date of the transfer.

5. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Merlin C. Beck and L. E. Peabody, a partnership, doing business as B.&M. Tank Lines, authorizing them to operate as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity acquired by Decision No. 78809 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchasers shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

8. Purchasers 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, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

9. Purchasers shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchasers elect not to

A. 54318 af

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 7th day of NOVEMBER, 1973.

Vernon L. Sturgeon
President
William J. ...
...
...
Commissioners

Merlin C. Beck and L. E. Peabody, by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to conduct operations as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, for the transportation of petroleum and petroleum products in tank trucks or tank trailers:

Between all points and places in the State of California.

RESTRICTION: Transportation of waste materials under this certificate is subject to obtaining and maintaining a valid registration certificate as a hauler of liquid waste from the State Water Resources Control Board.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 82092, Application No. 54318.