

Decision No. 83337**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
 of ANDREW GIACOMAZZI and JAMES
 GIACOMAZZI, copartners doing business
 under the firm name and style of
 ANDREW AND JAMES GIACOMAZZI, to
 transfer, and, CARROLL TRANSPORT CO.,
 a California Corporation, to acquire
 a Certificate of Public Convenience
 and Necessity to operate as a
 irregular route petroleum carrier.

Application No. 54989
 (Filed June 24, 1974)

O P I N I O N

Andrew Giacomazzi and James Giacomazzi, doing business as Andrew and James Giacomazzi, request authority to sell and transfer, and Carroll Transport Co., a California corporation, requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a petroleum irregular route carrier.

The certificate was granted by Decision No. 44583 in Application No. 31218 and authorizes the transportation of petroleum and petroleum products in tank trucks and trailers over irregular routes between all points and places within the State.

The cash consideration for the certificate is \$3,500. As of April 30, 1974 applicant purchaser indicated a net worth in the amount of \$28,632.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. We further find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Andrew Giacomazzi and James Giacomazzi and the issuance of a certificate in appendix form to Carroll Transport Co.

The authorization granted shall not be construed as a finding of the value of the rights authorized to be transferred.

Applicant purchaser presently transports petroleum products, in bulk, within a radius of 150 miles of San Diego pursuant to a petroleum contract carrier permit. By the authority granted herein, it will offer a similar service to the general public as a common carrier to all points and places in the State. The Public Utilities Code prohibits a common carrier from deviating from its published tariff rates (Geijsbeek v. P.U.C., 153 CA 2d 300). Additionally, the Code also provides that no public utility shall make or grant any preference or advantage to any corporation or person. In the circumstance, the petroleum contract carrier permit held by Carroll Transport Co. will be suspended effective concurrently on the effective date of the common carrier tariff filing and will be revoked 90 days thereafter unless an application is filed to transfer the permit.

Carroll Transport Co., is 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.

O R D E R

IT IS ORDERED that:

1. On or before October 31, 1974, Andrew Giacomazzi and James Giacomazzi may sell and transfer the operative rights referred to in the application to Carroll Transport Co.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the 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 transfer. 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 the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

4. 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 Carroll Transport Co., a corporation, authorizing it to operate as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, as set forth in Appendix A, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Decision No. 44583 in Application No. 31218 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. Purchaser 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.

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

9. The petroleum contract carrier permit heretofore issued to the purchaser shall stand suspended effective concurrently with the effective date of the ~~tariff~~ filings required by paragraph 3.

The permit, so suspended, shall be revoked 90 days thereafter unless an application is filed to transfer the permit.

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

Dated at San Francisco, California, this 20th day of AUGUST, 1974.

Veran L. Sturgeon
President
William Symons

[Signature]
[Signature]
Commissioners

[Signature]

[Signature], Commissioner

Carroll Transport Co., by the certificate of public convenience and necessity granted by the decision noted in the margin, is 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.

RESTRICTIONS: Whenever Carroll Transport Co., engages other carriers for the transportation of property of Carroll Transport Co., or customers or suppliers of said corporation, Carroll Transport Co., shall not pay such other carriers rates and charges less than the rates and charges published in Carroll Transport Co.'s tariffs on file with this Commission.

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. 83337, Application No. 54989.