

Decision No. 85480

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MARIAN R. EVANS, an individual, doing business as B & H SERVICE, to transfer a Petroleum Irregular Route Certificate of Public Convenience and Necessity to GILXCO, a California corporation.

Application No. 55934  
(Filed September 15, 1975)

Howard E. Meyers, for Gilxco, applicant.  
Michael R. Flaherty, for the Commission staff.

O P I N I O N

Marian R. Evans (seller), an individual doing business as B & H Service, requests authority to sell and transfer her petroleum irregular route certificate to Gilxco (purchaser), a corporation. The certificate was acquired by seller from J. T. Hutchison pursuant to Decision No. 83723 dated November 19, 1974 in Application No. 55233 and authorizes the transportation of petroleum products and related commodities between points and places in the counties of Santa Barbara, San Luis Obispo, and Monterey. The agreed cash consideration for the certificate is \$2,500. In the event the transfer is authorized, purchaser will lease the terminal facilities of seller for a ten-year period, purchase the seller's equipment and other facilities under separate agreement at a purchase price of \$97,350 with a down payment of \$30,000 and the balance payable within 13-1/2 years with interest at 8 percent on the unpaid balance, continue to operate the business under the name B & H Service, retain the operating manager of the business who has had ten years experience in oil field transportation and operations, and adopt

the tariffs of seller. Seller desires to dispose of the business because of ill health. The president of purchaser has had substantial experience in the oil field business. The Commission on October 24, 1975 transferred the radial highway common carrier permit held by seller to purchaser, and purchaser has operated under this authority since that date.

According to financial data submitted with the application the total capital investment of purchaser in the business sought to be transferred would be \$5,000, and the liabilities of the business would be \$167,525. The Commission staff, after several unsuccessful attempts to obtain from the purchaser more detailed information regarding the financial involvement of purchaser in the business should the transfer be authorized, requested that the application be set for hearing in order that this issue could be clarified. Public hearing was held before Examiner Arthur M. Mooney in Santa Maria on December 9, 1975, on which date the matter was submitted.

The following evidence was presented by the president of purchaser and its certified public accountant: The \$5,000 capital was obtained by the issuance of 50 shares of stock to purchaser's president and his wife, who is also the vice president, as tenants in common; their personal net worth and income is of substantial magnitude; they have personally guaranteed all loans obtained by purchaser to pay seller for the certificate, equipment, and facilities to be transferred; in the event purchaser should require additional funds, they will obtain them for it; and purchaser's operations under the radial highway common carrier permit have been profitable and will continue to be such if the certificate is transferred. With this additional information, the staff withdrew its objection to the transfer. There were no other protests.

Findings

1. Purchaser is fit, willing, and able to conduct the services of a petroleum irregular route certificated carrier.
2. The proposed transfer would not be adverse to the public interest.
3. It is reasonably certain that the project involved in this proceeding will not have a significant effect on the environment.

Conclusion

The Commission concludes that the application should be granted as set forth in the ensuing order.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by seller and the issuance of a certificate in appendix form to purchaser which shall contain the same restriction regarding payments to underlying carriers as appears in the permitted authority of the purchaser.

Purchaser 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 April 30, 1976, Marian R. Evans may sell and transfer the operative rights and property referred to in the application to Gilxco, a corporation.
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 Gilxco, a corporation, authorizing it 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.

5. The certificate of public convenience and necessity granted by Decision No. 83723 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. S4-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.

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

Dated at San Francisco, California, this 18<sup>th</sup> day of FEBRUARY, 1976.

 President  
William J. Lyons  
Thomas L. Stinger  
  
 Commissioners

GILXCO, a California corporation, by the certificate of public convenience and necessity granted in 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, drilling fluids, oil and chemicals used for drilling purposes and road oil in connection with the surfacing of roads, in bulk, in vacuum-type or pump-type tank trucks in connection with, or incidental to the drilling, reconditioning, or abandonment of an oil well or oil well site, or servicing its facilities and roads thereto, or the repair of pipeline breaks, between points and places in the counties of Santa Barbara, San Luis Obispo and Monterey.

RESTRICTION:

1. 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.
2. Whenever GILXCO, a corporation, engages other carriers for the transportation of property of GILXCO or customers or suppliers of said corporation GILXCO shall not pay such other carriers rates and charges less than the rates and charges published in the carriers tariffs on file with the Commission.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 85480, Application No. 55934.