

ORIGINAL

Decision No. 85958

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of ENERGY TRANSPORTERS, INC., a)
 California corporation, to pur-)
 chase and L. W. Potter Trucking)
 Company, a California corpora-)
 tion, to sell a petroleum ir-)
 regular route certificate.)

Application No. 56438
 (Filed April 27, 1976)

O P I N I O N

L. W. Potter Trucking Company, a California corporation, (seller) requests authority to sell and transfer a petroleum irregular route certificate to Energy Transporters, Inc., a California corporation (purchaser). The certificate was granted by Decision 44587, dated July 25, 1950, in Application 31140 and authorizes the transportation of petroleum products in tank trucks and tank trailers between all points and places in the State of California. Applicant purchaser does not presently hold operating authority issued by this Commission.

Pursuant to the Purchase Agreement entered into by the applicants on March 31, 1976, consideration for the sale is \$2,500.00 payable on approval of the sale and transfer by the Commission and the consummation of said sale. Applicant purchaser's balance sheet shows assets of \$6,000.00 and liabilities of \$1,000.00. Purchaser will operate leased highway vehicles under the certificate to be acquired.

Purchaser is a wholly owned subsidiary of Landy Corporation, a California corporation, which is a non carrier. By Decision 85184 dated November 25, 1975, in Application 56041, the Commission authorized Landy Corporation to control Allyn Transportation Company (Allyn) through purchase of all of the latter's capital stock. Allyn also holds statewide petroleum irregular route carrier authority from this Commission.

In order to avoid any possibility of preference or prejudice, purchaser is agreeable to an order of the Commission requiring that so long as the purchaser and Allyn Transportation Company remain under common control, purchaser will publish rates and charges identical to those published by Allyn. Regulatory purposes will be accomplished by providing for such an order.

Seller is a party to Western Motor Tariff Bureau, Inc., Agent, tariff publications. Purchaser proposes to adopt the tariffs. A copy of the application has been forwarded to the California Trucking Association and notice of the filing of the application appeared in the Commission's Daily Calendar of April 29, 1976. The applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which requires wide dissemination of the application. The relief is requested in order to acquire just, speedy and inexpensive determination of the issues presented. In support of the application, the applicants allege that the transaction will have no adverse effect on the shipping public or any other carriers. No protests to the application have been received.

After consideration, the Commission finds that the deviation from its Rules of Practice and Procedure should be authorized; that the proposed transfer would not be adverse to the public interest and should be authorized and that the effective date of this order should be the date on which it is signed because there is no opposition. 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 L. W. Potter Trucking Company, a corporation, and the issuance of a certificate in appendix form to Energy Transporters, Inc., a corporation.

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

Applicant 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 cancelled 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 1, 1976, L. W. Potter Trucking Company may sell and transfer the operative rights referred to in the application to Energy Transporters, Inc., a California 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' notice to the Commission and the public, and the effective date of 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 80-Series. Failure to comply with the provisions of General Order 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 Energy Transporters, Inc., 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 rates and charges set forth in tariffs required to be amended or reissued by paragraph 3 hereof, shall be the same as the rates and charges for the same transportation set forth in the tariffs of Allyn Transportation Company which is affiliated with the purchaser by reason of common control and ownership.

6. The certificate of public convenience and necessity granted by Decision 44587 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.


8. 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 April 30 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.

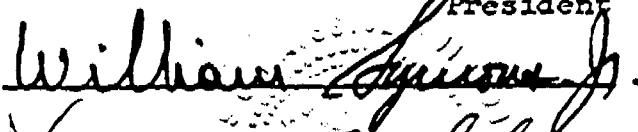
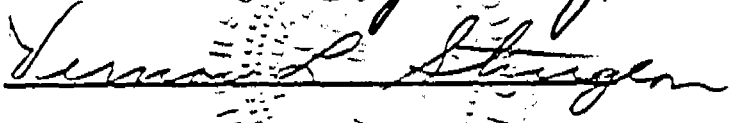
9. Purchaser shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.


10. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15th day of June, 1976.



President





Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

Energy Transporters, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate 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 bulk in tank trucks or tank trailers between all points and places in the State of California, subject to the following restriction:

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 85958, Application 56438.