

ORIGINAL

Decision No. 86617

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of (a) Robert H. Morrison, an individual, to transfer its Petroleum Irregular Route Certificate of Public Convenience and Necessity; and (b) C. S. McAuley, Inc., a California Corporation, to acquire said Certificate (Public Utilities Code Section 851).

Application No. 56703  
(Filed August 20, 1976,  
Amended September 27, 1976)

OPINION

Robert H. Morrison, an individual, requests authority to sell and transfer and C. S. McAuley, Inc., a California corporation, seeks authority to purchase and acquire a petroleum irregular route carrier certificate of public convenience and necessity. The certificate was granted by Decision 53358, dated July 10, 1956 in Application 37895 and authorizes transportation of petroleum and petroleum products in vacuum type and pump type tank trucks and tank trailers to, from and between all points and places in the Counties of Los Angeles, Orange, San Bernardino, Imperial and San Diego. Seller indicates he is discontinuing business upon the advice of his doctor.

The proposed transaction involves the sale of the entire business of seller including the certificate, a highway carrier permit, highway equipment and certain other assets. Transfer of the highway carrier permit is subject to a separate application.

Pursuant to the Agreement of June 30, 1976 between the applicants, the total purchase price for the transaction is \$150,000, which amount is not allocated among the various assets to be transferred. Payment is to be made with \$3,500 at execution of the agreement, \$40,000 upon consummation and the balance of \$106,500 to be represented by a promissory note and paid at interest of 6% per annum in 60 equal installments commencing January 1, 1977.

The highway equipment will be physically controlled by purchaser, however, to secure performance under the promissory note, seller will retain legal title until the entire amount owing is paid.

Purchaser indicates that it possesses the necessary financial resources, staffing and experience to perform the common carrier service. Its unaudited balance sheet of May 31, 1976, shows net worth of over \$400,000.

Seller is party to Western Motor Tariff Bureau, Inc., Agent, tariff publications. Purchaser proposes to adopt the tariffs. A copy of the application, as amended, has been forwarded to the California Trucking Association and notice of the application and its amendment appeared in the Commission's Daily Calendar of August 23 and September 29, 1976, respectively.

The applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require 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, as amended, have been received.

After consideration, the Commission finds:

1. The proposed transfer and sale of the operating rights and highway equipment and the encumbrance of such rights and equipment would not be adverse to the public interest.
2. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.
3. The proposed note issue is for the proper purposes. The money, property, or labor to be procured or paid for by the issue of the note authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

4. The highway equipment herein authorized to be sold is no longer necessary or useful in the performance of the obligation of purchaser to serve the public.

The Commission concludes that the proposed transactions should be granted as set forth in the ensuing order. 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 Robert H. Morrison and the issuance of a certificate in appendix form to C. S. McAuley, Inc., a California corporation.

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 the State, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before March 1, 1977, Robert H. Morrison, an individual, may sell and transfer the operating rights and equipment referred to in the application to C. S. McAuley, 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 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 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 C. S. McAuley, 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 certificate of public convenience and necessity granted by Decision 53358 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 insurance requirements of the Commission's General Order 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 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.

8. 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.

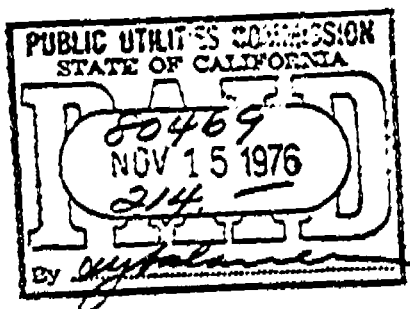
9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.


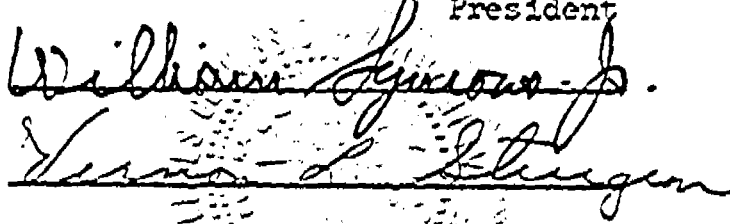
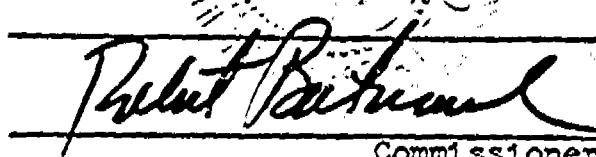
10. Purchaser may execute and deliver a note in substantially the same form referred to and for the purposes set forth in the application.

11. The issuer of the note authorized by this order shall file with the Commission a report, or reports, as required by General Order 24-Series.

12. The authority granted by this order to execute and deliver a note will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$214. In all other respects, the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 9th day of November, 1976.



  
President  
  
  
Commissioners

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

C. S. McAuley, 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 vacuum type and pump type tank trucks and tank trailers only to, from and between all points and places in the Counties of Los Angeles, Orange, San Bernardino, Imperial and San Diego 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 86617: Application 56703.