

ORIGINAL

Decision No. 88202 DEC 6 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Ottis E. Pittman,)
 Earl T. Pittman and Ott's Vacuum)
 Truck Service, Inc., a California)
 Corporation, to transfer Petroleum)
 Irregular Route Certificate)

Application No. 57515
 (Filed August 15, 1977)

O P I N I O N

By this application, Ottis E. Pittman and Earl T. Pittman, copartners doing business as Ott's Vacuum Truck Service (Transferors), seek authority under Section 1063 of the Public Utilities Code to transfer, and OTT'S VACUUM TRUCK SERVICE, INC., a California corporation (Transferee), requests authority to acquire a certificate of public convenience and necessity authorizing operations as a petroleum irregular route carrier.

The certificate was originally granted to the partners by Decision 51454 dated May 10, 1955 in Application 36450. This certificate authorizes the carrier to transport petroleum and petroleum products, in bulk in vacuum tank trucks, between all points and places in the Counties of Kern, Ventura, Los Angeles and Orange. Transferors formerly operated under permits issued to them by this Commission in File T-48,925, which permits have already been transferred to the transferee.

Transferors declare that they have decided to transfer their trucking operations from the copartnership to the new corporation which was incorporated on June 24, 1976, as evidenced by its Articles of Incorporation attached to the application herein. The partners state that the corporation was specifically formed as a successor in interest to the business which was conducted previously by the partnership; and that all of the assets, including operating equipment, as well as the liabilities of the partnership were acquired by the corporation at the close of business on June 30, 1976.

Transferors assert that the corporation is merely a continuation of the partnership's business in corporate form; and that the corporation will conduct the same trucking activities and will be under the same management and control which existed before the business was incorporated.

Attached to the application is the corporation's balance sheet dated December 31, 1976. It shows total assets of \$309,313; total liabilities of \$204,396; and net worth of \$104,917, mostly representing retained earnings since no common stock of the corporation has as yet been issued. Also attached is the corporation's statement of earnings for the six months ended December 31, 1976 which shows net earnings, after taxes, in the amount of \$80,176.

The partnership now participates in agency tariffs published on its behalf by the Western Motor Tariff Bureau, Inc., Agent, covering the petroleum operations sought to be transferred to the corporation. Upon adoption by the corporation of the same tariff rates now published by the partnership, there will be no change in the rates currently being assessed the shipping public for such transportation.

The application contains a list of the corporation's operating equipment. Listed therein are 12 tractors and 14 units of trailing equipment which are available for use in connection with its petroleum operations.

Notice of the filing of the application appeared in the Commission's Daily Calendar of August 16, 1977. No protest to the application has been received.

There is now pending, an alleged minimum rate violation action brought by the Commission's Enforcement Section against the copartnership, which action occurred subsequent to the filing of this transfer application and is currently awaiting adjudication by this Commission.

In order not to delay or jeopardize the certificate transfer to Ott's Vacuum Truck Service, Inc., Mr. Ottis E. Pittman, Sr., the corporation's president, has agreed, by means of a signed statement filed in this proceeding, that "The corporation will accept and be liable for whatever sanctions the California Public Utilities Commission may impose as a result of such adjudication."

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. 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 Ottis E. Pittman and Earl T. Pittman and the issuance of an in-lieu petroleum irregular route carrier certificate, in appendix form, to OTT'S VACUUM TRUCK SERVICE, INC.

OTT'S VACUUM TRUCK SERVICE, INC. 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. The authorization granted shall not be construed as a finding of the value of the rights to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1978, Ottis E. Pittman and Earl T. Pittman, copartners doing business as Ott's Vacuum Truck Service, may transfer the operating rights referred to in the application to OTT'S VACUUM TRUCK SERVICE, INC., a California corporation.

2. Within thirty days after the transfer, OTT'S VACUUM TRUCK SERVICE, INC. shall file with the Commission a written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. OTT'S VACUUM TRUCK SERVICE, INC. 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, such 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 date of 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 OTT'S VACUUM TRUCK SERVICE, INC. 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 of this decision.

5. The certificate of public convenience and necessity granted to Ottis E. Pittman and Earl T. Pittman by Decision 51454 is revoked effective concurrently with the effective date of the tariff filings required by Paragraph 3.

6. OTT'S VACUUM TRUCK SERVICE, INC. shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. OTT'S VACUUM TRUCK SERVICE, INC. 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. OTT'S VACUUM TRUCK SERVICE, INC. shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If it elects not to transport collect on delivery shipments, then 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 6th day of DECEMBER, 1977.

Robert Batminal
President
William Szymanski
Vernon L. Sturgeon
Robert W. Hoyle
Clarence T. Daniels
Commissioners

Ott's Vacuum Truck Service, Inc., a California corporation, 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 tank trucks or trailers between all points and places in the Counties of Kern, Los Angeles, Orange and Ventura, subject to the following restriction:

RESTRICTION: Transportation of waste material 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 88192, Application 57515.