

ORIGINAL

Decision No. 88325 JAN 10 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CLARENCE F. LEWIS)
and EUGENE M. JACINTO, (deceased),)
a partnership, doing business as)
L & J TANK LINES, for authority to) Application No. 57517
transfer to ALLIED PROPANE TRANS-) (Filed August 17, 1977)
PORTATION, a corporation, a cert-)
ificate of petroleum contract)
carrier of CLARENCE F. LEWIS and)
EUGENE M. JACINTO.)

O P I N I O N

Clarence F. Lewis and Eugene M. Jacinto, co-partners (sellers), request authority to sell and transfer and Allied Propane Transportation, Inc., a corporation (purchaser), requests authority to purchase and acquire a petroleum irregular route carrier certificate.¹ Said certificate was granted pursuant to Decision 44751 dated September 1, 1950 in Application 31165 and authorizes the transportation of petroleum and 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 from this Commission.

The proposed transaction involves the sale of the entire business of the sellers, including the certificate and the highway equipment. Pursuant to a Conditional Sales Contract, the issuance of which does not require an order of this Commission, entered into by the applicants on November 1, 1976, the consideration for the sale is \$40,000 payable as follows: The sum of \$11,000 in cash was paid upon execution of the agreement; and the balance of \$29,000 was to have been paid at the rate of \$2,500 per month until the whole sum of \$29,000 plus interest was paid. Due to a change

¹The type of certificate is erroneously stated in the title of the application as a petroleum contract carrier. The certificate held by L & J Tank Lines, transferor, is a petroleum irregular route carrier certificate.

in the financial circumstances of the purchaser, this agreement was supplemented by an installment note, issuance of which does require the authority of this Commission, dated March 3, 1977. The note provides for the payment of \$29,000 in 35 equal monthly installments of \$882.24 each which includes principal and interest at the rate of 6% per annum; thereafter, the entire unpaid balance, including principal and interest, is due and payable.

The reason for the sale and transfer is that the partnership of the seller was terminated with the death of Eugene M. Jacinto and the retirement of Clarence F. Lewis. Frances M. Jacinto, wife of the late Eugene M. Jacinto, is Executrix of his estate. A copy of the Letters Testamentary in said estate was filed as Exhibit C to this application.

Sellers are a party to Pacific Coast 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 August 18, 1977. The applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. This 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 carrier. No protests to the application have been received.

After consideration, the Commission finds:

1. The proposed sale and transfer of the operating rights and highway equipment would not be adverse to the public interest.
2. The proposed note issue is for a proper purpose. 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.

3. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

The Commission concludes that the proposed transaction 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 Clarence F. Lewis and Eugene M. Jacinto (deceased), co-partners doing business as L & J Tank Lines, and the issuance of a certificate in appendix form to Allied Propane Transportation, Inc., a California corporation.

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 canceled 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 or other assets authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before April 30, 1978, Clarence F. Lewis and Eugene M. Jacinto (deceased), co-partners doing business as L & J Tank Lines, may sell and transfer the operative rights and other assets referred to in the application to Allied Propane Transportation, 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 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 Allied Propane Transportation, 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 44751 dated September 1, 1950 in Application 31165 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 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.

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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.

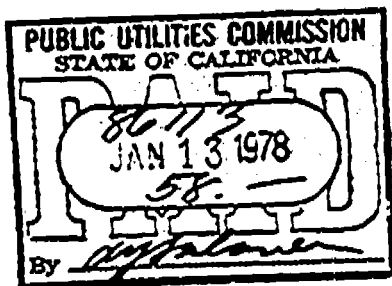
9. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

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 No. 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 \$58.00. In all other respects, the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 10th day of JANUARY, 1978.



Robert Bateman
President
William Agnew Jr.
Vernon L. Stingers
Charles D. Deville
Clare T. Deville
Commissioners

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.

Issued by California Public Utilities Commission.

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