

Decision No. 89539 OCT 17 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BKK CORPORATION, a)
California corporation to acquire)
control of CHANCELLOR & OGDEN,)
INC. and to merge the two corpora-)
tions, pursuant to the terms and)
conditions of Sections 851, 854)
and 3551 of the Public Utilities)
Code of the State of California)

Application No. 58228
(Filed July 14, 1978)

O P I N I O N

By this application, BKK CORPORATION, a California corporation and the successor company to both B.K.K. Co. and Chancellor & Ogden, Inc., seeks belated authority from this Commission approving the following corporate transactions, all of which occurred in the past on the dates indicated:

- (1) B.K.K. Co. to acquire control of Chancellor & Ogden, Inc., the original entity involved herein (CHANCELLOR), through the purchase of all of the latter corporation's issued and outstanding capital stock. (Effective March 17, 1969 per "Stock Purchase and Sale Agreement", Appendix "E" of the application.)
- (2) To merge CHANCELLOR into B.K.K. Co. with the latter firm to be the surviving corporation. (Effective December 27, 1976 per "Certificate of Ownership", Appendix "F" of the application.)
- (3) To officially change the surviving company's legal name from B.K.K. Co. to BKK CORPORATION, hereinafter referred to as BKK, on the Commission's records pertaining to the former-named corporation's operating authorities. (Effective December 24, 1976 per "Amendment to Articles of Incorporation", Appendix "D" of the application.)
- (4) To further officially record on BKK CORPORATION's certificate and permit authorities, its fictitious business name, "Chancellor & Ogden", under which it has been conducting its trucking operations. (Effective February 1, 1978 per "Fictitious Business Name Statement" filed with the County Clerk of Los Angeles County, Appendix "G" of the application.)

Chancellor & Ogden, Inc. operates as a petroleum irregular route carrier under a certificate originally granted to it by this Commission in Decision 44806 dated September 19, 1950 in Application 30885. The certificate authorizes said carrier to transport petroleum and petroleum products in tank trucks and tank trailers between all points in California. CHANCELLOR also possesses a statewide permit to operate as a radial highway common carrier under authority from this Commission in File T-31,173. Applicant also requests that CHANCELLOR's permit authority be similarly amended by the order herein so as to reflect the corporate changes recited above.

The specific authority sought herein by BKK for the acquisition of control of Chancellor & Ogden, Inc. by B.K.K. Co. (see paragraph (1) above) is not required inasmuch as the regulatory provisions of Section 854 of the Public Utilities Code governing such transaction were not in effect in 1969 when said transaction occurred.

By way of explanation and justification, BKK declares that it failed to recognize that prior approval from this Commission was required for the other business transactions referred to above, which occurred at different times during the period between December 24, 1976 and the present. BKK asserts that it did obtain prior approval from the California Commissioner of Corporations for the transfer of CHANCELLOR's issued stock to B.K.K. Co. At no time, BKK states, did it intend to violate the governing statutory requirements of the Public Utilities Code, but rather only did so through oversight and a lack of knowledge of such regulatory requirements.

The main purpose of BKK in filing this application now is to secure, belatedly, the Commission's official approval of those business transactions (other than the one described in paragraph (1) above) which occurred without the companies involved obtaining the required authority from the Commission beforehand. Since all of the legal documents which support and confirm the statements contained in the application on behalf of CHANCELLOR, B.K.K. Co., and BKK are attached as appendices thereto, it would not serve any useful purpose

to discuss, in further detail, those transactions previously negotiated by or between said corporations for which official Commission approval is now sought.

According to BKK (formerly B.K.K. Co.), it was under the misapprehension that it could legally operate under CHANCELLOR's certificate and permit. Hence, BKK has continuously performed its trucking operations under CHANCELLOR's identity since March 17, 1969, the date on which B.K.K. Co. acquired control of CHANCELLOR through the purchase of all of the latter's capital stock. BKK alleges that the public has been continuously served since 1950, the year when the certificate involved was initially granted to CHANCELLOR, regardless of the changes in its corporate ownership which have occurred since then. Consequently, BKK now contends that any interruption or discontinuance of CHANCELLOR's certificated carrier service, at this late date, would cause an extreme hardship to the shipping public.

BKK asserts that none of the above corporate transactions have resulted in harm to any individual or any petroleum carrier with whom CHANCELLOR has competed. BKK points out that as soon as the Commission's statutory requirements governing such transactions were brought to its attention, it immediately cooperated by filing this application seeking the Commission's approval. BKK declares that approval of its application by the Commission would permit BKK CORPORATION to continue to operate under the certificate now in CHANCELLOR's name, as well as enable BKK to continue to provide the shipping public with the same type of transportation service heretofore rendered by CHANCELLOR.

According to its annual report of operations for the calendar year 1977 filed with the Commission in the name of Chancellor & Ogden, Inc., that company had total current assets of \$9,043,048 offset by total current liabilities of \$6,284,420 and a net worth representing capital stock and retained earnings equal to \$2,758,628. The report also shows that Chancellor & Ogden, Inc. had a net profit for 1977 (before taxes) in amount of \$259,333. This profit was achieved out of total gross revenues in amount of \$4,157,117 for that calendar year.

CHANCELLOR currently participates in various rate tariffs published on its behalf by the Western Motor Tariff Bureau, Inc., Agent. BKK would be required to adopt the same rate tariffs to cover its certificated petroleum operations if the approval it seeks herein is granted by the Commission.

After consideration, the Commission finds that:

1. The merger of Chancellor & Ogden, Inc. into B.K.K. Co., with B.K.K. Co. as the surviving corporation, would not be adverse to the public interest and should be authorized.

2. The transfer of Chancellor & Ogden, Inc.'s California intrastate certificate to B.K.K. Co., now known as BKK CORPORATION doing business as Chancellor & Ogden, as a result of the aforesaid merger should be authorized.

3. Since there is no known opposition and there is no reason to delay granting the authority sought in the application, the effective date of the Commission's order issued herein should be the date on which it is signed.

On the basis of the foregoing findings, the Commission concludes that the application should be granted as set forth in the ensuing order. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the assets involved in the merger. The order which follows will provide for the revocation of the certificate presently held by Chancellor & Ogden, Inc., a nonexistent corporation, and the issuance of an in-lieu certificate in appendix form to the successor company, BKK CORPORATION doing business as Chancellor & Ogden.

BKK CORPORATION doing business as Chancellor & Ogden is placed on notice that operating 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. BKK CORPORATION (formerly B.K.K. Co.), a California corporation, may merge with Chancellor & Ogden, Inc. (now a nonexistent corporation) with the former as the surviving company.

2. Within 30 days after the effective date hereof, BKK CORPORATION (formerly B.K.K. Co.) doing business as Chancellor & Ogden shall file a report with the Commission confirming the fact that the merger authorized herein has been completed.

3. An in-lieu certificate of public convenience and necessity is granted to BKK CORPORATION doing business as Chancellor & Ogden, a California corporation, authorizing it to operate as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, between all points in the State of California as set forth in Appendix A of this decision.

4. In providing service pursuant to the authority granted by this order, BKK CORPORATION doing business as Chancellor & Ogden shall comply with the following service regulations. Failure to do so may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, BKK CORPORATION doing business as Chancellor & Ogden shall file a written acceptance of the certificate granted. BKK CORPORATION doing business as Chancellor & Ogden is placed on notice that if it accepts the certificate, it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, BKK CORPORATION doing business as Chancellor & Ogden shall establish the authorized service and adopt, amend or refile tariffs, as necessary, in the Commission's office pursuant to the certificate granted by this decision.

- (c) The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and to the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order 80-Series.
- (e) BKK CORPORATION doing business as Chancellor & Ogden 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.
- (f) BKK CORPORATION doing business as Chancellor & Ogden 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, it shall make the appropriate tariff filings as required by the General Order.

5. The in-lieu certificate of public convenience and necessity granted in paragraph 3 of this order shall supersede the certificate of public convenience and necessity granted to Chancellor & Ogden, Inc. by Decision 44806 dated September 19, 1950 in Application 30885, which certificate is hereby revoked effective concurrently with the effective date of the tariff filings required by paragraph 4(b).

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The effective date of this order is the date hereof.

Dated at San Francisco, California, this 17th day
of OCTOBER, 1978.

President
William J. Quinn
Thomas L. Stegeman
Robert D. Howell
Clair J. DeWick
Commissioners

Commissioner Robert Batinovich, being
necessarily absent, did not participate
in the disposition of this proceeding.

BKK 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 tank trucks or tank trailers between all points and places in the State of California, 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 89539, Application 58228.