

Decision No. 90121 ; MAR 27 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of OGLESBY BROS.)
PETROLEUM TRANSPORTATION, INC.,)
a corporation, to sell, and of)
DAMON L. BANNING, an individual,)
to purchase a certificate of)
public convenience and necessity)
to transport petroleum and petro-)
leum products, pursuant to)
Sections 851-854 of the Public)
Utilities Code.)

Application No. 58566
(Filed January 3, 1979)

O P I N I O N

Oglesby Bros. Petroleum Transportation, Inc., a California corporation (seller), seeks authority to sell and transfer and Damon L. Banning, an individual (purchaser), seeks authority to purchase and acquire a petroleum irregular route carrier certificate of public convenience and necessity. The certificate was granted by Decision 75181, dated January 7, 1969, in Application 50729 and authorizes transportation of petroleum and petroleum products in tank trucks and tank trailers between all points in the State north of a due east-west line drawn through Long Beach, and south of a due east-west line drawn through Eureka.

Purchaser presently holds radial highway common carrier and dump truck carrier permits in File T-92602. His balance sheet as of December 19, 1978 shows a net worth of \$251,310, which includes current assets totaling \$73,010, and he operates eight highway vehicles in his business.

Pursuant to the Purchase Agreement of December 26, 1978 between the parties, consideration for the sale of the certificate is \$1,000 payable in cash upon consummation of the transaction. No other assets are involved in the sale.

The applicants indicate that purchaser has had considerable experience in the transportation of bulk commodities. He presently owns equipment specifically designed for the transportation of bulk commodities and he has adequate financial resources. They further allege that there will be no change in the rates assessed to the shipping public and that the entry of purchaser into the petroleum transportation industry will be balanced by the withdrawal of seller therefrom and, therefore, there will be no change in competitive relationships.

Seller participates in Western Motor Tariff Bureau, Inc., tariffs for rates to cover operations under the certificate. Purchaser proposes to adopt the tariffs. A copy of the application has been sent to the California Trucking Association and the applicants request relief from the provisions of the Commission's Rules of Practice and Procedure requiring wide dissemination of the application. Notice of the filing of the application appeared in the Commission's Daily Calendar of January 4, 1979. No protests to the application have been received.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it and the requested relief from its Rules of Practice and Procedure should be granted. 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 Oglesby Bros. Petroleum Transportation, Inc., and the issuance of an in-lieu certificate in appendix form to Damon L. Banning, an individual.

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 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 value of the rights authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. Oglesby Bros. Petroleum Transportation, Inc., a California corporation, may sell and transfer the operative rights referred to in the application to Damon L. Banning, an individual. This authorization shall expire if not exercised by October 1, 1979, or within such additional time as may be authorized by the Commission.
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 he has adopted or established, as his 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 Damon L. Banning, an individual, authorizing him 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 75181 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

7. Purchaser shall maintain his 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 his 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, he shall make the appropriate tariff filings as required by the General Order.

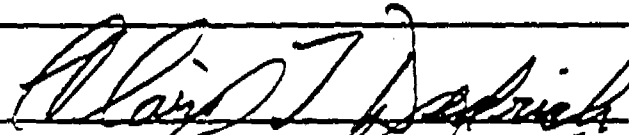
9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

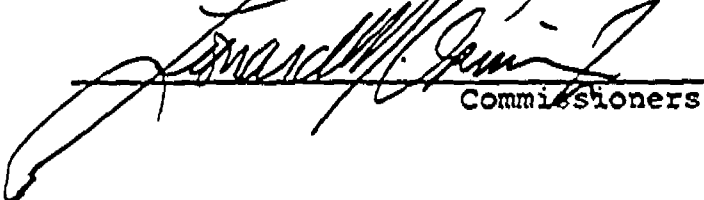
The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 27th
day of MARCH, 1979.



President





Commissioners

Commissioner Vernon E. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Damon L. Banning, 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, north of a due east-west line drawn through Long Beach, and south of a due east-west line drawn through Eureka, 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.

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