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Decision No. 90799

SEP 12 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of APEX BULK COMMODITIES  
to buy and CITIZENS TRANSPORTATION CO.  
of RIVERSIDE to sell specified certi-  
ficates of public convenience and  
necessity pursuant to Section 851 of  
the Public Utilities Code.

Application No. 58849  
(Filed May 8, 1979)

O P I N I O N

Apex Bulk Commodities (buyer) and Citizens Transportation Co. of Riverside (seller) are both California corporations authorized by this Commission to transport property for-hire over the public highways.

Seller desires to sell portions of a certificate of public convenience and necessity which authorize it to operate as a highway common carrier (HCC) of certain petroleum products in bulk, and also as a petroleum irregular route carrier (PIR). The PIR authority covers bulk petroleum transportation excluded from the HCC authority. These operating authorities, along with certain others, were transferred to seller by Decision No. 62676 dated October 17, 1961 in Application No. 48742.

A certificate of registration was issued seller in Interstate Commerce Commission (ICC) Docket MC8758, Sub 4. A portion of that certificate of registration also is embraced in the proposed transfer. A concurrent application for transfer and an application for conversion of a portion of the certificate of registration to an interstate certificate of public convenience and necessity was filed with the ICC. Notice of the filing of the transfer portion of said application was published in the Federal Register of June 22, 1979.

According to a purchase agreement dated September 12, 1978, as amended February 21, 1979, and subject to approval of both commissions, the total purchase price will be \$35,000, allocated (a) \$5,000 to operating rights, and (b) \$30,000 to motor vehicle equipment (one 1964 tank truck and tank trailer).

Buyer is presently engaged in the transportation of property by motor vehicle in California intrastate commerce as a highway contract carrier in file T-86687. Buyer also has authority granted directly from the ICC in MCL36720, Sub 2.

Buyer's balance sheet as of November 30, 1978 shows assets of \$443,998 and net worth of \$113,549. Buyer's operating statement for eleven months ending November 30, 1978 shows carrier operating revenue of \$1,404,766; net carrier operating income of \$98,528 after operating expenses; and ordinary income of \$57,146 after income taxes. Assertedly, there has been no material change in the financial position of buyer since November 30, 1978.

Buyer furnished pro forma financial statements assertedly reflecting its best estimates of balance sheet and operating results if the application is approved. Assets would be \$443,998 with surplus of \$103,549. Gross revenue would be \$1,560,000 with ordinary income after income taxes of \$68,740.

Buyer lists 122 units of equipment. Buyer asserts that if necessary it will purchase additional equipment and/or augment its fleet by utilizing subhaulers.

In the event the proposed transfer of operating rights is approved, buyer proposes to publish and maintain rates and rules governing the common carrier operations involved which are the same as those maintained by seller on the date of transfer. Buyer requests authority to file tariffs to become effective on the effective date of the order approving the transfer, on not less than ten days' notice to the Commission and the public.

Buyer forwarded a copy of the application to the California Trucking Association. Applicants contend they are unaware of any carrier which might desire a copy of the application, but will forward a copy to any carrier or other party desiring one.

Seller contends it has actively operated under its certificates of public convenience and necessity and its registered ICC authority. It is applicants' opinion that this transfer is noncontroversial in nature and of no interest to other carriers. They request that the application be granted by ex parte order.

Notice of the filing of the application appeared on the Commission's Daily Calendar of May 9, 1979. There are no protests.

Findings of Fact

1. Buyer has the necessary equipment, experience, and financial ability to conduct the proposed HCC and PIR operations it seeks to acquire from seller.
2. There would be no change in rates under the proposed transfer.
3. The proposed sale and transfer would not be adverse to the public interest.
4. Relief from the Commission's Rules of Practice and Procedure requiring wide dissemination of the application should be authorized.
5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The Commission concludes that the proposed transfer would not be adverse to the public interest and should be granted as applied for. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the certificate and other assets to be sold and transferred. The

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territorial description or routes of the authority granted reflect the names of redesignated highways and roads and do not exceed the geographical scope of the proposed operation as published in the Federal Register. The order which follows will provide, in the event the transfer is completed, for the revocation of the highway common carrier and the petroleum irregular route carrier certificate acquired by the seller by Decision No. 62676 and the issuance of in lieu certificates in appendix form to buyer and seller.

Buyer 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 the value of the rights and other assets to be transferred.

O R D E R

IT IS ORDERED that:

1. Citizens Transportation Co. of Riverside (seller), a California corporation, may sell and transfer the operating rights, described in Appendices A & B attached hereto and made a part hereof, and the other assets referred to in the application to Apex Bulk Commodities (buyer), a California corporation. This authority shall expire if not exercised by March 1, 1980, or within such additional time as may be authorized by the Commission.
2. Within thirty days after the transfer, the buyer shall file with the Commission written acceptance of the certificates and a true copy of the bill of sale or other instrument of transfer.

3. Buyer 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 had adopted or established as his own the rates and rules. The tariff filings shall be made effective not earlier than the effective date of this order on not less than ten 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. 117-Series. Failure to comply with the provisions of General Order No. 117-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, certificates of public convenience and necessity are granted to Apex Bulk Commodities authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, and as a petroleum irregular route carrier, as described in Section 214 of the Public Utilities Code, between the points set forth in Appendices A and B, respectively, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted seller by Decision No. 62676 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 and an in lieu certificate of public convenience and necessity is granted to Citizens Transportation Co. of Riverside authorizing it to operate as a highway common carrier as defined in Section 213 of the Public Utilities Code between the points set forth in Appendix C attached hereto and made a part hereof.

6. Buyer shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. Buyer 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 March 31 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. Buyer shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If buyer 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 an exemption from Rule 37(2) of the Commission's Rules of Practice and Procedure requiring wide dissemination of the application.

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

Dated SEP 12 1979, at San Francisco, California.

John E. Byrne  
President

Thomas P. Stegeman

Joseph D. Havel

Clair J. Decker

James M. King  
Commissioners

Apex Bulk Commodities, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized as follows:

1. To conduct operations as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of petroleum products, in bulk, except liquefied petroleum gases and any other petroleum products requiring pressurized tanks and except liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks, upon and along the following described routes, including all intermediate points, with the right to make lateral departures therefrom within a radius of fifty (50) miles of said routes:

- (a) U.S. 101 and U.S. 101 By-Pass between Santa Barbara and the California-Mexico Line.
- (b) U.S. 99 between Bakersfield and the Mexican Border.
- (c) U.S. 395 between Lone Pine and Junction U.S. 66.
- (d) U.S. 66 between Los Angeles and Needles.
- (e) U.S. 60 between Los Angeles and the California-Arizona State Line.
- (f) U.S. 91 and U.S. 466 between Barstow and Nevada-California State Line.
- (g) State Highway 127 between Baker and Nevada-California State Line.
- (h) U.S. Highway 80 between San Diego and the California-Arizona Border.

(End of Appendix A)

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. To conduct operations as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, for the transportation of (a) liquefied petroleum gases and any other petroleum products requiring pressurized tanks and liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks between all points and places within the State of California, and (b) all other petroleum and petroleum products in tank trucks and tank trailers between all points and places in the State of California, except the points and places authorized to be served as a highway common carrier as set forth in Appendix A.

(End of Appendix B.)

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Citizens Transportation Co. of Riverside by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

- I Between all points in Riverside Territory as described in Note A hereof.
- II Between all points in said Riverside Territory and Los Angeles Orange County Area as described in Note B hereof, subject to the following restriction.

RESTRICTION: The authority set forth in II does not include the right to render service to, from, or between intermediate points nor to render service between points both of which are located within said Los Angeles-Orange County Area.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, briefcases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.

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3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

## NOTE A

## RIVERSIDE TERRITORY

RIVERSIDE TERRITORY is bounded and described as follows: Beginning at the junction of the westerly boundary of San Bernardino County and the San Bernardino National Forest, then generally southerly along the westerly boundary of San Bernardino County and the northeasterly boundary of Orange County to the junction of the latter boundary and State Highway 91, then easterly along State Highway 91 to junction with State Highway 71, then southeasterly along State Highway 71 to junction with State Highway 79, then northerly along State Highway 79 to junction with State Highway 60, then easterly along State Highway 60 to junction with Interstate Highway 10, then northwesterly along Interstate Highway 10 to junction with the southerly boundary of San Bernardino County, then easterly and northerly along said county boundary to junction with the southerly boundary of San Bernardino National Forest, then generally westerly along the southerly boundary of said San Bernardino National Forest to the point of beginning. Said territory includes all points within a radius of 5 statute miles of State Highways 91, 71, 79 and State Highway 60 and Interstate Highway 10 not otherwise within the boundary above described, and, in addition, Banning, California.

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## NOTE B

## LOS ANGELES-ORANGE COUNTY AREA

LOS ANGELES-ORANGE COUNTY AREA is bounded and described as follows: Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean (near Topanga Canyon), then along the westerly and northerly boundary of the City of Los Angeles, the southerly boundary of Angeles National Forest, the easterly boundary of Los Angeles County, the north-easterly boundary of Orange County, State Highway 91, State Highway 55 and the prolongation thereof to the Pacific Ocean and the coastline of the Pacific Ocean to the point of beginning. Said territory includes all points within a radius of 5 statute miles to the south and east of State Highway 91 and 55 between the Orange County line and the Pacific Ocean.

(END OF APPENDIX C)

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