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ORIGINAL

Decision No. 90942 OCT 23 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Donald G. Haefer)
and Pauline Sue Haefer for)
authorization of acquisition of)
Ranchers Oil Company, a highway)
common carrier (PUC Section 854)
and Section 3551).)

Application No. 58642
(Filed January 29, 1979)

O P I N I O N

The application of Donald G. Haefer and Pauline Sue Haefer (buyers) shows that they are requesting authority to acquire Ranchers Oil Company (Ranchers), a California corporation, which holds certificates of public convenience and necessity as a highway common carrier and a petroleum irregular route carrier originally granted by D.42623, dated March 15, 1949 in A.29684 and D.44393, dated June 20, 1950 in A.31224 and acquired by Ranchers pursuant to D.58432 dated May 19, 1959 in A.40982. Ranchers also holds a permit to operate as a petroleum contract carrier (Permit No. 50575, File T-56572).

Manley H. Reitz and Janet P. Reitz, sole shareholders of Ranchers (sellers), upon their retirement from the business, entered into an agreement to sell Ranchers to buyers pursuant to an "Agreement for Sale and Purchase of Stock and Pledge Agreement" dated June 29, 1976 (Exhibit B to the Application).

The agreement states that the sellers own all of the outstanding stock of Ranchers (560 shares). Buyers desire to purchase these shares pursuant to the following terms and conditions: sellers will transfer and convey 560 shares of stock of the corporation to buyers, and buyers will acquire the shares from sellers; as payment for the transfer of the shares sold, buyers will, upon date of sale,

deliver to sellers the following: (a) a promissory note in the principal amount of \$50,000, bearing interest at the rate of 7 percent per annum, with privilege of prepayment of all or any part of the principal at any time, except as is more particularly set forth in said note (Exhibit A to the agreement); and (b) said note shall be secured by a pledge of the shares and the execution of the agreement by buyers shall constitute said pledge. The note provides for the payment of \$50,000 with interest from July 1, 1976 on unpaid principal at the rate of 7 percent per annum, interest payable on the 5th day of each month, commencing August 5, 1976; and principal payable in installments of \$5,000 on the 5th day of each January, commencing on the 5th day of January, 1977, and continuing until said principal and interest have been paid in full. The note is secured by a pledge of 560 shares of the stock of Ranchers pursuant to the agreement for sale and purchase of stock and pledge agreement also dated June 29, 1976.

The application states that Mr. Haefer has been chief executive officer of Ranchers for eight years. The sale to Mr. and Mrs. Haefer will permit the continued orderly operations of Ranchers by those who have been involved in its management for a number of years. Mr. and Mrs. Haefer have no ownership interest in any other common carriers or public utilities.

The balance sheet of Ranchers as of June 30, 1978 (Exhibit C to the application) shows 560 shares issued and outstanding and valued at \$28,000.00; stockholders' equity is shown as \$84,064.54. An income statement for the period July 1, 1977 through June 30, 1978 shows a net profit before taxes of \$26,502.33.

Buyers request relief from further compliance with any additional requirements of our Rules 35 and 37.

Findings of Fact

1. No protests have been received. A public hearing is not necessary.

2. The acquisition of all of the stock and control of Ranchers by buyers is not adverse to the public interest.

3. Section 3542 of the Public Utilities Code^{1/} prohibits the transportation of the same commodities both as a highway common carrier and a petroleum contract carrier between the same points except as provided in Section 1066.2. ^{2/}

4. There is an inherent potential for discrimination where one carrier holds both a highway common carrier certificate for general commodities and a petroleum contract carrier permit. Such a situation is contrary to the public interest.

Conclusions of Law

1. Buyers' request to be excused from the requirements of Rules 35 and 37 should be granted.

2. Buyers should be authorized, nunc pro tunc, to implement the "Agreement for Sale and Purchase of Stock and Pledge Agreement" and to issue the \$50,000 note secured by pledge of stock.

1/ "3542. No person or corporation shall engage or be permitted by the commission to engage in the transportation of property on any public highway, both as a highway common carrier and as a highway contract carrier or as a highway common carrier and a petroleum contract carrier of the same commodities between the same points, except as provided in Section 1066.2."

2/ "1066.2 Nothing in this code shall be construed to prohibit a highway common carrier from entering into a written contract for the transportation of property, for one person or corporation, by the exclusive use of a vehicle or combination of vehicles pursuant to applicable monthly or yearly vehicle unit rates, rules, and regulations specified in its tariff, notwithstanding that the service to be performed under such written contract includes operations as a highway permit carrier beyond or outside the scope of its authority as a highway common carrier."

3. It is unlawful for one carrier to operate both a highway common carrier certificate and a petroleum contract carrier permit between the same points. Therefore, Ranchers' petroleum contract carrier permit should be conditioned to show that it is inapplicable between the points named in the certificate sought to be acquired by Ranchers.

Buyers are 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.

O R D E R

IT IS ORDERED that:

1. Upon payment of the \$100 fee required by Section 1904(b) of the Public Utilities Code, Manley H. Reitz and Janet P. Reitz may sell and transfer the control of Ranchers Oil Company including the certificates of public convenience and necessity referred to in the application to Donald G. Haefer and Pauline Sue Haefer.

2. Donald G. Haefer and Pauline Sue Haefer are authorized, nunc pro tunc, to issue the note attached to the application as Exhibit B and dated June 29, 1976.

3. Within thirty days after the transfer the buyers shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

4. Buyers shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that they have adopted or established, as their 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.

5. On or before the end of the third month after the transfer, the buyers shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the sellers for the period commencing with the first day of the current year to and including the effective date of the transfer.

6. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 4, a certificate of public convenience and necessity is granted to Donald G. Haefer and Pauline Sue Haefer authorizing them 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 defined in Section 214 of the Public Utilities Code, between the points and over the routes set forth in Appendices A and B of this decision.

7. The certificate of public convenience and necessity granted by Decision No. 58432 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4.

8. Buyers 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.

9. Buyers shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

10. Concurrent with the transfer authorized herein, the petroleum contract carrier permit held by Ranchers Oil Company under File T-56572 is hereby conditioned so that it will not apply for transportation of the commodities named between the points specified in the certificate referred to in Ordering Paragraph 6.

11. Buyers shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If buyers elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

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

Dated OCT 23 1979, at San Francisco, California.

Commissioner JOHN E. BRYSON

Present but not participating.

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

President

Richard D. Howell

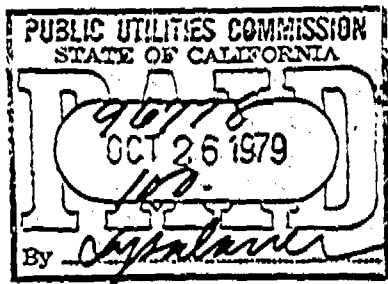
Commissioners

Clare T. DeLoach

Commissioners

James M. [unclear]

Commissioners



Ranchers Oil Company 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 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, as follows:

- I. 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) statute miles of said routes.
 - (a) U.S. Highway 101 between Paso Robles and the California-Mexico Border via its intersection with Interstate Highway 5 in the City of Los Angeles; thence via Interstate Highway 5.
 - (b) State Highway 99 between Fresno and the California-Mexico Border via its intersection with Interstate Highway 5 at Wheeler Ridge; thence via Interstate Highway 5 to its junction with Interstate Highway 10 in the City of Los Angeles; thence via Interstate Highway 10 to its junction with State Highway 86 near the City of Indio; thence via State Highway 86 to its intersection with State Highway 111 east of Heber; thence via State Highway 111.

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- (c) U.S. Highway 395 between Bishop and San Diego via its junction with Interstate Highway 15 southeast of Victorville; thence via Interstate Highway 15 and State Highway 163.
- (d) Between the City of Los Angeles and the City of Needles and via State Highway 11, Colorado Boulevard, Huntington Drive, Foothill Boulevard and State Highway 66 to its junction with Mt. Vernon Avenue in the City San Bernardino; thence via Mt. Vernon Avenue to its junction with Interstate Highway 15; thence via Interstate Highway 15 to Barstow; thence easterly via Interstate Highway 40 to Ludlow; thence via San Bernardino County Road designated "National Trails Highway" via Amboy and Essex to Goffs; thence via San Bernardino County Road designated "Goffs Road" to its junction with Interstate Highway 40 approximately eleven (11) statute miles west of the City of Needles; thence via Interstate 40.
- (e) Interstate Highway 15 between Barstow and its junction with the California-Nevada Border.

- (f) Interstate Highway 10 between the City of Los Angeles and its junction with California-Arizona Border at Blythe.
- (g) Interstate Highway 8 between the City of San Diego and its junction with the California-Arizona Border near Winterhaven.

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)

Ranchers Oil Company by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as petroleum irregular route carrier as defined in Section 214 of the Public Utilities Code, for the transportation of the following commodities between all points in the State of California, subject to the restriction set forth in (c) below:

- (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.
- (b) All other petroleum and petroleum products in tank trucks, subject to the following exception:

EXCEPTION: No transportation of the foregoing commodities is authorized to be performed between points which are authorized to be served in Appendix A hereof.

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 B)

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