

ORIGINAL

Decision No. 91998 JUL 2 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of (a) Mc Auley Oil Company, for)
authority to transfer its Petroleum)
Irregular Carrier certificate of)
public convenience and necessity,)
and (b) VTS Trucking for authority)
to control and utilize the certifi-)
cates and permits formerly held by)
Mc Auley Oil Company.)

Application No. 59616
(Filed April 25, 1980)

O P I N I O N

Mc Auley Oil Company (Mc Auley), a California corporation, requests authority to sell and transfer, and VTS Trucking (VTS), a California corporation, requests authority to purchase and acquire control of Mc Auley's trucking division, including its certificate of public convenience and necessity to operate as a petroleum irregular route carrier. The proposed transaction involves the purchase by VTS of 1,000 shares of \$10 par value common stock.

Mc Auley currently operates as a petroleum irregular route carrier for the transportation of petroleum and petroleum products in vacuum-type and pump-type tank trucks and trailers to, from, and between all points and places in the counties of Los Angeles, Orange, San Bernardino, Imperial, and San Diego. This certificated authority was granted to Mc Auley by Decision No. 86617 dated November 9, 1976 in Application No. 56703. Mc Auley also operates as a highway contract carrier and a radial highway common carrier under permits issued by this Commission in File No. T-115,276.^{1/}

^{1/} VTS has also filed an application requesting authority for the transfer of the permitted authorities now held by Mc Auley to VTS.

The certificated and permitted trucking operations of Mc Auley are conducted by its V.T.S. Trucking Division. On October 27, 1978 the Mc Auley's Board of Directors authorized management to divest of the V.T.S. Trucking Division through sale to a newly formed Vacuum Truck Service Corporation of California, the initial ownership of which consisted of C. S. Mc Auley and J. D. Clarke as individuals. In so doing, the Board further resolved that all trucking permits, including but not limited to all permits issued to Mc Auley by this Commission, be transferred into the name of the V.T.S. Trucking Division.

The Vacuum Truck Service Corporation was incorporated on November 21, 1978 and was subsequently renamed VTS Trucking, the corporation which now seeks authority to purchase and acquire the ultimate control and certificated operating authority now held by Mc Auley. In addition to the sought purchase of Mc Auley's petroleum irregular route certificate, VTS requests that with such transfer the Commission delete the following restriction:

"Transportation of waste materials 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."

VTS assertedly finds the aforementioned restriction to be unnecessary and cumbersome considering the current methods of petroleum transportation. Whether such additional certification from the State Water Resources Control Board is, as a matter of law, a preliminary requirement that must be met as a condition to the hauling of liquid waste was not disclosed by VTS. Until such verification is obtained, the sought deletion of the existing restriction to Mc Auley's petroleum irregular route carrier certificate should be deferred without prejudice to the subsequent filing of a similar request together with the full justification therefor.

VTS proposes to acquire control of the trucking division of Mc Auley through the purchase of 1,000 shares of \$10 par value common stock which is in accordance with the terms of an Agreement for Sale of Stock dated November 1978. VTS has an authorized capital of 1,000 shares of common stock which have all been issued, are fully paid for, and are nonassessable. C. S. Mc Auley, Chairman of Mc Auley Oil Company, is to serve as a board member of VTS. Messrs. John Clarke and G. W. Shearer as president and vice president, respectively, are to provide active and vigorous management of the affairs of VTS. Collectively, they represent over 40 years experience in the for-hire transportation industry and are assertedly familiar with the type of operation engaged in by Mc Auley.

VTS indicates that it possesses the necessary financial resources, staffing, and experience to perform the common carrier service. Its unaudited balance sheet as of December 31, 1979 shows a net worth of \$25,346. A statement of VTS's results of operations for the 12-month period ending December 31, 1979 shows a net profit of \$16,846.

Applicants contend that the application covers transactions in which no other carrier would possibly have an interest and, therefore, is one which may be handled under the Commission's ex parte procedure. Accordingly, appropriate relief is requested from the Commission's Rules of Practice and Procedure which require wide dissemination of the application. A copy of the application was mailed to the California Trucking Association. Notice of the filing of the application appeared in the Commission's Daily Calendar of April 28, 1980. No protests to the application have been received. Finally, applicants allege that the granting of the sought relief will have no significant effect upon the quality of the human environment.

Findings of Fact

1. The proposal by Mc Auley to sell and transfer, and VTS's proposal to purchase and acquire control of the former's trucking division and certificate of public convenience and necessity to operate as a petroleum irregular route carrier would not be adverse to the public interest.

2. The sought deletion of the current restriction to the certificated authority of Mc Auley, upon its sale and transfer to VTS, should be deferred pending receipt of further evidence in justification therefor.

3. Pending completion of the transaction to be authorized by the ensuing order VTS should be permitted to execute and deliver the contemplated Security Agreement to Mc Auley.

4. It can be seen with certainty that there is no possibility that the project in question may have a significant effect upon the environment.

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

The Commission concludes that Application No. 59616 should be granted to the extent provided in the order herein. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the capital stock of VTS. In the event the sale and transfer are completed, the order which follows will provide for the revocation of the certificate presently held by Mc Auley and the issuance of an in lieu certificate, in appendix form, to VTS.

VTS 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 value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. Mc Auley Oil Company, a California corporation, may sell and transfer, and VTS Trucking, a California corporation, may purchase and acquire control of the former's trucking division, including its certificate of public convenience and necessity to operate as a petroleum irregular route carrier. The authorization shall expire if not exercised within ninety days after the date hereof.

2. Within thirty days after the date hereof, VTS Trucking shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instruments of transfer.

3. VTS Trucking shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operation 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. If 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 VTS Trucking 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 No. 86617, dated November 9, 1976 in Application No. 56703 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

7. VTS Trucking 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.

8. VTS Trucking shall comply with the requirements of the Commission's General Order No. 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.

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

10. VTS Trucking may execute and deliver a Security Agreement to Mc Auley Oil Company as requested in the application.

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

Dated JUL 2 1980, at San Francisco, California.

John E. Guyon
President

[Signature]

Michael W. Givelle

Clair J. Bedrick

[Signature]
Commissioners

ALJ/ek

Appendix A

VTS TRUCKING
(a California corporation)

Original Page 1

VTS Trucking, 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 vacuum-type and pump-type tank trucks and tank trailers only to, from, and between all points and places in the counties of Los Angeles, Orange, San Bernardino, Imperial, and San Diego subject to the following restriction:

RESTRICTION: Transportation of waste materials 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 No. 91998, Application No. 59616