

*Original*

Decision No. 92428 November 18, 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
A. W. HAYS TRUCKING, INC., a corpo- )  
ration, to transfer, and of )  
G. P. TRUCKING CO., a corporation, )  
to acquire, a certificate of public )  
convenience and necessity to oper- )  
ate as a petroleum irregular route )  
carrier. )

Application No. 59807  
(Filed July 11, 1980)

O P I N I O N

This is an application in which A. W. Hays Trucking, Inc. (Hays) seeks authority to transfer its certificate of public convenience and necessity to operate as a petroleum irregular route carrier to G. P. Trucking Co. (GP), a California corporation.

A copy of the application was served on the California Trucking Association. There have been no protests to the application. The Commission makes the following findings and conclusions:

Findings of Fact

1. A public hearing is not necessary in this matter.
2. GP holds a certificate of public convenience and necessity to operate as a highway common carrier to all points in California. It also holds statewide contract and agricultural carrier permits issued by this Commission. In addition GP operates as a contract carrier in interstate and foreign commerce pursuant to permits issued by the Interstate Commerce Commission (ICC).
3. Hays was a California corporation. It held a certificate of public convenience and necessity to operate as a petroleum irregular route carrier which was granted in Decision No. 70491, in Applications Nos. 31227 and 48232, entered on March 29, 1966. It also held a certificate of public convenience and necessity to operate as a highway common carrier to all points in California.

Hays held contract, dump truck, and agricultural carrier permits issued by this Commission. In addition Hays held certificates of public convenience and necessity for certain common carrier operations in interstate and foreign commerce which were issued by the ICC.

4. In Decision No. 87763 in Application No. 57423, entered on August 23, 1977, the Commission authorized GP to acquire control of Hays through the purchase of all of Hays' issued and outstanding capital stock. The stock purchase was consummated on September 13, 1977, and from that time until August 31, 1979 Hays was operated as a wholly owned subsidiary of GP.

5. On August 31, 1979, for tax purposes, Hays was wound up and dissolved pursuant to Section 1900 of the Corporations Code. Under Corporations Code Section 2004, GP was entitled to all of the assets of Hays. Since August 31, 1979 GP has continued to provide the petroleum irregular route carrier service formerly provided by Hays.

6. GP has the ability including financial ability to conduct operations under the certificate for which authority to transfer is herein sought.

7. The transfer of Hays' petroleum irregular route operating authority to GP would not be adverse to the public interest.

8. Since GP presently holds highway common carrier operating rights the transfer of Hays' highway common carrier operating rights would result in duplication of rights.

9. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

#### Conclusions of Law

1. Although dissolved, Hays still has legal standing to prosecute this application and transfer the operating rights here involved. (Corporations Code Section 1905(b).)

2. Hays should be authorized to transfer its petroleum irregular route authority to GP as hereinafter set forth.

3. The transfer authorized herein does not result in the change of control or beneficial interest of the operating rights involved. It only changes the form of ownership of these rights.

4. This order should be effective the date hereof to allow Hays the maximum time to transfer the certificate and to allow GP time to actually operate as a petroleum irregular route carrier before January 1, 1981, the date when SB 1886 becomes effective. (Stats. 1980, Ch. 1096.)

The Commission concludes that the proposed transaction should be granted as set forth in the ensuing order. 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 held by Hays and the issuance of a certificate in appendix form to GP.

Transferee 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.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1980, A. W. Hays Trucking, Inc. may transfer its certificate of public convenience and necessity to operate as a petroleum irregular route carrier to G. P. Trucking Co.

2. Within thirty days after the transfer the transferee shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

3. Transferee shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations 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. On or before the end of the third month after the transfer the transferee 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 transferor for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. 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 hereof, a certificate of public convenience and necessity is granted to GP 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 of this decision.

6. The certificate of public convenience and necessity granted by Decision No. 70491 dated March 29, 1966 in Application No. 31227 and 48232 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. 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, Hays' certificate of public convenience and necessity to operate as a highway common carrier is canceled.

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

9. Transferee 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.

10. Transferee shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If transferee elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

The effective date of this order shall be ~~thirty days after~~ <sup>is</sup> the date hereof.

Dated NOV 18 1980, at San Francisco, California.

John E. Boyer  
President  
William L. Stinson  
Richard W. Gwozdz  
Clifford J. Friedrich  
Arnold J. Smith  
Commissioners

G. P. Trucking Co., 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 92428, Application 59807.