

ORIGINAL

Decision No. 92538 DEC 16 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MILES TANK LINES
 to transfer its certificates of
 public convenience and necessity
 authorizing operations as a
 highway common carrier of petro-
 leum products and as a petroleum
 irregular route carrier and
 MORRIS PROCTOR, INC., a corpora-
 tion, to acquire such certifi-
 cates pursuant to Public Utilities
 Code Section 851.

Application No. 59821
 (Filed July 22, 1980;
 amended November 14, 1980)

O P I N I O N

Miles Tank Lines (Miles), a California corporation, requests authority to sell and transfer, and Morris Proctor, Inc. (Proctor), a California corporation, requests authority to purchase and acquire the certificates of public convenience and necessity granted to Miles in Decision No. 76829 which authorized Miles to conduct operations as a highway common carrier of petroleum products and as a petroleum irregular route carrier. Miles and Proctor also request waiver of the service of application requirements set out in Rule 37(a). A copy of the application was served on the California Trucking Association, and it was noticed on our Daily Calendar. No protests to the application have been received.

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 The certificates for which approval to transfer is requested authorize extensive operations within the State bounded by Los Angeles, the California-Oregon border, and the California-Nevada border. The application shows that on September 28, 1979 shareholders representing a majority of the issued and outstanding capital stock of Miles elected to wind up the affairs of Miles and dissolve the company pursuant to California Corporations Code Sections 1900 and 1901, and Miles passed a resolution adopting a formal plan of complete liquidation pursuant to Internal Revenue Code Section 337. The planned

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dation pursuant to Internal Revenue Code Section 337. The planned

liquidation requires Miles to sell and/or dispose of its assets and wind up its business within a certain time. As part of this liquidation plan Miles has agreed to enter into a contract of sale of the subject certificates to Proctor for \$500. The agreement of sale, attached to the application as Exhibit C, covers only the sale of the subject certificates. The sale does not include the assumption of any of Miles' obligations.

The application shows that Morris Proctor, the owner of the majority of stock in Proctor, has had 14 years experience in the trucking business having been employed in various positions within that industry. Exhibit A to the amended application shows that Proctor had a net worth as of October 13, 1980 of approximately \$20,000 including \$14,445 cash.

Findings of Fact

1. Miles seeks to sell and transfer and Proctor seeks to buy and acquire the certificates of Miles granted in Decision No. 76829 for \$500.
2. On September 28, 1979 the shareholders representing a majority of issued and outstanding stock voted to dissolve the corporation and the directors adopted a formal plan of complete liquidation.
3. As part of the liquidation plan Miles has agreed to sell its certificates to Proctor for \$500.
4. Proctor, majority stockholder, has had 14 years' experience in the trucking business in various positions.
5. Proctor is financially able to pay the purchase price without the payment adversely affecting its financial standing.
6. Proctor is fit, willing, and able to perform the proposed service.
7. Consummation of the proposed transaction will not adversely affect the public interest.
8. A public hearing is not necessary.
9. The order will be made effective on the date hereof to allow Proctor to engage in operations during 1980 to preserve his "grandfather rights" in connection with SB 1886, which becomes effective January 1, 1981.

Conclusions of Law

1. The application should be granted.
2. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificates presently held by Miles and the issuance of certificates in appendix form to Proctor.
3. The request for waiver of Rule 37(a) is reasonable and should be granted.

Proctor 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. Miles Tank Lines (Miles) may sell and transfer the operative rights referred to in the application to Morris Proctor, Inc. (Proctor). This authorization shall expire if not exercised by March 1, 1981, or within such additional time as may be authorized by the Commission.
2. Within thirty days after the transfer Proctor 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. Proctor 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, Proctor 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 seller 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, certificates of public convenience and necessity are granted to Proctor authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, and a petroleum irregular route carrier as defined in Section 214 of the Public Utilities Code, between the points set forth in Appendices A and B.

6. The certificates of public convenience and necessity granted by Decision No. 76829 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Proctor 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.

8. Proctor 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.

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

10. The requirements of Rule 37(A) are waived.

The effective date of this order is the date hereof.

Dated DEC 16 1988, at San Francisco, California.

John E. Byron
President

Michael D. Howell

Clair T. D'Amico

Commissioners

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

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

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Appendix A

MORRIS PROCTOR, INC.
(a California corporation)

Original Page 1

Morris Proctor, Inc., by the certificate of public convenience and necessity granted by 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, upon and along the following routes, and between the points hereinafter specified, including all intermediate points, with the right to make lateral departures therefrom within a radius of fifty (50) statute miles of said routes.

1. U.S. 101 between the Oregon-California State Line and Los Angeles.
2. State Highway 1 between its junction with U.S. Highway 101 near El Rio and Los Angeles.
3. Interstate Highway 5 between the Oregon-California State Line and its junction with State Highway 113 in the City of Woodland; thence via State Highway 113 to its junction with Interstate Highway 80 at Davis, thence via Interstate Highway 80 to Sacramento.
4. State Highway 99 between Red Bluff and its junction with State Highway 20 at Yuba City; thence via State Highway 20 to its junction with State Highway 70 in the City of Marysville; thence via State Highway 70 to its junction with State Highway 65 near Olivehurst; thence via State Highway 65 to its junction with Interstate Highway 80 in the City of Roseville; thence via Interstate Highway 80 to Sacramento.

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5. State Highway 99 between Sacramento and its junction 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 111 near the City of Indio; thence via State Highway 111 to its junction with State Highway 86 near the City of Coachella; thence via State Highway 86 to its junction with State Highway 111 near Heber; thence via State Highway 111 to the California-Mexico border.
6. State Highway 299 between Redding and Alturas.
7. U.S. Highway 395 between the Oregon-California State Line and the California-Nevada stateline via Alturas and Johnstonville.
8. State Highway 36 between its junction with State Highway 99 near Red Bluff and its junction with U.S. Highway 395 at Johnstonville.
9. State Highway 20 between Marysville and its junction with Interstate Highway 80 near Yuba Gap.
10. Interstate Highway 80 between San Francisco and the California-Nevada State Line.
11. U.S. Highway 50 between Sacramento and the California-Nevada State Line.
12. U.S. Highway 395 between the California-Nevada State Line near Topaz, and its junction with Interstate Highway 15 near Cajon Summit.
13. State Highway 11 between Los Angeles and its junction with Colorado Boulevard in the City of Pasadena; thence via Colorado Boulevard to its junction with Huntington Drive in the City of Arcadia; thence via Huntington Drive, Foothill Boulevard, Alostia Avenue and Foothill Boulevard to its junction with State Highway 66 near the City of Claremont; thence via State Highway 66 to its junction with Mount Vernon Avenue in the City of San Bernardino; thence via Mount Vernon Avenue to its junction with Interstate Highway 15; thence via Interstate Highway 15 to Barstow.

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14. Interstate Highway 15 between Barstow and the California-Nevada State Line.
15. State Highway 127 between Baker and the California-Nevada State Line.

(END OF APPENDIX A)

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Appendix B

MORRIS PROCTOR, INC. Original Page 1
(a California corporation)

Morris Proctor, Inc., a California corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized 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, liquid asphalt and hot road oils and other petroleum products requiring insulated tanks, between all points and places in 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 by it as a highway common carrier as provided in Appendix A hereof.

(END OF APPENDIX B)

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