

ORIGINAL

Decision No. 42870

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 STARKSEN TRANSPORTATION COMPANY for)
 certificate of public convenience and)
 necessity to operate as a highway)
 common carrier for the transportation) Application No. 29947
 of liquid petroleum products in bulk,)
 in tanks, trucks and trailers, over)
 described routes and to all points and)
 places laterally within fifty miles)
 thereof.)

Phil Jacobson for applicant. E. L. H. Bissinger for
 Southern Pacific Company, Pacific Electric Railway Company,
 San Diego and Arizona Eastern Railway Company, Santa Maria Valley
 Railway Company, Petaluma and Santa Rosa Railroad Company, and
 Visalia Electric Railway Company, protestants:

O P I N I O N

Applicant herein seeks a certificate of public convenience and necessity to operate as a highway common carrier, as defined in Section 2 3/4 of the Public Utilities Act of the State of California, for the transportation of liquid petroleum products in bulk, in tank trucks and trailers.

A public hearing was held in Los Angeles on January 11, 1949, before Commissioner Huls and Examiner Syphers. On that date evidence was adduced and the matter was submitted.

The Starksen Transportation Company is a California corporation having its principal place of business in Santa Maria. For the past two and a half years it has operated motor trucks and trailers equipped with tanks, in the transportation of liquid

petroleum products, and such operations have been conducted as a radial highway common carrier under Permit 42-1241. The liquid petroleum products transported consist of refined petroleum products and also the so-called hot oils, consisting of asphalts and road oils. Applicant does not transport liquefied petroleum gases nor any petroleum products requiring pressurized tanks.

The equipment owned and operated by applicant consists of one truck and one full trailer, used in the transportation of refined petroleum products, and one truck, one trailer, one tractor, and one semi-trailer, used in the transportation of liquid asphalts and hot road oils and having insulated tanks.

According to the testimony, the hot road oils and liquid asphalts are primarily hauled to road construction jobs. In some cases the asphalts and hot road oils are delivered to hot plants and in other cases they are spread along the road. Applicant has spreader equipment which is used for this purpose. The charges for the hauling often include charges for the spreader equipment. The evidence indicates that the destination points change from day to day and from job to job, depending upon the progress of the road construction work. In some cases the hot road oil and asphalts are hauled for contractors and in other cases the refiner pays the transportation charges.

An analysis of the testimony concerning the hauling of hot road oils and asphalts indicates that the situation herein is similar to that discussed by this Commission in Decision No. 42623, dated March 15, 1949, wherein it was held that such hauling did not constitute common carriage as defined in Section 2 3/4 of the

Public Utilities Act. We confirm this finding as it relates to the instant matter. As to the transportation of gasoline and other refined petroleum products, the testimony indicates that applicant has transported from one point of origin, Santa Maria, to points along and near U. S. 101 between San Francisco and Los Angeles, U. S. 99 between Sacramento and Los Angeles, and U. S. 40 between San Francisco and Sacramento.

Exhibits Nos. 1 and 2 are a financial statement and an operating statement of applicant and an analysis of these exhibits, together with the testimony presented therein, including a consideration of the trucking equipment and terminal facilities of applicant, indicate that applicant is willing and able to conduct the transportation of refined petroleum products within the limits hereinafter set out.

Concerning the public convenience and necessity of this proposed operation, it was stipulated at the hearing that the testimony of certain major oil companies, as presented in application No. 29416, Lang Transportation Company, et al, would be incorporated in this record. Representatives of certain of these oil companies were present in the hearing room and were willing to testify but, because of the stipulation, were not called to the witness stand. The nature of applicant's hauling, the commodities handled, and the compensation received all are similar to the situations discussed in Decision No. 42623, supra, which decision, in this respect, becomes controlling in this matter. Upon this record, therefore, the application will be granted to the extent of the showing made.

Applicant presented a statement of points of origin and destination which it has served under its existing permits and this

statement is relied upon herein to the extent that it indicates the public demand for applicant's operations in the past. Also, applicant submitted a statement of proposed rates (Exhibit No. 4) which proposal contains rates identical to those adopted by each of the applicants in the Lang case and designated therein as Exhibit No. 265.

From an analysis of the testimony herein, we find that public convenience and necessity require the institution of service as a highway common carrier for the transportation of petroleum products, in bulk, as set out in the ensuing order.

Starksen Transportation Company is hereby placed upon 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, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not, in any respect, limited to the number of rights which may be given.

O R D E R

Application as above entitled having been filed, a public hearing having been held thereon, the matters having been submitted and the Commission being fully advised in the premises and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

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(1) That a certificate of public convenience and necessity, authorizing the establishment and operation of a service as a high-way common carrier, as defined in Section 2 3/4 of the Public Utilities Act, 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, be, and it hereby is, granted to Starksen Transportation Company, a corporation, along the routes and between the points hereinafter specified:

1. U. S. 101 and U. S. 101 By-Pass between San Francisco and Los Angeles;
2. U. S. 99 between Sacramento and Los Angeles;
3. U. S. 40 between San Francisco and Sacramento.

(2) That in providing service pursuant to the certificate herein granted, there shall be compliance with the following service regulations:

- (a) Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days after the effective date hereof,
- (b) Applicant shall, within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission.

In all other respects Application No. 29947 shall be denied.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 10th day of May, 1949.

R. J. [Signature]

Justin J. [Signature]

Frank [Signature]

Harold [Signature]

Benjamin [Signature]
COMMISSIONERS