

Decision No. 44136

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
 E. D. BLAKELY, HELEN I. BLAKELY and
 HAROLD D. BLAKELY, a copartnership
 doing business under the firm name
 of E.D. BLAKELY & SON, for a
 certificate of public convenience
 and necessity to operate as an irreg-
 ular route, or, in the alternative,
 as a highway common carrier, for the
 transportation of petroleum and pet-
 roleum products in the State of
 California.

Application No. 30799

In the Matter of the Application of
 ROBERT A. ELLIS and ALBERT DARRAH,
 a copartnership doing business under
 the firm name of CALIFORNIA TANK LINE,
 for a certificate of public convenience
 and necessity to operate as an irregular
 route, or in the alternative, as a high-
 way common carrier, for the transporta-
 tion of petroleum and petroleum products
 in the State of California.

Application No. 30887

In the Matter of the Application of
 GEORGE W. GILL, JR. and JOHN E. NEWMAN,
 (G & N TANK TRUCKING COMPANY), for a
 certificate to transport petroleum
 products in bulk as a Petroleum Irregular
 Route Carrier under the Provisions of
 Chapter 1399, Statutes of 1949.

Application No. 30934

Francis X. Vieira for applicants in Application Nos. 30799 and
 30887; Phil Jacobson for applicants in Application No.
 30934.

Edward M. Berol for Lang Transportation Corporation, Fortier
 Transportation Company and Pacific Truck Service, interested
 parties in Application No. 30799; Phil Jacobson in propria
 persona, interested party in Application No. 30887.

Wayne B. Stephens for Division of Permits and Fees, Public Utilities
 Commission of the State of California.

O P I N I O N

The applicants in these proceedings seek certificates of public convenience and necessity authorizing operations as highway carriers of petroleum and petroleum products, in bulk, in tank trucks and trailers. Each of the applications was filed pursuant to recent amendments to Sections 2-3/4 and 50-3/4 of the Public Utilities Act (Stats. 1949, Ch. 1399).

Section 2-3/4 of the Public Utilities Act defines the terms "highway common carrier", "between fixed termini or over a regular route" and "common carrier", when used in that Act. It was amended by providing (1) that the term "common carrier" shall include every petroleum irregular route carrier operating within this State and (2) that a petroleum irregular route carrier includes every corporation or person and their lessees, trustees, receivers or trustees appointed by any court whatsoever, operating within this State, engaged as a common carrier, other than as a highway common carrier, for compensation in the ownership, control, operation or management of any motor vehicle transporting petroleum or petroleum products in tank truck or tank trailer over any public highway in this State.

Section 50-3/4 of the same Act was amended by extending its provisions to embrace petroleum irregular route carriers. One of the requirements of the section, as amended, is that no petroleum irregular route carrier shall engage in any operation on any public highway in this State unless there is in force, with respect to such carrier, a certificate of public convenience and necessity issued by this Commission authorizing such operations. This requirement, however, is subject to a proviso that in the event any such carrier was, on September 1, 1949, and thereafter, operating, under a permit as a

radial highway common carrier, as defined in the Highway Carriers' Act, and shall file an application within 180 days after the amendment takes effect, the Commission shall issue a certificate of public convenience and necessity without further proceedings, and such certificate shall authorize the carrier to engage in such operations as it was authorized to conduct on September 1, 1949, pending the issuance of such certificate.

Public hearings upon the three proceedings herein under consideration were held before Examiner Bradshaw. They will be disposed of in a single opinion and order. No protests against the granting of either of the applications have been received.

Application No. 30799

By application, filed November 21, 1949, E. D. Blakely, Helen I. Blakely and Harold D. Blakely, copartners doing business as E. A. Blakely & Son, having their place of business in Modesto, applied for a certificate of public convenience and necessity to operate as a petroleum irregular route carrier, by virtue of operations conducted on September 1, 1949, and thereafter, under a permit to operate as a radial highway common carrier.

It appears from the evidence that the present partnership was formed on January 1, 1944, although two of the partners were in business for about 15 or 20 years prior thereto; that applicants have been, and are, engaged in the distribution and sale of petroleum products throughout Stanislaus and Tuolumne counties and portions of two other counties; that applicants began for-hire transportation operations about 1943; and that a radial highway common carrier permit, granted to applicants on September 28, 1948, is still in effect. One of the conditions of this permit is that no vehicle or vehicles shall

be operated unless adequately covered by a public liability and property damage insurance policy or other means of protection, as required by Sections 5, 6 and 7 of the Highway Carriers' Act. A member of the partnership testified that such insurance coverage is restricted to the territory embracing a 150-mile radius of Modesto. It was stated that the commodities which applicants transport consist of gasoline, diesel oil, stove oil, kerosene and lubricating oils.

Applicants' accountant testified that two tank trucks and two tank trailers are used in the for-hire operations. He verified a list purporting to set forth typical shipments handled prior and subsequent to September 1, 1949. The movements were shown as having taken place (a) from Oakland to Stockton, Alameda and Santa Rosa; (b) from Richmond to Sacramento and Stockton; (c) from Martinez to Modesto and Santa Rosa; (d) from Avon to Stockton; and (e) from Stockton or bulk facilities located approximately three miles west of the Stockton city limits to Modesto, Waterford, Livingston and Stockton. This witness further testified that these points of origin and destination include all of the places from or to which applicants have performed for-hire transportation service. He characterized the places at which shipments were received and delivered as permanently located refinery or bulk storage facilities. The highways traversed were described. In most instances, they comprised the principal direct routes between the points of origin and destination and were stated to be those usually and ordinarily used in applicants' operations.

During the course of the proceedings applicants requested leave to amend their application to seek authority to operate as a highway common carrier, that is, between fixed termini or over regular

routes. An amendment was subsequently filed, seeking, in the alternative, as applicants' proof may justify, a certificate of public convenience and necessity to operate (1) as a petroleum irregular route carrier, or (2) as a highway common carrier for the transportation of petroleum and petroleum products (a) between Oakland and Santa Rosa, Sacramento, Stockton, Modesto and Livingston and (b) between Martinez and Stockton and Modesto and all intermediate points over certain specified routes, with the right to make lateral departures therefrom within a radius of 50 miles of said routes.

In view of the amendment, a further hearing was held for the purpose of receiving additional evidence at which one of the applicants, their accountant and representatives of three distributors of petroleum products gave testimony from which it appears that applicants propose to render an on-call service, utilizing the same equipment as has been used in the past.

A balance sheet as of December 31, 1948, was presented showing current assets, \$935.11; tangible property, \$15,926.83; and total assets, \$17,861.94. The liabilities were set forth as representing current liabilities, \$1,800.00; equipment and other long-term obligations, \$1,900.00; and partnership capital, \$14,161.94. According to the testimony, these figures cover the for-hire portion of applicants' business and their entire assets are considerably greater than shown.

An income statement covering for-hire operations during the year 1949 purports to show operating revenues of \$36,285.18, operating expenses of \$28,226.67, income deductions of \$282.54 and a net profit of \$7,775.97. It appears that, of the operating revenues reported,

\$29,561.51 represented a revenue credit for transporting petroleum products purchased and sold by applicants.

The three witnesses representing distributors of petroleum products testified that applicants' service has been utilized in the past, that a satisfactory service has been rendered and that they expect to have occasion to use it in the future. The points from and to which their shipments had been transported by applicants were described by one or more of these witnesses as from bulk facilities located about three miles west of Stockton to Stockton; from Oakland, Richmond, Avon and Sacramento to Stockton; and from Oakland to Alameda, Napa and Santa Rosa. Two of them stated that there is a possibility that in the future shipments would be made to other points.

Application No. 30887

By this application, as amended, Robert A. Ellis and Albert Darrah, doing business as California Tank Line, with headquarters at Stockton, seek, in the alternative, as their proof may justify, (1) a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of petroleum and petroleum products

- (a) between Oakland, Richmond, Avon and Martinez, on the one hand, and Ukiah, Auburn, Sacramento, Marysville, Rainbow Tavern, Stockton, Tracy and Monterey, on the other hand;
- (b) between Stockton and Ukiah, Chico, Sacramento, Sonora, Dos Palos, Hanford and Los Angeles; and
- (c) between Auburn and Sonora

and all intermediate points, with the right to make lateral departures within a radius of 50 miles from certain specified routes and authorizing operations as a petroleum irregular route carrier for the transportation of asphalt within the same area; or (2) a certificate of public convenience and necessity as a petroleum irregular route

carrier by virtue of operations conducted on September 1, 1949, and thereafter.

One of the applicants testified that a partnership was formed on July 1, 1946; that applicants were granted a permit to operate as a highway contract carrier on July 10, 1946, at which time they had two contracts with shippers and that they commenced accepting new accounts, with the result that by January 1, 1947, operations were being conducted for anyone who desired service. The witness asserted that applicants believed that their contract carrier permit authorized the type of operations in which they were and have since been engaged.

According to the record, applicants have transported all kinds of petroleum products with the exception of liquid petroleum gases, including hot and cold asphalts. Their equipment consists of two tank trucks and tank trailers, a tractor and a tank semi-trailer. None of the units are insulated or pressurized. A list of typical shipments transported on September 1, 1949, and thereafter, discloses movements from Stockton to Modesto, Oakdale, Lodi, Jackson, San Andreas, Sacramento, Brentwood and Tracy; from Martinez to Ukiah, Stockton, Lodi and Auburn; from Avon to Stockton and Angels Camp and from Tracy to Sacramento and Sonora. It also appears that prior to September 1, 1949, some shipments were transported between other points. Not having insulated equipment, the movement of hot asphalt has been confined to hauls not exceeding about 100 miles from Stockton.

As a fixed termini or regular route carrier, applicants would provide an on-call service, charging the minimum rates prescribed by the Commission. A balance sheet as of December 31, 1949, purports to show applicants' assets as consisting of current assets, \$18,417.27;

trucks and equipment, \$9,488.65; prepaid insurance, \$1,069.39; or total assets aggregating \$28,975.31. Of the current assets, an amount of \$13,024.48 is reported as being cash in bank. The liabilities are listed as \$2,844.76 in current liabilities and \$26,130.55 as constituting "net worth". According to an income statement for the calendar year 1949, applicants' gross income amounted to \$67,167.83 (of which \$3,121.46 was derived from the sale of a truck, equipment and one load of gasoline), while their expenses were \$45,431.29, leaving a net income of \$21,736.54.

A distributor of petroleum products located at Modesto testified that he has used applicants' service since January, 1947, for the transportation of gasoline, stove oil and diesel oil from Martinez to Modesto and from Stockton to Modesto, Turlock and other places in Stanislaus, San Joaquin and Merced counties. The locations of some of the destinations were not disclosed. One of the witness' customers was indicated as located on a ranch about 18 miles from Modesto near Vernalis. This witness expressed a desire to continue to utilize applicants' service because of its flexibility. He stated that on several occasions customers have been able to obtain deliveries within five or six hours after requesting service.

A transportation and supply supervisor employed by a petroleum refining company stated that applicants have transported shipments from Martinez and Stockton to Brentwood, Oakdale, Farmington, Tracy and San Andreas, including road oils from Martinez to other destinations.

A dealer in road oils at Auburn declared that he has patronized applicants ever since they started business for transporting heavy fuel oil and road oil from Martinez to Auburn, Colfax and

Rainbow Tavern (located about 50 miles east of Auburn) and that their service has been very satisfactory.

A distributor of petroleum products at Stockton testified that applicants have been engaged to transport shipments for approximately three years, usually from a plant located three miles from Stockton to various points in San Joaquin County, including Victor, Lodi, Manteca and Linden, and on one occasion from Maricopa to Stockton. He described the service as very satisfactory and indicated a desire to have it available in the future.

The local manager of an oil company at Stockton said that applicants have been employed to haul gasoline from Stockton to Merced and vicinity, Sacramento and Empire (located eight miles east of Modesto).

A wholesale gasoline dealer at Stockton testified that shipments have been transported by applicants from Avon to Stockton and locations within five miles thereof, and occasionally to Angels Camp. He proposes to establish plants at Tracy and Lodi and declared that he would ask applicants to transport shipments to those points.

An agent for another oil company at Stockton asserted that applicants have hauled shipments from Stockton to Jackson and West Point (located about 20 miles east of Jackson); that the service rendered was very satisfactory and that he desires to have it available in the future.

Application No. 30934

Applicants in this proceeding are George W. Gill, Jr. and John E. Newman, doing business as G. & N. Tank Trucking Company. Their principal place of business is in Sacramento. By Decision No.

42866, dated May 10, 1949, in Application No. 30012, they were granted a certificate of public convenience and necessity authorizing operations as a highway common carrier for the transportation of petroleum products, in bulk, except liquified petroleum gases and other products requiring pressurized tanks, and except liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks. The territory authorized to be served embraces all points along the principal highways of the State other than south of Los Angeles. Applicants are also permitted to make lateral departures within a radius of 50 miles from the routes specified in the certificate.

By application, filed January 18, 1950, a certificate of public convenience and necessity is sought authorizing operations as a petroleum irregular route carrier in the transportation of petroleum products, in bulk, in tank trucks and trailers, other than (1) those included in applicant's operative rights as a highway common carrier and (2) products which require pressurized equipment. Subsequently, applicants' were authorized to sell and transfer to F. N. Rumbley Company, a corporation, their highway common carrier operative rights, certain motor vehicles, materials and supplies, as well as whatever operative rights they may hold by virtue of Chapter 1399, Statutes of 1949. The substitution of F. N. Rumbley Company in place of Gill and Newman as applicant herein was also authorized (Decision No. 43860, dated February 28, 1950, in Application No. 30963).

George W. Gill, Jr. testified that applicants have been in business since December, 1945, transporting all kinds of petroleum products other than liquified gases, including hot oils, asphalt and other products requiring insulated equipment. According

to an exhibit of record, applicants had six units of insulated equipment on September 1, 1949. Most of the transportation in insulated equipment, so the witness testified, takes place from refineries or bulk-plant facilities to storage facilities at or near locations where construction work is in progress. It was stated that each job involves the movement of from one to about 300 loads and that, while most of the work is for State, county or municipal government projects, the successful bidder on a construction contract arranges for the necessary transportation. About five percent of applicants' business of this nature also entails the spreading of oil upon the roads under construction or repair.

The same witness asserted that applicants have held themselves out to haul to any and all points in the State; that on September 1, 1949, they possessed a radial highway common carrier permit to perform such service; and that their public liability and property damage insurance covers operations throughout the State. An exhibit of record purports to indicate the areas from and to which operations have been conducted. According to another exhibit, applicants have performed service for 52 customers during the last three or four years.

Conclusions

In proceedings involving applications for certificates of public convenience and necessity under the "grandfather" provisions of the 1949 amendments to Sections 2-3/4 and 50-3/4 of the Public Utilities Act, the primary purpose of conducting public hearings is to determine whether the applicant was a petroleum irregular route carrier on September 1, 1949, and thereafter, operating under a permit as a radial highway common carrier, and, if so, the nature and

extent of the operations such carrier was authorized to conduct on September 1, 1949. However, in instances in which the record shows that an applicant's operations were other than those of a petroleum irregular route carrier, and a certificate is sought to operate either as a highway common carrier or petroleum irregular route carrier, it becomes necessary to determine whether public convenience and necessity require the proposed operations.

The record in the Blakely Application shows that operations were conducted over regular routes between permanently located refinery or bulk storage facilities. Such operations must, therefore, be regarded as those of a highway common carrier rather than as a petroleum irregular route carrier. (See Decision No. 42623, dated March 15, 1949, in Application No. 29416, et al., 48 Cal. P.U.C., 559.) The evidence, in our opinion, justifies the issuance of a certificate of public convenience and necessity to operate as a highway common carrier between the termini and over the routes specified in the amendment to the application.

In seeking the right to make lateral departures within a 50-mile radius of such routes these applicants rely upon the principles announced in Decision No. 42623, supra. The Commission in the proceeding referred to, however, in authorizing operations to points within 50 miles on either side of the highways named in the certificates of public convenience and necessity therein granted, found that there existed a definite need for transportation to off-route points. In the absence of a similar showing in support of the Blakely Application, the request for authority to serve off-route points will be denied.

Inasmuch as applicants Ellis and Darrah were not authorized to operate as a radial highway common carrier on September 1, 1949, they are not entitled to a certificate by virtue of operations conducted on that date. The record, however, discloses sufficient justification for granting a certificate of public convenience and necessity (1) authorizing operations as a highway common carrier for the transportation of petroleum products between the points and along the routes described in the amendment to their application other than between Stockton and points south of Merced and Dos Palos, with the right to make lateral departures from said routes in Stanislaus County within a radius of 20 miles therefrom, and (2) authorizing operations as a petroleum irregular route carrier for the transportation of asphalt within a radius of 100 miles of the City of Stockton.

The evidence respecting applicants Gill and Newman shows that on September 1, 1949, and thereafter, their operations were those of a petroleum irregular route carrier, that they were operating under a permit as a radial highway common carrier; and that they were authorized on September 1, 1949, to conduct such operations throughout the State of California.

Findings

Upon the facts of record in these proceedings, the Commission finds:

1. That public convenience and necessity require the establishment and operation of service by E. D. Blakely, Helen I. Blakely and Harold D. Blakely and by Robert A. Ellis and Albert Darrah as highway common carriers for the transportation of petroleum and petroleum products, in bulk, as set forth in the ensuing order.

2. That public convenience and necessity require the establishment and operation of service by Robert A. Ellis and Albert Darrah as a petroleum irregular route carrier for the transportation of asphalt between points and places located within a radius of 100 miles of the City of Stockton.

3. That F. N. Rumbley Company, a corporation, (as successor to George W. Gill, Jr. and John E. Newman) is entitled to a certificate of public convenience and necessity authorizing operations as a petroleum irregular route carrier for the transportation of liquid asphalt, hot road oils and other petroleum products requiring insulated tank trucking equipment, by virtue of operations conducted on September 1, 1949, and thereafter.

E. D. Blakely, Helen I. Blakely and Harold D. Blakely; Robert A. Ellis and Albert Darrah; and F. N. Rumbley Company, a corporation, (as successor to George W. Gill, Jr. and John E. Newman) are, and each is, hereby 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, 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

Public hearings having been had in the above-entitled proceedings, and the Commission, based upon the evidence received, having found that public convenience and necessity so require,

IT IS ORDERED:

1. That a certificate of public convenience and necessity be and it is hereby granted to E. D. Blakely, Helen I. Blakely and Harold D. Blakely, copartners, authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of petroleum and petroleum products, in bulk, except liquefied petroleum gases and other petroleum products requiring pressurized tanks, and except liquid asphalt and hot road oils and other petroleum products requiring insulated tanks (a) between Oakland and Santa Rosa, Sacramento, Stockton, Modesto and Livingston, and (b) between Martinez and Stockton and Modesto, including all intermediate points, but excluding the right to serve off-route points.

2. That a certificate of public convenience and necessity be and it is hereby granted to Robert A. Ellis and Albert Darrah, copartners, authorizing the establishment and operation of a service as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of petroleum and petroleum products, in bulk, except liquefied petroleum gases and other petroleum products requiring pressurized tanks, and except liquid asphalt and hot road oils and other petroleum products requiring insulated tanks, (a) between Oakland, Richmond, Avon and Martinez, on the one hand, and Ukiah, Auburn, Sacramento, Marysville, Rainbow Tavern, Stockton, Tracy and Monterey, on the other hand; (b) between Stockton and Ukiah, Chico, Sacramento, Sonora, Merced and Dos Palos; and (c) between Auburn and Sonora, including all intermediate points, with the right to serve off-route points located in Stanislaus County within 20 miles of the highways hereinafter specified.

3. That a certificate of public convenience and necessity be and it is hereby granted to Robert A. Ellis and Albert Darrah, copartners, authorizing the establishment and operation of a service as a petroleum irregular route carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of asphalt between

points and places located within a radius of 100 miles of the City of Stockton.

4. That a certificate of public convenience and necessity be and it is hereby granted to F. N. Rumbley Company, a corporation, authorizing the operation of a service as a petroleum irregular route carrier, as defined in Section 2-3/4 of the Public Utilities Act, for the transportation of liquid asphalt, hot road oils and other petroleum products requiring insulated tanks between all points and places within the State of California.

5. That in providing service pursuant to the certificates herein granted, applicants shall comply with and observe the following service regulations:

- a. Within thirty (30) days after the effective date of this order, applicants shall file a written acceptance of the certificates herein granted.
- b. Within sixty (60) days after the effective date hereof, applicants shall 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, appropriate tariffs and time schedules on not less than five (5) days' notice to the Commission and the public.
- c. Subject to the authority of the Commission to change or modify them by further order, applicants other than F. N. Rumbley Company shall conduct highway common carrier operations pursuant to the certificates herein granted over and along the following routes:

Applicants in Application No. 30799.

Between Oakland and Santa Rosa: U. S. Highway 40 to Vallejo, California Highway 48 to Sears Point, California Highway 37 to Novato, thence U. S. Highway 101. Between Oakland and Sacramento: U. S. Highway 40. Between Oakland and Stockton: U. S. Highway 50. Between Oakland and Modesto: U. S. Highway 50 to Mossdale Bridge, California Highway 120 to Manteca, thence U. S. Highway 99. (Alternate Route: U. S. Highway 50, California Highway 33, thence California Highway 132.) Between Modesto and Livingston: U. S. Highway 99. Between Martinez and Stockton: California Highway 44. Between Martinez and Modesto: California Highway 4 to about 1.6 miles north of Byron, Byron-Tracy Road to U. S. Highway 50, thence same route as between Oakland and Modesto, including alternate route.

Applicants in Application No. 30887.

From Oakland, Richmond, Avon and Martinez over U. S. Highway 40, or California Highways 4, 29 or 37, thence: U. S. Highway 101 to Ukiah, U. S. Highway 40 to Rainbow Tavern, U. S. Highway 99E to Marysville, U. S. Highway 50 and California Highway 4 to Stockton, U. S. Highway 50 to Tracy and U. S. Highway 50, California Highways 17 and 21 and U. S. Highway 101 to Monterey. Between Stockton and Ukiah: California Highway 12 and U. S. Highway 101. Between Stockton and Chico: U. S. Highways 50, 99 and 99E. Between Stockton and Sonora: California Highways 8, 12 and 49 or 4. Between Stockton and Merced: U. S. Highway 99. Between Stockton and Dos Palos: California Highways 33 and 152. Between Auburn and Sonora: California Highway 49.

6. That in all other respects Applications Nos. 30799 and 30887 are hereby denied.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 2nd day of May, 1950.

R. Z. [Signature]

[Signature]

[Signature]

[Signature]
COMMISSIONERS

Commissioner Justus F. Graemer, being necessarily absent, did not participate in the disposition of this proceeding.