

ORIGINAL

Decision No. 44631

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CHARLOTTE L. EVANS, as Executrix of the Estate of J. H. Evans, doing business as EVANS TANK LINE, for a certificate to operate as a highway common carrier for the transportation of asphalts and road oils.

Application No. 31081

In the Matter of the Application of CHARLOTTE L. EVANS as Executrix of the Estate of J. H. Evans, doing business as Evans Tank Line, for a certificate to operate as an irregular route highway common carrier for the transportation of petroleum road oils and asphalts including heated products in bulk, in tank trucks, in tank trailers, and tank semitrailers over irregular routes within a portion of the State of California.

Application No. 31059

Earl Glenn Whitehead for applicant.O P I N I O N

By Application 31081 authority is sought to operate as a highway common carrier for the transportation of liquid asphalts and hot road oils and any other petroleum products requiring insulated tanks, between points and places in California south of Paso Robles. By Decision No. 43161 this applicant received authority to operate as a highway common carrier in the transportation of petroleum products in bulk, except liquefied petroleum gases and any other products

requiring pressurized tanks and except liquid asphalts and hot road oils and any other petroleum products requiring insulated tanks. This application requests enlargement of the prior authority.

By Application No. 31059, as amended, applicant requests authority to continue operations as a petroleum irregular route carrier throughout the State for the transportation of all petroleum products in tank trucks and tank trailers pursuant to the provisions of Section 50 3/4 of the Public Utilities Act as amended by Statutes 1949, Chapter 1399.

A public hearing was held before Commissioner Huls and Examiner Syphers at Los Angeles on July 31, 1950, at which time evidence was adduced and the matters were submitted.

The manager of applicant company appeared as a witness and corroborated the testimony previously presented in public hearings before this Commission which led to Decision No. 43161 dated July 26, 1949, on Application No. 30029. This previous testimony was incorporated in this record, and the witness testified that there have been no changes in applicant's operations since the prior testimony was adduced.

A public witness representing the Petrol Corporation testified that applicant transported hot road oils and liquid asphalts in insulated tanks for his company.

Upon this record we must conclude to deny Application 31081. The question of the transportation of liquid asphalts and hot road oils was thoroughly considered in the prior proceeding leading to Decision No. 43161 supra and likewise in Decision No. 42623 dated March 15, 1949 on Application No. 29416. In those decisions it was

determined that the transportation of liquid asphalts and hot road oils conducted in a manner similar to the operations of applicant herein does not constitute highway common carriage as defined in Section 2 3/4 of the Public Utilities Act. Inasmuch as no new evidence in this regard was presented in the instant hearing, we must affirm our previous conclusions.

Application 31059 falls within the provisions of the amendment to Section 50 3/4 of the Public Utilities Act as above referred to. This amendment provides, among other things, that in the event a petroleum irregular route carrier was, on September 1, 1949, and continuously thereafter, operating under a permit as a radial highway common carrier 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.

Applicant alleges in her verified petition that prior to the granting of the authority set out in Decision 43161 dated July 26, 1949, and continuously thereafter, she was operating under a permit issued by this Commission as a radial highway common carrier and was and is transporting liquid petroleum products. The application was filed within 180 days after the amendment became effective.

Upon these facts we hereby find that public convenience and necessity require that Charlotte L. Evans doing business as Evans Tank Line establish and operate services as a petroleum irregular route carrier to the extent set forth in the ensuing order.

Applicant 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

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

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it hereby is granted to Charlotte L. Evans doing business as Evans Tank Lines, 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 petroleum and petroleum products in tank trucks and tank trailers between all points and places in the State of California.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with the following service regulations:

- (a) Applicants shall file a written acceptance of the certificates herein granted within a period of not to exceed thirty (30) days after the effective date hereof.
- (b) Applicants 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, Applications Nos. 31059 and 31081 are denied.

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

Dated at San Francisco, California, this 8th day of August, 1950.

Julius F. Casner
Walter S. Powell
Harold P. Hula
Penelope Totten
COMMISSIONERS