

Decision No. 44690

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MORRIS ESACOVE and WALLY ESACOVE,)
 doing business as CAPITOL TANK LINE,)
 for a certificate of public conven-)
 ience and necessity to operate an)
 automobile freight service as a)
 petroleum irregular route carrier,)
 between all points in the State of)
 California, by reason of operations)
 conducted on and after September 1,)
 1949, under Radial Highway Common)
 Carrier Permit issued by the Public)
 Utilities Commission.)

Application No. 31500

O P I N I O N

Applicants, Morris Esacove and Wally Esacove, doing business as Capitol Tank Line, are the holders of a certificate of public convenience and necessity authorizing them to establish and operate a service as a highway 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, upon and along certain routes, including intermediate points, with the right to make lateral departures therefrom within a radius of fifty (50) miles of the route⁽¹⁾.

(1) Decision No. 42623, dated March 15, 1949, as amended by decision No. 43049, dated June 28, 1949.

The applicants herein request a certificate of public convenience and necessity to operate as a petroleum irregular route carrier throughout the state for the transportation of petroleum and 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.

The amendment referred to provides, among other things, that, in the event a petroleum irregular route carrier was, on September 1, 1949, and 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.

The above application alleges that applicants are now, and at all times since October 10, 1946, have been, the owners and holders of a radial highway common carrier permit authorizing the applicants to operate as a radial highway common carrier as the term "Radial Highway Common Carrier" is defined in the Highway Carriers' Act and that at all times since October 10, 1946, applicants have conducted operations under said permit in the transportation of petroleum and petroleum products between all points in California.

The applicants further allege that, by reason of the fact that applicants were operating pursuant to a permit issued by the Public Utilities Commission as a radial highway common

carrier on September 1, 1949, and have operated continuously since that date in the transportation of petroleum and petroleum products, they are entitled to a certificate of public convenience and necessity as a petroleum irregular route carrier. This is not pursuant to the clear language of the Public Utilities Act. Section 50 3/4 thereof, as amended by Statutes 1949, Chapter 1399, requires that the applicant for a certificate as a petroleum irregular route carrier by virtue of prior operations as a radial highway common carrier" . . . shall file with the . . . Commission . . . within *one hundred eighty (180) days after this section takes effect,* an application as provided herein, . . .". The effective date of the amendment was October 1, 1949, and 180 days after the amendment took effect was March 30, 1950. The application was filed June 13, 1950.

Applicants not having filed their application for a certificate to operate as a petroleum irregular route carrier within 180 days after the 1949 amendment to Section 50 3/4 of the Public Utilities Act became effective, a hearing on the application was necessary, and the hearing was set for and held on August 7, 1950, at 10 a.m., before Examiner Rogers in Los Angeles. The applicants were duly notified of the time and place of hearing. Neither applicants nor their representative appeared thereat and the matter was submitted.

O R D E R

Morris Esacove and Wally Esacove, doing business as Capitol Tank Line, having filed the above-entitled application for

a certificate of public convenience and necessity to operate a service as a petroleum irregular route carrier, as defined in Section 2 3/4 of the Public Utilities Act, as amended by Statutes 1949, Chapter 1399; the said application not having been filed within 180 days after said amendment became effective as required by Section 50 3/4 of the Public Utilities Act, as amended by Statutes 1949, Chapter 1399, and a hearing on the application being necessary and notice of the time and place of said hearing having been given to applicants, and applicants having failed to appear at said time and place,

IT IS HEREBY ORDERED that Application No. 31500, application of Morris Esacove and Wally Esacove, doing business as Capitol Tank Line, for a certificate of public convenience and necessity to operate as a petroleum irregular route carrier be, and it hereby is, dismissed

Dated at San Francisco, California, this 22nd day of August, 1950.

B. J. [Signature]
Justus J. Craven
[Signature]
Harold A. Kils
[Signature]
COMMISSIONERS