

Decision No. 44826**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 WALTER S. WINANS, an individual, doing)
 business under the firm name of WINANS)
 TRANSPORTATION, for a certificate of)
 public convenience to operate an auto-)
 mobile 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. 31526

Walter S. Winans in propria persona. Lloyd R. Guerra,
 for Cantlay & Tanzola, Inc., and Allyn Tank Line, Inc., Gordon
 S. Knapp, by Sanford A. Waugh, for Lamb Transportation Co., pro-
 testants; Bertram S. Silver and Edward Berol, by Bertram S. Silver,
 for Lang Transportation Corporation, Fortier Transportation
 Company, Acme Transportation Company, and Pacific Truck Service,
 interested parties.

O P I N I O N

Applicant requests 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.

A hearing on the application was held in Los Angeles on September 1, 1950, before Examiner Rogers. At the hearing evidence was presented, and the matter was submitted. It is now ready for decision.

The only evidence presented at the hearing, other than reference to records of the Commission, consisted of the oral

testimony of the applicant. Since October, 1941, to and including the date of the hearing, applicant has been hauling certain petroleum products in bulk in tank trucks and tank trailers, pursuant to a radial highway common carrier's permit issued by the California Public Utilities Commission. Applicant, after the effective date of Section 3-1/2 of the Highway Carriers' Act (added by Statutes 1949, Chapter 1398, effective October 1, 1949), filed an application for a permit to operate as a petroleum contract carrier. Applicant was advised by a representative of the Commission that his petroleum operations appeared to be those of a petroleum irregular route carrier, rather than those of a petroleum contract carrier. He forthwith, but after March 30, 1950, filed the subject application.

The main petroleum products applicant has hauled since September 1, 1949, to date of hearing, are distillate and residual fuel oil, and liquid asphalt and hot road oils in insulated tanks. Most, if not all, of applicant's hauling from September 1, 1949, to date of hearing, was in the counties of Los Angeles, San Diego, Imperial, Riverside, and Orange. Applicant listed three shippers whose petroleum products he has hauled in tank trucks and tank trailers since September 1, 1949, carrying their products to some eleven consignees. Most of the shipments were sent collect, and were shipped via applicant's trucks at the consignees' requests. Applicant has no contracts with any shipper or consignee concerning the use of applicant's trucks for hauling petroleum products, and all

shippers and consignees use the facilities of other trucking companies. Applicant owns one diesel truck and full trailer, and one diesel tractor with semitrailer.

Although over one hundred carriers of petroleum products were notified of the hearing on the application, only seven were represented thereat. The representatives of those seven carriers stated that they have no objection to the Commission's granting to applicant a certificate of convenience and necessity to operate a service as a petroleum irregular route carrier, if the Commission sees fit to do so, provided the certificate is limited to the hauling of distillate and residual fuel oil, and liquid asphalt and hot road oils in insulated tanks, in the counties of Los Angeles, San Diego, Imperial, Riverside, and Orange. It was agreeable to applicant that such restrictions be imposed.

Upon the facts set forth hereinabove, we find that public convenience and necessity require that Walter S. Winans, doing business as Winans Transportation, establish and operate services as a petroleum irregular route carrier to the extent set forth in the ensuing order.

Walter S. Winans 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 granting of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business.

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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 matter being duly submitted, the Commission being fully advised in the premises and having found 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 Walter S. Winans, doing business as Winans Transportation, 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 distillate and residual fuel oil, and liquid asphalt and hot road oils in insulated tanks, in tank trucks and tank trailers, between all points and places in the counties of Los Angeles, San Diego, Imperial, Riverside, and Orange, in the State of California.

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

- (a) Within thirty (30) days from the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.

- (b) Within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission and the public, applicant shall 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, appropriate tariffs and time tables.

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

Dated at San Francisco, California, this 19th day of September, 1950.

R. F. [Signature]
Justus F. [Signature]
Les H. [Signature]

COMMISSIONERS