

ORIGINAL

Decision No. 44862

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 L P G TRANSPORTATION CORP. for a certi-
 ficate of public convenience and neces-
 sity 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 High-
 way Common Carrier Permit issued by the
 Public Utilities Commission.

Application No. 31482

Phil Jacobson for applicant. Lloyd R. Guerra, for
Centlay & Tanzola, Inc. and Allyn Tank Line, Gordon & Knapp, by
Sanford A. Waugh, for Clarence J. Lamb, Lora Lamb, and Colin J.
Boone, dba Lamb Transportation Co., protestants; Bertram S.
Silver and Edward M. Zerol, by Bertram S. Silver, for Lang
Transportation Corp., Fortier Transportation Co., Acme Trans-
portation, Inc., and Pacific Truck Service, Inc., interested
 parties.

O P I N I O N

L P G Transportation Corp., pursuant to the appli-
 cation herein, filed on June 9, 1950, seeks a certificate of
 public convenience and necessity authorizing it to engage in
 business throughout the State of California as a petroleum ir-
 regular route carrier, as that term is defined in Section 2-3/4
 of the Public Utilities Act, as amended by Statutes of 1949,
 Chapter 1399. Applicant has held an active radial highway
 common carrier permit since August 3, 1948.

A public hearing was held at Los Angeles on August 28,
 1950, before Examiner Rogers. At that time and place evidence

was adduced and the matter was continued to October 19, 1950, to enable applicant to produce additional evidence of public convenience and necessity, if it so desired, with the proviso that applicant could, if so advised, submit the application on the record without the introduction of further evidence. On September 11, 1950, applicant advised the Commission that it desired to submit the matter without further evidence, and the matter was thereupon submitted.

By Decision No. 42849, dated May 10, 1949, as amended by Decision No. 42996, dated June 14, 1949, applicant was granted a certificate as a highway common carrier for the transportation of liquefied petroleum gases in all their forms, including butane, propane, isopropyl, normal butane, natural gasoline, and casing-head gasoline, along the following routes and between the points hereinafter specified, with the right to make lateral departures therefrom within a radius of fifty (50) miles of said routes:

1. U. S. 101 and U. S. 101 By-Pass between San Francisco and the California-Mexico Line;
2. U. S. 99 between Sacramento and the California-Mexico Line;
3. U. S. 40 between San Francisco and the Nevada-California State Line;
4. U. S. 50 between Sacramento and the California-Nevada State Line;
5. U. S. 395 between the California-Nevada State Line at Topaz Lake and Junction U. S. 66;
6. U. S. 66 between Los Angeles and Needles;
7. U. S. 60 between Los Angeles and the California-Arizona State Line;
8. U. S. 91 and 466 between Barstow and Nevada-California State Line;
9. State Highway 127 between Baker and Nevada-California State Line;
10. U. S. 80 from San Diego to the California-Arizona State Line.

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By the subject application, applicant originally sought authority to operate as a petroleum irregular route carrier throughout the State of California. At the hearing applicant requested permission to amend its application, limiting the territory it seeks authority to serve to that territory which it serves by virtue of its mentioned highway common carrier certificate. Applicant was given permission to so amend the application, but has failed to do so.

Over one hundred certificated petroleum irregular route carriers were notified of the hearing herein. Seven of these carriers entered appearances, either as protestants or as interested parties, and advised the Commission that they have no objection to the granting of the requested certificate, if the applicant was actually operating on and subsequent to September 1, 1949, provided applicant is limited to serving in the territory which it now serves by virtue of its said certificate.

The application shows that applicant has sufficient equipment and is financially able to carry on the proposed service.

Applicant's secretary-treasurer testified in support of the application, but no other witness was called. The secretary-treasurer stated that applicant has been transporting liquid petroleum products in the territory it serves, under authority granted by Decision No. 42849, since October, 1946; that, after November, 1948, and in the early part of 1949, applicant acquired two nonpressurized tanks, which, as need

arises, are used on chassis which carry either pressurized or nonpressurized tanks. This witness further testified that, prior to September 1, 1949, these two nonpressurized tanks were used to transport weed oil, diesel oil, gasoline and stove oil, but no hot oils, as far north as Fresno, Sacramento, and Stockton, for approximately eight customers. This testimony is supplemented by the verified application which alleges that applicant was operating as a radial highway common carrier on September 1, 1949, and has so operated since that date in the transportation of petroleum and petroleum products.

Upon the facts set forth hereinabove, we find that public convenience and necessity require that L P G Transportation Corp. establish and operate services as a petroleum irregular route carrier to the extent set forth in the ensuing order.

L P G Transportation Corp. 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. 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, public hearing having been held thereon, the matter having been submitted, the Commission being fully advised in the premises and heroby 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 L P G Transportation Corp., 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 weed oil, diesel oil, gasoline and stove oil, between all points and places in the State of California south of a line fifty (50) miles north of U. S. Highway 40 between San Francisco and the California-Nevada State Line.

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

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty (60) days after the effective date hereof, and upon 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, tariffs and time schedules satisfactory to the Commission.

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

Dated at San Francisco, California, this 3rd day of October, 1950.

P. E. Dunning
Justin F. Currier
John H. Lawrence
Harold F. Hule
Herbert R. Potter
COMMISSIONERS