

Decision No. 44863**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 RICHARD A. COHAN for certificate of)
 public convenience and necessity to) Application No. 31318
 operate as an irregular route petro-)
 leum carrier.)

Earl Glen Whitehead for applicant. Bertram S. Silver
 and Edward M. Berol, by Bertram S. Silver, for Lang Transporta-
 tion Corporation, Fortier Transportation Company, Acme Trans-
 portation, Inc., and Pacific Truck Service, Inc.; Lloyd R. Guerra
 for Cantlay & Tanzola, Inc., and Allyn Tank Line; Gordon W. Knapp,
 by Sanford A. Waugh, for Clarence J. Lamb, Lora Lamb, and Colin J.
Boone, copartners, doing business as Lamb Transportation Company,
 interested parties.

O P I N I O N

Applicant herein requests a certificate of public con-
 venience 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 subject application was stamped "Rec'd Public Utilities Comm. State of Calif. 1950 Apr - 3 PM 3:07". Because of this apparent filing of the subject application after March 30, 1950, the "grandfather" date, a public hearing on the application was held before Examiner Rogers in Los Angeles, on August 28, 1950, at which time evidence concerning the facts of the filing of the application was received, and the matter was continued to September 1, 1950. No appearance for applicant having been made on September 1, 1950, the matter was submitted for decision.

The records of the Commission show that the applicant holds an active radial highway common carrier permit. His verified application alleges that he was operating as a radial highway common carrier of petroleum products in bulk, as authorized by said permit, on September 1, 1949, and continuously thereafter. At the hearing, applicant testified he has been in the business of hauling petroleum products under a radial highway common carrier permit since 1942. He further testified that, on March 29, 1950, in Long Beach, California, he mailed to the office of the Commission in San Francisco the single verified copy of the subject application which was stamped filed in San Francisco on April 3, 1950. Such mailing constituted a "filing" (Government Code Sections 11000 and 11003), and was prior to March 30, 1950, the "grandfather" date. Subsequently, the applicant filed the exhibits and number of copies of the application required by the rules of the Commission.

Although over one hundred carriers of petroleum products were notified of the hearings herein, only seven were represented

theroat. The representatives of these seven carriers stated that, as applicant was actually operating on and after September 1, 1949, the carriers have no objection to the applicant's receiving such authority as the Commission determines he is entitled to obtain.

Upon the pleadings, records and evidence set forth hereinabove, we find that applicant was, on September 1, 1949, and thereafter, operating under a permit issued by the Public Utilities Commission, as a radial highway common carrier (as the term "radial highway common carrier" is defined in Chapter 223, Statutes of 1935 as amended), that applicant filed a verified written application for a certificate of public convenience and necessity to operate as a petroleum irregular route carrier on March 29, 1950, and, therefore, under the facts in this matter, applicant should receive a certificate declaring that public convenience and necessity require that Richard E. Cowan, doing business as Dick Cowan Tank Line, establish and operate services as a petroleum irregular route carrier to the extent set forth in the ensuing order.

Richard E. Cowan, doing business as Dick Cowan Tank Line, is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be 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 hearings having been held thereon, and the Commission 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 Richard E. Cowan, doing business as Dick Cowan Tank Line, 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, 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.

R. Z. [Signature]
Justice F. [Signature]
[Signature]
[Signature]
[Signature]
 COMMISSIONERS