

Decision No. 44913

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 HARBOR REFINING & TRANSPORTATION CO., )  
 a copartnership consisting of HAROLD C. )  
 MORTON, H. A. McOWEN, H. S. KOHLBUSH, )  
 and CHESTER F. DOLLEY, for a certificate )  
 of public convenience and necessity to )  
 operate an automotive freight service ) Application No. 31211  
 for the transportation of petroleum )  
 and petroleum products between all points )  
 in California as a petroleum irregular )  
 route carrier based upon operations con- )  
 ducted on and after September 1, 1949, )  
 under radial highway common carrier permit.)

Hanna and Morton, by B. W. Burkhead, for applicant;  
Lloyd R. Guerra, for Cantlay & Tanzola, Inc., and Allyn Tank  
 Line; Gordon & Knapp, by Sanford A. Waugh, for Lamb Transportation  
 Company, protestants; Bertram S. Silver and Edward M. Berol, by  
Bertram S. Silver, for Lang Transportation Corp., Fortier Trans-  
 portation Co., Acme Transportation, Inc., and Pacific Truck Service,  
 Inc., interested parties.

### O P I N I O N

By the above application, request is made of the Commis-  
 sion that it issue a certificate of public convenience and necessity  
 to Harold C. Morton, H. A. McOwen, H. S. Kohlbush, Chester F. Dolley,  
 Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R.  
 McOwen, copartners doing business under the fictitious firm name and  
 style of Harbor Refining Company, authorizing them 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.

Public hearing on the application was held before Examiner Rogers in Los Angeles on September 1, 1950, at which time and place the applicant's attorney, with the consent of the interested parties and protestants, submitted the application upon the pleadings and the records of the Commission. The matter is now ready for decision.

At the completion of the hearing, applicant's attorney orally requested that a copy of any proposed decision be delivered to him prior to action thereon by the Commission. At the suggestion of the Examiner, a written petition for a proposed report pursuant to rules 69 and 70 of the Order Revising Rules of Practice and Procedure (Decision No. 43994, dated March 28, 1950) was filed on September 8, 1950. For the reason that the petition was not filed prior to the conclusion of the hearing, as required by rule 69, and for the additional reason that the order herein grants to applicant the authority requested, the Petition for Proposed Report will be denied.

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 records of the Commission show that, on June 7, 1944, Harold C. Merton, H. A. McOwen, H. S. Kohlbush, and Chester F. Dolley doing business as Harbor Refining & Transportation Co., received from the California Public Utilities Commission a permit as a radial highway common carrier. This permit was in effect on September 1, 1949, and thereafter.

On March 29, 1950, within the 180-day period specified in the 1949 amendment to Section 50 3/4 of the Public Utilities Act, the original subject application of the Harbor Refining & Transportation Co. was filed with, and accepted by, the Commission. This application alleges, among other things, that Harbor Refining & Transportation Co. is a copartnership consisting of Harold C. Morton, H. A. McOwen, H. S. Kohlbush, and Chester F. Dolley; that applicant is, and at all times since 1944 has been, the owner and holder of Permit No. 19-18546, authorizing the applicant to operate as a radial highway common carrier (as the term "radial highway common carrier" is defined in Chapter 223, Statutes of 1935, as amended); that, at all times since said date, applicant has conducted operations under said permit in the transportation of petroleum and petroleum products in bulk, in tank trucks and trailers, between points in the State of California; that applicant was, on September 1, 1949, operating as a radial highway common carrier of petroleum and petroleum products to the full extent as authorized by said Permit No. 19-18546, and has continuously so operated from said date to the date of the application.

Upon the pleadings and records set forth hereinabove, it is found that Harold C. Morton, H. A. McOwen, H. S. Kohlbush, and Chester F. Dolley, doing business as Harbor Refining & Transportation Co., a copartnership, were, on September 1, 1949, and thereafter, engaged in the transportation of petroleum and petroleum products, in bulk, in tank trucks and tank trailers, pursuant to a permit issued by the Public Utilities Commission, as a radial highway common carrier; that they filed an 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) on March 29,

1950, and, therefore, said applicants are entitled to a certificate of public convenience and necessity authorizing them to perform a service throughout the state as a petroleum irregular route carrier.

In addition to the foregoing facts, the application alleges that the name, Harbor Refining & Transportation Co., has been changed to Harbor Refining Company, and that, with the consent of the four original partners, four additional persons, Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R. McOwen, have become general partners. The prayer of the application is that a certificate of public convenience and necessity be granted to all eight partners, doing business as Harbor Refining Company, authorizing them to engage in operations as a petroleum irregular route carrier between all points in the State of California. Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R. McOwen, having become members of the partnership, and the name thereof having been changed to Harbor Refining Company, no good cause appears why a certificate should not be granted all eight members of the partnership doing business under the latter name. From the application, it appears that the new partnership will have adequate finances and sufficient equipment to perform the contemplated services. As the new partnership will include the former partners who have been engaged in performing the service contemplated under the requested authority, it appears that the new partnership is adequately experienced in the type of operation proposed. For the foregoing reasons, a transfer of the certificate of public convenience and necessity herein granted to Harold C. Morton, H. A. McOwen, H. S. Kohlbush, and Chester F. Dollwy, copartners doing business under the name of Harbor Refining & Transportation Co., to Harold C. Morton, H. A. McOwen, H. S. Kohlbush, Chester F. Dolley, Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R. McOwen, copartners, doing business

under the fictitious firm name and style of Harbor Refining Company, does not appear to be contrary to the public interest, and it is our conclusion that the authority sought should be granted. Such authority shall not be construed to be a finding of the value of the operative rights herein authorized to be transferred.

Harold C. Morton, H. A. McOwen, H. S. Kohlbush, Chester F. Dolley, Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R. McOwen, are, and each of them is, 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. 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 Commission having found that Harold C. Morton, H. A. McOwen, H. S. Kohlbush, and Chester F. Dolley, doing business as Harbor Refining & Transportation Co., a copartnership, were conducting operations on and after September 1, 1949, as a radial highway common carrier, pursuant to a permit issued by the Public Utilities Commission for the transportation of petroleum products in bulk, in tank trucks and tank trailers, and that they filed an application for a certificate of public convenience and necessity to operate as a petroleum irregular route carrier, as defined in Section 2 3/4 of the Public Utilities Act, on or before March 30, 1950, said Harold C. Morton, H. A. McOwen, H. S. Kohlbush,

and Chester F. Dolley, copartners doing business as Harbor Refining & Transportation Co., are entitled to a certificate of public convenience and necessity, authorizing them to perform a service as a petroleum irregular route carrier throughout the state and the Commission having found, in addition, that the transfer of the operative right herein granted to Harold C. Morton, H. A. McOwen, H. S. Kohlbush, and Chester F. Dolley, doing business as Harbor Refining & Transportation Co., to Harold C. Morton, H. A. McOwen, H. S. Kohlbush, Chester F. Dolley, Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R. McOwen, copartners doing business under the fictitious firm name and style of Harbor Refining Company, is not adverse to the public interest,

IT IS HEREBY ORDERED:

A (1) That a certificate of public convenience and necessity be, and it hereby is, granted to Harold C. Morton, H. A. McOwen, H. S. Kohlbush, and Chester F. Dolley, copartners, doing business under the name of Harbor Refining & Transportation Co., 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 bulk, 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, said partners, within thirty (30) days after the effective date hereof, shall file a written acceptance of the certificate herein granted.

IT IS FURTHER ORDERED:

B (1) That Harold C. Morton, H. A. McOwen, H. S. Kohlbush, and Chester F. Dolley, copartners doing business under the fictitious firm name and style of Harbor Refining & Transportation Co., be, and they hereby are, authorized to sell and transfer to Harold C. Morton, H. A. McOwen, H. S. Kohlbush, Chester F. Dolley, Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R. McOwen, copartners doing business under the fictitious firm name and style of Harbor Refining Company, the certificate of public convenience and necessity granted by Paragraph A (1) of the order herein, and said Harold C. Morton, H. A. McOwen, H. S. Kohlbush, Chester F. Dolley, Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R. McOwen, be, and they hereby are, authorized to acquire said certificate.

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

Within sixty (60) days from the effective date hereof, and on not less than five (5) days' notice to the Commission and to the public, applicants Harold C. Morton, H. A. McOwen, H. S. Kohlbush, Chester F. Dolley, Lynn Morton, Richard K. Jamison, Sherwood A. McOwen, and Howard R. McOwen, shall establish the service authorized by Paragraph A(1) of the order herein 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 timetables.

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

Dated at San Francisco California, this 17<sup>th</sup>  
day of October, 1950.

R. Z. McIntire  
James F. Galloway  
Frank H. Russell  
Harold P. Kilds  
Herbert H. Pollett  
COMMISSIONERS