

ORIGINAL

Decision No. 45681

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
L. W. POTTER, doing business as L. )	
W. POTTER TRUCKING COMPANY, for a )	
certificate of public convenience )	
and necessity authorizing the )	Application No. 32088
transportation of crude oil and )	
fuel oil as a petroleum irregular )	
route carrier. )	

Marvin Handler, for Applicant.

O P I N I O N

By this application as amended L. W. Potter seeks a certificate of public convenience and necessity authorizing him to transport petroleum and petroleum products in tank trucks and tank trailers as a petroleum irregular route carrier between points and places in the counties of Kern, San Luis Obispo, Santa Barbara and Ventura. The proposal is limited to those shipments which originate in or are destined to an oil field. Applicant also requests that he be exempted from the provisions of Highway Carriers' Tariff No. 6 and be allowed to publish a tariff on an hourly rate basis.

No protests were received respecting the application. A public hearing thereon was held before Examiner Gillard on April 20, 1951, in San Francisco, at which time the matter was submitted for decision.

Applicant commenced his present business in May, 1946, and has operated in the four counties mentioned continuously since that time. He owns a terminal with office and shop facilities

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(1) Applicant testified he did not apply for "grandfather" rights under Chapter 1399, Statutes of 1949, because he believed that legislation did not apply to his operation.

in Bakersfield and leases property in the Cuyama Valley (Santa Barbara County) where he has erected shops, gas pumps, buildings and living quarters for his employees. His total working force consists of 25 people. At the time the application was filed he had 15 pieces of pump or vacuum tank equipment, ranging in size from 26 to 80 barrels capacity (42 gallons per barrel) and since then has added to his fleet one 106 barrel capacity vacuum tank.

His balance sheet as of October 31, 1950, shows assets of \$111,178 and net worth amounting to \$85,171. For the first ten months of 1950 his operating net profit was \$11,880, and his operating gross income was \$122,776.

Applicant's transportation business is confined to services rendered in connection with the drilling and operation of oil wells. Oil is transported to the fields to manufacture emulsified mud, to clean the drilling hole, or to lubricate or loosen the pipe. Test tanks and sump holes in the field are drained and the oil transported to storage tanks. Only occasionally does applicant transport oil without also rendering some additional service in the field.

The vacuum tank operates on air pressure, with no material passing through the pump. In this respect it has rendered the pump type equipment obsolete, and applicant now possesses but two units of this type. The vacuum tank is loaded by air suction and unloaded by air pressure. It can thus deliver oil to a new well site and force the oil under pressure into the hole to loosen pipe which has become stuck, or lubricate the hole. It will suck mud and debris from the hole. It can also be used in the manufacture of emulsified mud (necessary to drilling operations) by using its air pressure to agitate and mix the oil and the mud.

Applicant testified to typical transportation services rendered by him, both before and after September 1, 1949, for 71 customers between numerous points and places within the four counties mentioned. A representative of Richfield Oil Company testified to the need for applicant's services in the area involved, and its need for those services particularly in connection with all new development work, where it has no oil storage facilities.

Upon the facts of record we find that public convenience and necessity require that L. W. Potter, doing business as L. W. Potter Trucking Company, establish and operate services as a petroleum irregular route carrier between all points and places in the counties of Kern, San Luis Obispo, Santa Barbara and Ventura, subject to the restriction that the point of origin or the point of destination be an oil field.

L. W. Potter 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 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 over a particular route. 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.

Applicant also requests that he be exempted from the provisions of Highway Carriers' Tariff No. 6 requiring the observance of rates in cents per 100 pounds and that he be allowed to publish a tariff naming the following hourly rates:

28-barrel equipment, or less, with driver - \$6 per hour,  
29 to 80-barrel equipment, with driver - \$7 per hour,  
81 to 108-barrel equipment, with driver - \$12 per hour.

Applicant's sixteen units of equipment have the following carrying capacities:

1 truck - 28 barrels (1176 gallons)  
1 truck - 29 barrels (1218 gallons)  
9 trucks - 32 barrels (1344 gallons)  
1 truck - 34 barrels (1428 gallons)  
1 truck - 35 barrels (1470 gallons)  
1 truck - 41 barrels (1722 gallons)  
1 truck - 80 barrels (3360 gallons)  
1 truck - 106 barrels (4452 gallons)

Applicant points out that Item 80-B of Highway Carriers' Tariff No. 6 provides that on commodities other than asphalt and road oil the transportation charges shall not be less than those applicable upon shipments of 3,000 gallons, and that only two of his pieces of equipment will carry that quantity. He also states that there are no constructive mileages in the area in which he operates, and that the rugged mountain terrain and narrow, steep roads, would make rates based on his actual road miles inadequate and unprofitable. He further testified that in most instances his equipment spends more time loading or unloading in the oil fields than it does in actual travel over the highways and therefore a rate based upon mileage would be inadequate.

Applicant testified that his six dollar and seven dollar rates have been in effect, unchanged, since 1946. However, only one of his trucks (the 28-barrel capacity tank) would take the proposed six dollar rate, whereas copies of his 1950 freight bills put into evidence by applicant disclose that the six dollar rate was applied to six different vehicles. On the surface, it therefore appears that the rate has been increased on five pieces of equipment.

Applicant's 106-barrel capacity tank was acquired in February, 1951, and up to the date of the hearing had not been used to transport petroleum products. There was no attempt made to explain the basis of the \$12 an hour charge for this vehicle.

The showing made indicates that hourly rather than weight rates are required under the circumstances and conditions peculiar to applicant's service. The profit and loss statement heretofore referred to discloses that applicant operates at a profit under the proposed rates and these rates thus appear compensatory. However, the record does not show that the particular hourly rates proposed are just, reasonable, and otherwise proper. Applicant may establish rates conforming with the minimum rates or file an application seeking authority to deviate therefrom to the extent that he may still deem such action necessary and justified.

O R D E R

Application as above-entitled having been filed 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 is hereby granted to L. W. Potter, doing business as L. W. Potter Trucking Company, 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 pump or vacuum type tank trucks and trailers between all points and places in the Counties of Kern, San Luis Obispo, Santa Barbara and Ventura; provided

that applicant shall transport only those shipments which have origin or destination in an oil field.

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

- a. Applicant shall file a written acceptance of the certificate herein granted, within a period of not to exceed 30 days after the effective date hereof.
- b. Within 60 days after the effective date hereof and on not less than 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 time tables and satisfactory tariffs conforming with the provisions of Highway Carriers' Tariff No. 6.

(3) That in all other respects the application is hereby denied.

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

Dated at Los Angeles, California, this 8th day of May, 1951.

R. J. [Signature]  
Justus J. [Signature]  
Harold [Signature]  
[Signature]  
[Signature]  
COMMISSIONERS