

ORIGINAL

Decision No. 4SS64

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 Robert Russel Jones and J. C. Barch,  
 dba J & B CONSTRUCTION CO. for a  
 petroleum contract carrier permit.

) Application No. 15-5533  
 ) T-49202  
 )  
 )

Fred Fischer, attorney, for applicant.  
Lawrence N. Baker, attorney, for Lunsford Tank Lines,  
 Jackson Supply, B & R Service and Johnson Vacuum  
 Tank Service, and Paul E. Tibbets, for Routh Trans-  
 portation, protestants; John Newman and Alfred Flekal  
 for Oilfield Vacuum Service, and L. W. Potter for  
 L. W. Potter Trucking Company, interested parties.

## O P I N I O N

Applicant herein has requested authority to conduct operations as a petroleum contract carrier pursuant to Section 3603 of the Public Utilities Code. A public hearing was held on May 26, 1953, before Examiner Syphers at East Bakersfield, California, at which time evidence was adduced and the matter submitted.

At the hearing one of the partners of applicant company testified that applicant is in the business of laying and repairing pipe lines and also of transporting water, oil, drill compound, and rotary mud. In this business applicant operates three gang trucks, two welding trucks and one 50-barrel vacuum truck. The vacuum truck is used to transport oil and other types of fluid. About 90% of the hauling performed is over private roads and the remainder is over public highways.

About 25% of applicant's business is devoted to hauling fluids, and of these fluids approximately one-third consists of petroleum products. The witness testified that applicant has been serving five main customers in the vicinity of Taft, Fellows and McKittrick. He further testified that it was the intention of applicant to provide hauling for any one who would agree to pay the rates.

The president of Routh Transportation Company testified that his company presently operates thirty-five vacuum trucks and that it is ready, willing, and able to transport any and all of this type of hauling which may be tendered to them.

Upon this record we are asked to decide whether or not applicant should be granted a petroleum carrier permit. Section 3602 of the Public Utilities Code requires that any petroleum contract carrier must obtain a permit to engage in this business. Section 3603 provides the form and contents of an application for a permit. Section 3604 provides as follows:

"3604. Before a permit is issued the commission shall require the applicant to establish ability and reasonable financial responsibility to initiate the proposed operations. The commission may, with or without hearing, issue or refuse to issue the permit. If the commission finds that the applicant possesses the ability and financial responsibility to initiate the proposed operations, it shall issue a permit as prayed for."

On this record we have an applicant who has requested authority to operate as a petroleum contract carrier, but at the hearing one of the partners of applicant company testified that it was the intention to haul for any one. A petroleum

contract carrier is defined in Section 3518 of the Public Utilities Code as follows:

"3518. 'Petroleum contract carrier' means any person or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever, who, under individual contracts or agreements, engages in the transportation of petroleum or petroleum products in tank truck or tank trailer for compensation over any public highway in this State."

An analysis of this record leads us to the conclusion, and we now find, that applicant's offer of service as set out in the testimony presented in this hearing is not that of a contract carrier. Rather applicant specifically testified that it intended to haul for any and every shipper who would pay the rates. This clearly evidences an intention to conduct a common carrier operation. In other words, it constitutes an unequivocal intention to dedicate property to a public use (see Samuelson vs. Public Utilities Commission, 36 Cal. 2d 722, 733).

While it is true the statute, Section 3604, provides that the Commission shall issue a permit if it finds that the applicant "possesses the ability and financial responsibility to initiate the proposed operations", this does not mean that the Commission must issue a permit to one who does not intend to operate as a contract carrier. In this case the application is for authority to operate as a petroleum contract carrier, but the expressed intention of applicant is to conduct operations as a common carrier. Therefore, we find that applicant has not met the terms of the statute, and has not made a bona fide offer to conduct operations as a petroleum contract carrier. Upon this record, therefore, we conclude to deny this application without

prejudice to the filing by applicant of any future application for common carriage or contract carriage if it should meet the requirements and intent of the statutes.

ORDER

Application as above entitled having been filed, public hearing having been held, and the Commission being fully advised in the premises,

IT IS ORDERED that the application of Robert R. Jones and J. C. Barch, a partnership, doing business as the J & B Construction Co., for a permit to conduct operations as a petroleum contract carrier, as defined in Section 3518 of the Public Utilities Code, be, and it hereby is, denied.

Dated at San Francisco, California, this 21st day of July, 1953.

R. T. [Signature]  
President  
Justin J. Cooney  
Harold H. Hills  
Kenneth Potter  
Commissioners

Peter E. Mitchell  
Commissioner....., being  
necessarily absent. Did not participate  
in the disposition of this proceeding.