

ORIGINAL

Decision No. ~~48680~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ROY L. JOHNSTON,)
 dba JOHNSTON VACUUM TANK SERVICE, for a Certificate)
 of Public Convenience and Necessity as a Petroleum) Application
 Irregular Route Carrier to operate a vacuum tank) No. 34800
 truck service within a radius of 90 miles from base) (as amended)
 of operations, with emergency service to all areas)
 in the State of California being developed or ex-)
 plored for oil.)

In the Matter of the Application of ROBERT RUSSELL)
 JONES and J. C. BARTCH, dba J & B CONSTRUCTION) Application
 COMPANY, for a Certificate of Public Convenience) No. 34807
 and Necessity as a Petroleum Irregular Route Carrier) (as amended)
 to operate a vacuum tank truck service within a ra-)
 dius of 90 miles from base of operations, with)
 emergency service to all areas in the State of)
 California being developed or explored for oil.)

In the Matter of the Application of PERRY A. REDWINE,)
 dba B & R SERVICE COMPANY, for a Certificate of Pub-) Application
 lic Convenience and Necessity as a Petroleum Irregu-) No. 34809
 lar Route Carrier to operate a vacuum tank truck) (as amended)
 service within a radius of 90 miles from base of)
 operations, with emergency service to all areas in)
 the State of California being developed or explored)
 for oil.)

In the Matter of the Application of VALLEY VACUUM)
 TANK SERVICE, INC., a corporation, for a Certificate) Application
 of Public Convenience and Necessity as a Petroleum) No. 34823
 Irregular Route Carrier to operate a vacuum tank) (as amended)
 truck service within a radius of 90 miles from base)
 of operations, with emergency service to all areas)
 in the State of California being developed or ex-)
 plored for oil.)

Deadrich, Gill and Bates by John H. Stewart,
for applicants.

Paul E. Tibbetts for Routh Transportation as
interested party as to all applicants except as to
J & B Construction Company, Application No. 34807,
which it protests.

Marvin Handler, for L. W. Potter Trucking Co.,
interested party.

Phil Jacobson for Alfred Flekel and John Newman
doing business as Oilfield Vacuum Service, interested
parties.

O P I N I O N

Applicant Roy L. Johnston doing business as Johnston Vacuum Tank Service filed his Application No. 34800 on October 16, 1953 alleging that the following facts exist justifying the granting of the requested certificate:

"Since February, 1948, applicant has continuously engaged in operating a vacuum tank service, with his primary base at Taft, California. The services performed by applicant consist of oiling and watering roads, cleaning sumps and tanks, and of hauling water, waste materials, prepared drilling mud, drilling fluids, and oils used primarily for drilling purposes. The use of mechanical pumps is occasionally required in the performance of these services, and applicant has or will install such mechanical pumps as auxiliary equipment on the equipment used in his operation.

"The major portion of applicant's operation is performed within a radius of 90 miles from Taft, California. Applicant provides service as required, twenty-four hours a day, on an "on-call" basis. There are no conditions governing these services, save that a higher rate is charged for work done between 5:00 P.M. and 7:00 A.M. or on legal holidays.

"A substantial amount of applicant's operation contributes to the exploration for and production of oil; applicant hauls prepared drilling mud, drilling fluids and oils, and cleans oil sumps and tanks. In these activities applicant is occasionally called upon to travel to other areas in the State of California which are more than the aforementioned 90 miles distant from Taft, California, and at times to establish a different base of operations.

"Approximately 4.81 per cent of past operations have consisted of hauling petroleum products over public highways; approximately 88 per cent of all operations were on private property; and approximately 7.19 per cent of all operations other than petroleum products on public highways.

"In performing the above-mentioned services, applicant has heretofore been operating under the authority of Radial Highway Common Carrier Permit No. 15-4429, and Petroleum Contract Carrier Permit No. 15-5042, issued by this Commission. Applicant has been informed that the Commission, by its Decision No. 48864, dated July 21, 1953, in the matter of the application of J & B Construction Company, has determined that an operation of a type and nature similar to applicant's is not entitled to a permit as a petroleum contract carrier, and that the Commission has further indicated that the correct authority for this type of operation is a certificate of public convenience and necessity as a petroleum irregular route carrier."

As filed, the application provided that the proposed rates to be charged would be \$7.63 per hour plus federal tax for service in the use of the 33-barrel vacuum tank unit, with the operator, for all time elapsed between departure from base of operations and return, with \$2.00 per hour additional for service rendered on Saturdays, Sundays and legal holidays with a minimum charge for two hours' service for work done between 7:00 A. M. and 5:00 P.M. and a minimum charge for three hours' service for work done between 5:00 P.M. and 7:00 A.M. At the hearing the basic hourly charge was amended to \$8.00 per hour instead of \$7.63. Another amendment was made as to restrictions which will be discussed later.

Similar allegations were made by the other applicants. Applicants Robert Russell Jones and J. C. Barch doing business as J & B Construction Company, Application No. 34807 also are based at Taft. They, after request was granted, amended their applications as above indicated in reference to applicant Johnston. In addition they abandoned their request to be authorized to render any service beyond a 90-mile radius from their base of operations.

Likewise the allegations and amendments of applicant Perry A. Redwine, doing business as B & R Service Company were the same except that his base of operations is Cuyama, California. The same may be said of Valley Vacuum Tank Service, Inc., which is based in Bakersfield, California. This applicant has more equipment and its proposed rates provide higher amounts for the hourly use of larger equipment. This applicant like applicant Johnston was unwilling to waive his request to be permitted to perform emergency service to points more than 90 miles distant from its base. It would restrict its operations however to the San Joaquin Valley.

Public hearing was held on the above applications in Bakersfield, California, on January 19, 1954 before Examiner Rowe. By stipulation the four matters were consolidated for hearing.

Evidence both oral and documentary was adduced and the matter was duly submitted.

One public witness representing the Texas Company testified on behalf of applicant Johnston. Another such witness, representing the Standard Oil Company testified on behalf of applicant J & B Construction Company and two such witnesses appeared on behalf of Valley Vacuum Tank Truck Service, Inc. The latter two witnesses represented respectively the Shell Oil Company and Clifton Reed Company.

According to the applicants, each, with the exception of applicant Redwine, have been serving a substantial portion of the public engaging in the business of drilling for and of producing oil and of transporting oil through pipelines. Applicant Redwine performs 98 per cent of his service for the Richfield Oil Company. The balance of his operation has been for the Hancock Oil Company and for Griggs Oil Company. However, he wishes to offer his services generally to the public in his proposed area.

The Commission finds that public convenience and necessity require that each of the four above-named applicants render service as a petroleum irregular route carrier for the transportation of petroleum products consisting only of drilling fluids, oils for drilling purposes and road oil within the service areas hereinafter described in the order issuing authority to the respective applicant. It is further found that public convenience and necessity require that applicant Johnston and applicant Valley Vacuum Tank Truck Service, Inc. perform service beyond said territories as described in the respective orders herein but only for customers operating in and having headquarters in the respective service areas heretofore referred to.

The testimony of the various applicants as to the customers served and the testimony of the witnesses who have been using the services indicates a public need for the operations proposed by the

Commission
applicants. Applicants, Jones and Bartch, while their revenue has been substantial during 1953, received only a small portion of such revenue from the type of operation proposed. This they explained was due to the Commission's denial to them of a petroleum contract carrier permit ⁽¹⁾ and because of mechanical difficulties experienced with their equipment.

Counsel for Routh Transportation at the conclusion of the hearing stated that his company withdrew its protest to each of the applications except that it wished to continue its protest to the granting of a certificate to applicants Jones and Bartch. This protestant, however, presented no evidence of its own operations and consequently, in no way showed that the granting of operating rights to Jones and Bartch would injure Routh Transportation. Counsel for L. W. Potter Trucking Co. stated that, provided the operating authority granted is restricted to the right to continue the present operations of the four applicants, his client had no objection to the granting of the rights requested. L. W. Potter Trucking Co. has operating authority in Santa Barbara, Ventura, San Luis Obispo and Kern County and consequently has no interest in any operations of applicants to points outside of said counties.

The request of Roy L. Johnston and of Valley Vacuum Tank Truck Service, Inc. to render a so-called emergency service to points beyond the service areas requested by them will be granted by authorizing them to serve customers who have headquarters in and around Bakersfield and Taft, respectively, by going to other parts of the State of California. Counsel for L. W. Potter requested that some statement be made in the opinion as to the rights of petroleum

(1) Decision No. 48864, dated July 21, 1953, in Application No. 15-5533, T-49202.

irregular route carriers to operate under petroleum contract carrier permits. It would appear to be lawful for a carrier to operate under a petroleum irregular route carrier certificate and a petroleum contract carrier permit provided there is no violation of Section 3542 of the Public Utilities Code.

The restrictions stipulated to by the respective parties will be incorporated in the four certificates of public convenience and necessity set forth in the following orders:

These are the restrictions heretofore imposed on other carriers carrying on business in the manner proposed by these applicants, such as F. I. Kirchhof⁽²⁾ and L. W. Potter Trucking Company⁽³⁾. These restrictions require that all points served, except breaks in pipelines, be within two miles of a well or well site as hereinafter defined. Upon the showing made in this proceeding that rates based upon weights or distances moved are inappropriate for this type of operation, applicants will be authorized to publish rates on an hourly basis.

Each of the four applicants herein 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. 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

Applications as above-entitled having been filed, public hearing having been held thereon, the Commission being fully advised

(2) Decision No. 49472 dated December 21, 1953 in Application No. 34691.

(3) Decision No. 45681 dated May 8, 1951 in Application No. 32088.

in the premises and hereby 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 Roy L. Johnston doing business as Johnston Vacuum Tank Service, authorizing the establishment and operation of service as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, for the transportation of petroleum and petroleum products in pump or vacuum-type trucks and trailers between all points and places within 90 miles of Taft, California and also to serve customers with headquarters within said radius by operating beyond said area to other points in California provided that said applicant Johnston shall transport only those shipments which have both origin and destination within two miles of an oil well, well site, or pipeline break, a well site being any location upon which an oil well is about to be constructed, is being constructed, or is completed but is not yet producing.

(2) That a certificate of public convenience and necessity be, and it hereby is, granted to Robert Russell Jones and J. C. Barch doing business as J & B Construction Company, authorizing the establishment and operation of service as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, for the transportation of petroleum and petroleum products in pump or vacuum type trucks and trailers between all points and places within 90 miles of Taft, California, provided said applicants Jones and Barch shall transport only those shipments which have both origin and destination within two miles of an oil well, well site, or pipeline break, a well site being any location upon which an oil well is about to be constructed, is being constructed, or is completed but is not yet producing.

(3) That a certificate of public convenience and necessity be, and it hereby is, granted to Perry A. Redwine doing business as

B & R Service Company, authorizing the establishment and operation of service as a petroleum irregular route carrier as defined in Section 214 of the Public Utilities Code, for the transportation of petroleum and petroleum products in pump or vacuum type trucks and trailers between all points and places within 90 miles of Cuyama, California, provided said applicant Redwine shall transport only those shipments which have both origin and destination within two miles of an oil well, well site, or pipeline break, a well site being any location upon which an oil well is about to be constructed, is being constructed or is completed but is not yet producing.

(4) That a certificate of public convenience and necessity be, and it hereby is, granted to Valley Vacuum Tank Truck Service, Inc., a corporation, authorizing the establishment and operation of service as a petroleum irregular route carrier as defined in Section 214 of the Public Utilities Code, for the transportation of petroleum and petroleum products in pump or vacuum type trucks and trailers between all points and places within 90 miles of Bakersfield, California, and also to serve customers with headquarters within said radius by operating beyond said area to other points within the San Joaquin Valley provided that said corporate applicant shall transport only those shipments which have both origin and destination within two miles of an oil well, well site, or pipeline break, a well site being any location upon which an oil well is about to be constructed, is being constructed, or is completed but is not yet producing.

(5) That in providing service pursuant to the certificates herein granted, each of the four above-named applicants shall comply with and observe the following service regulations:

- (a) Each applicant shall file a written acceptance of the respective certificate granted to such applicant or applicants within a period of not to exceed thirty days after the effective date hereof.

(b) Within sixty days after the effective date hereof, and on not less than five days' notice to the Commission and the public, each applicant shall establish the respective service said applicant or applicants are herein authorized to establish and perform and each shall file in triplicate, and concurrently make effective, appropriate tariffs naming rates, rules and regulations on an hourly basis and as described in the foregoing opinion and in the applications here involved.

(6) That in all other respects Applications Nos. 34800, 34807, 34809 and 34823 are hereby denied.

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

Dated at San Francisco, California, this 16th day of February, 1954.

A. J. Anderson
President
Justice J. Caswell
Samuel H. Potter
J. D. McMillan
Gene Rogers
Commissioners