

ORIGINALDecision No. 50163

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 MARVIN BARNETT for a certificate of
 public convenience and necessity as
 a petroleum irregular route carrier
 to operate a vacuum tank truck service
 within a radius of 90 miles from base
 of operations, with emergency service
 to all areas in the State of Cali-
 fornia being developed or explored
 for oil.

Application No. 35276

J. A. Galvin, attorney, for applicant. Glanz & Russell, by Theodore W. Russell, for System Tank Lines, Inc., Asbury Transportation Co., Cantlay & Tanzola, Inc., and Ventura Truck & Transfer Co., and Paul L. Tibbets, for Routh Transportation Co., interested parties.
C. S. Abernathy, Senior Transportation Rate Expert, for the Commission's staff.

O P I N I O N

Marvin Barnett is now and has been, since May 1949, rendering service in Ventura County, California, pursuant to a radial highway common carrier permit, transporting petroleum products consisting of waste materials, prepared drilling mud, drilling fluids, oils used primarily for drilling purposes, and oils, fluids and waste materials drained from broken oil lines. He also oils and waters roads, cleans oil sumps and tanks, and hauls water. By the application herein, he sought authority to render a service as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, for the transportation of such of the foregoing items as are

included in the term "petroleum or petroleum products" in tank trucks or tank trailers via public highway between any two or more places in Ventura County, California.

Applicant has two tank trucks, one 45-barrel and one 50-barrel, equipped with vacuum pumps and hoses which he now uses and will use in the future.

He proposes to charge the following rates:

- (a) Base rate of \$8.50 per hour, plus federal tax, for 45-barrel vacuum tank unit for all time elapsing between departure from base of operations and return thereto;
- (b) Base rate of \$9.00 per hour, plus federal tax, for 50-barrel vacuum tank unit for all time elapsing between departure from base of operations and return thereto.

A public hearing on the application was held in Oxnard, California, on May 25, 1954 before Examiner Rogers. Evidence was presented and the matter was submitted. It is now ready for decision.

Several petroleum irregular route carriers and a Commission rate expert appeared at the hearing. The carriers and the Commission's expert were principally concerned with the territory proposed to be served and the rates to be collected for rendering the proposed service. The parties stipulated as follows:

- (1) Applicant's services as a petroleum irregular route carrier will be limited to the transportation of petroleum and petroleum products in vacuum-type tank trucks and tank trailers only, and in connection with and incidental to drilling, maintenance or reconditioning of oil wells or repair of pipe line breaks;
- (2) The area in which applicant will operate will be within a radius of twenty airline miles in all directions from the Fillmore city limits, including the City of Fillmore, Ventura County;

- (3) Applicant's rates will conform to the requirements of Local Vacuum and Pump Tank Truck Tariff No. 7, Cal. P.U.C. No. 16, of Southwestern Motor Tariff Bureau, J. L. Beeler, Agent.

Applicant testified that he operates nothing but vacuum trucks, that he proposes an "on-call" service and does not, and will not, operate over regular routes, that about 90% of his trips are entirely on private roads, and that all or a portion of each trip in the remaining 10% are on public highways. He stated that he renders the proposed service for several petroleum producing companies between points in the area defined in the stipulation, that they will need such service in the future, and that there are no certificated petroleum irregular route carriers rendering a similar service in the area involved.

Upon the evidence of record herein, we find that public convenience and necessity require that applicant establish and operate services as a petroleum irregular route carrier to the extent set forth in the ensuing order.

Marvin Barnett 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

Application having been made, the Commission being fully advised and 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 Marvin Barnett, authorizing the establishment and operation of a 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 vacuum-type tank trucks and tank trailers only, and in connection with and incidental to drilling, maintenance, or reconditioning of oil wells or repair of pipeline breaks between all points and places within a radius of 20 air-line miles in all directions from the city limits of the City of Fillmore, California, including the City of Fillmore.

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

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within sixty days after the effective date hereof and on not less than five days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs containing rates and charges conforming to those set forth in Local Vacuum and Pump Tank Truck Tariff No. 7, Cal. P.U.C. No. 16, of Southwestern Motor Tariff Bureau,

A. 35276 - MP/SL *

J. L. Boeler, Agent, and otherwise satisfactory to the Commission.

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

Dated at San Francisco, California, this 18th day of June, 1954.

[Signature]
President

[Signature]

[Signature]

Commissioners

Commissioner Justus F. Craemer, being necessarily absent, did not participate in the disposition of this proceeding.