

Decision No. 50476**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JOHN C. MOODY for a certificate of)
 public convenience and necessity as a)
 petroleum irregular route carrier to)
 operate a vacuum tank truck service) Application No. 35497
 within a radius of fifty miles from)
 base of operations, with emergency)
 service to all areas in the State of)
 California being developed or explored)
 for oil.)

L. H. Loughman for applicant. Johnston and Lucking, by Bruce Johnston, for T. A. Smith, doing business as Smith Trucking, Sheridan, Orr and Barnes, by Donald L. Benton, for Gilliard Petroleum Service, Inc., and J and G Oil Well Service, Inc., protestants. Glanz & Russell, by R. Y. Schureman, for System Tank Lines, Inc., and Routh Transportation, interested parties.

O P I N I O N

John C. Moody is an individual who since about November 1953 has been and now is engaged in the transportation of petroleum products, such as drilling fluid, oils for drilling purposes and road oils, pursuant to a radial highway common carrier permit issued by this Commission. He seeks authority as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, for the transportation of certain of petroleum products consisting of drilling fluids, oils for drilling purposes and road oils, within a radius of 50 miles from Ventura, his primary base of operations, with emergency service to all areas in the State of California being developed or explored for oil. He has, and will use, if certificated, the following equipment:

- (a) Two flat bed trucks.
 - (b) One 45-bbl. portable vacuum tank with pump.
 - (c) One 50-bbl. portable vacuum tank with pump.
- (The tanks are placed on the flat bed trucks for use)

He charges and proposes to charge the following rates per hour, plus federal tax, with a minimum charge for three hours' service:

\$8.65 per hour for 45 bbl. tank.
\$9.00 per hour for 50 bbl. tank.

A public hearing on the application was held in Oxnard on August 3, 1954, before Examiner Kent C. Rogers, evidence was presented, and the matter was submitted.

At the hearing applicant, System Tank Lines, Inc., and Routh Transportation, through their attorneys, stipulated as follows: if the application is granted, the authority shall be restricted to the transportation of petroleum and petroleum products, drilling fluids, oil and chemicals for drilling purposes and road oil in connection with the surfacing of roads, in bulk, in vacuum-type or pump-type tank trucks in connection with, or incidental to, the drilling, reconditioning maintenance or abandonment of an oil well or oil well site, or servicing its facilities and roads thereto, or the repair of pipe line breaks, between points and places in the Counties of Santa Barbara and Ventura, California.

The protesting parties refused to join in this stipulation.

The applicant testified that he commenced operations about November, 1953 with one tank, and acquired another one about January, 1954; that his services consist of oiling and watering roads, cleaning sumps and oil tanks, and hauling water, waste materials, prepared drilling mud, drilling fluids, and oils used

primarily for drilling purposes; that he mainly renders service for an oil-producing corporation; that in addition to the work performed for this one producer he has, since he commenced business, rendered service on a total of about eight occasions for three other oil-producing companies; that he has rendered and will render service to any producer desiring his services; that about 80 percent of his hauling is entirely on private roads and all or some portion of the balance is on public highways; that he also hauls pipe and machinery, which hauling accounts for about 30 percent of his gross income; and that the financial statement and operating statement attached to the application (Exhibit C) are correct.

An assistant drilling superintendent for applicant's principal customer testified that applicant has been serving the witness's company for not to exceed one year; that the applicant calls almost daily and gives good service; that the corporation has no contract with the applicant; that at times there is a shortage of equipment in the proposed service area which is available to render the type of service proposed and rendered by applicant; that in the past six months the witness has called two of the protesting carriers for service but could not get equipment from them; and that his company wants applicant's services continued.

The protestants have been granted certificates which are not yet effective. At the hearing they requested that the Commission consider the number of carriers in applicant's proposed

service area rendering the type of service he proposes, and argued that applicant is performing contract carrier operations rather than petroleum irregular route carrier operations. They presented no affirmative evidence.

The record shows that applicant has dedicated his property to the public use, thus taking his past operations out of the petroleum contract carrier classification. The question, therefore, is, do public convenience and necessity require that applicant be given the petroleum irregular route carrier certificate. As heretofore stated, the record shows that one oil producer needs the type of service rendered by applicant and the protestants. In our opinion this shows that applicant's services, in addition to those of other carriers, are needed to adequately service the area involved.

Upon the evidence of record herein we find that applicant has the experience and financial ability to conduct the proposed operation and 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.

No finding is made, however, concerning the propriety of the rates, rules and regulations which applicant proposes to maintain for the service herein authorized.

John C. Moody 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 John C. Moody, 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, drilling fluids, oil and chemicals for drilling purposes and road oil in connection with the surfacing of roads, in bulk, in vacuum-type or pump-type tank trucks in connection with, or incidental to, the drilling, reconditioning, maintenance or abandonment of an oil well or oil well site, or servicing its facilities and roads thereto, or the repair of pipe line breaks, between points and places in the Counties of Santa Barbara and Ventura, State of California.

(2) That in providing service pursuant to the certificate herein granted there shall be compliance with 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 upon 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 satisfactory to the Commission.

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

Dated at San Francisco, California, this 24th day of August, 1954.

[Signature]
President

[Signature]

[Signature]

Commissioners

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