

Decision No. 90179 APR 10 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of)
))
JAMES W. BERG and JOHN W. BERG,)
a partnership, doing business)
under the fictitious name of)
DUTCH LINE, for a certificate of)
public convenience and necessity)
authorizing operations as a petro-)
leum irregular route common)
carrier.)

Application No. 58590
(Filed January 8, 1979,
Amended March 2, 1979)

O P I N I O N

Applicant John W. Berg presently operates pursuant to a petroleum contract carrier permit issued to him by the Commission under File T-107,226. This permit authorizes him to transport petroleum and petroleum products in tank trucks and tank trailers between all points in the State of California. Applicant James W. Berg has worked in the business operations, now contemplated to be conducted as a partnership, with his father, John W. Berg, for a number of years.

The applicants have applied in this proceeding for a certificate of public convenience and necessity which, if granted, would authorize them to operate as a petroleum irregular route carrier, as defined in Section 214 of the Code, between all points and places in the State of California.

According to the application as amended, the proposed transportation will be performed daily, and the time in transit within the area sought to be served will be both same-day and over-night, depending upon the time of day when requests for applicants' services are received. Rates to be assessed for the proposed transportation will be generally on the same level as those currently set forth in the Commission's Minimum Rate Tariff 6-B. Accordingly, applicants will become a participant in the rate tariffs published by the Pacific Coast Tariff Bureau for the transportation of petroleum and petroleum products, in bulk.

Applicants' balance sheet dated November 8, 1978, and attached to the application as Exhibit "B", indicates a net worth of \$129,061. Their statement of income for the first ten months of 1978 shows a net operating profit of \$31,751. Based on these documented figures, it would appear that applicants have the financial ability to perform the proposed transportation service as a certificated carrier.

Exhibit "C" of the applicant shows that applicants possess a substantial fleet of tank truck and tank trailer equipment. These tank vehicles are specifically built for the transportation of bulk petroleum and petroleum products. Should additional units of equipment be required to conduct the proposed service, applicants state that they are willing and able to provide them.

In justification for the certificate authority sought herein, applicants allege that:

- (a) Applicant John W. Berg has been engaged in the transportation of bulk petroleum and petroleum products as a for-hire motor carrier in California for 4 years;
- (b) The transportation business has grown and, thus, the number of customers served is expected to increase significantly;
- (c) The anticipated petroleum requirements of the shipping and receiving public will necessitate and justify the conversion of the present contract authority to one of common carrier status;
- (d) Obtaining the petroleum irregular route carrier authority sought herein will enable applicants to maintain established transportation service while allowing for the orderly future expansion of the trucking business.

Pursuant to the Commission's Rules of Practice and Procedure, a printed notice containing a brief summary of the subject application was mailed by the applicants' counsel on

January 16, 1979 to the principal common carriers of bulk petroleum products in this State with whom applicants' proposed service is likely to compete. Public notice of the filing of the application, and its amendment, herein appeared in the Commission's Daily Calendar of January 12 and March 5, 1979 respectively. No protest to the application has been received.

After consideration, the Commission finds that:

1. Applicant John W. Berg is currently conducting for-hire petroleum trucking operations under a statewide petroleum contract carrier permit issued by this Commission.

2. Applicant John W. Berg currently operates 15 highway vehicles which will be utilized in the transportation service as proposed herein.

3. Based upon the evidence presented herein, applicants have demonstrated their financial as well as operational ability to perform the proposed transportation service.

4. Public convenience and necessity require that applicants be authorized to engage in operations as a petroleum irregular route carrier in intrastate commerce as proposed in the application as amended.

5. It can be seen with certainty that there is no possibility the activity in question may have a significant effect on the environment.

On the basis of the foregoing findings, the Commission concludes that the subject application as amended, should be granted as set forth in the ensuing order. A public hearing is not necessary.

Applicants are placed on 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 consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be cancelled at any time by the State which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to James W. Berg and John W. Berg, a partnership, authorizing them to operate as a petroleum irregular route carrier, as defined in Section 214 of the Public Utilities Code, between all points in the State of California as set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicants shall comply with the following service regulations. Failure to do so may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicants shall file a written acceptance of the certificate granted. Applicants are placed on notice that if they accept the certificate they will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicants shall establish the authorized service and file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-Series.
- (e) Applicants shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before

April 30 of each year, an annual report of its operations in such form, content and number of copies as the Commission, from time to time, shall prescribe.

- (f) Applicants shall comply with the requirements of the Commission's General Order No. 80-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

This order shall become effective when John W. Berg, in addition to all other requirements set forth in the foregoing order, has divested himself of the petroleum contract carrier permit issued to him in File T-107,226.

Dated at San Francisco, California, this 10th day of APRIL, 1979.

John E. Bryan
President
Vernon L. Sturgeon
Robert D. Swale
Clare T. Quinn
James W. Quinn
Commissioners

John W. Berg and James W. Berg, co-partners, by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to operate 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 bulk, in tank truck or tank trailers between all points and places in the State of California, subject to the following restriction:

RESTRICTION:

1. Transportation of waste material under this certificate is subject to obtaining and maintaining a valid registration certificate as a hauler of liquid waste from the State Water Resources Control Board.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 90179, Application 58590.