

Decision No. 92813 MAR 17 1981

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 to operate)
as a highway common carrier.)

Application No. 59789
(Filed July 2, 1980;
amended November 3, 1980)

O P I N I O N

James W. Berg and John W. Berg, a partnership doing business as Dutch Line, operate as a petroleum irregular route carrier pursuant to a certificate of public convenience and necessity granted to them by Decision No. 90179 dated April 10, 1979 in Application No. 58590. The certificate authorizes them to transport petroleum and petroleum products in tank trucks and tank trailers between all points in California. By this application, as amended, they seek a highway common carrier certificate to transport liquid commodities, in bulk, in tank truck equipment between all points in California. Applicants do not hold or seek any interstate or foreign commerce authority.

The application states as follows: (1) Prior to obtaining their petroleum irregular route carrier certificate, applicants held a petroleum contract carrier permit; (2) they have had considerable experience in the transportation of these commodities; (3) applicants have also transported numerous types of chemical and related products in the good faith belief that such was authorized under their prior permit and their current certificate; (4) during a recent survey of applicants' operations, a Commission representative advised them that their present operating authority does not cover the transportation of chemical and related

products and that they should seek additional authority from the Commission to transport these commodities; (5) because the number of regular customers for whom they provide this transportation has been increasing substantially, a contract carrier permit would not be appropriate; (6) for these reasons, the instant application was filed; and (7) since the equipment, terminal facilities, and operations will be substantially the same as are presently being utilized and conducted, the granting of the sought additional authority will have no adverse effect upon the human environment.

On January 1, 1981 the Public Utilities Code was substantially amended with respect to the type of operative right required by highway carriers to engage in the transportation of bulk liquid commodities in tank trucks (Senate Bill 1886, Statutes of 1980, Chapter 1086).

A new carrier classification, the tank truck carrier, was established. A tank truck carrier is defined in Code Section 3522 as "any person or corporation other than a vacuum truck carrier engaged in the transportation for compensation over any public highway in the State of any liquids, compressed gases, commodities in suspension in liquids in bulk in any tank truck or tank trailer." Concurrently the definition of highway common carrier was amended to exclude carriers operating as tank truck carriers. Code Section 3592.5 establishes procedures under which any tank truck carrier engaged in such business on January 1, 1981 may file with the Commission prior to July 1, 1981 an application for a permit to operate as a tank truck carrier, subject to payment of a filing fee of \$50. The Code Section further provides that if the applicant was operating in good faith as a tank truck carrier during 1980, and continuously to the date of filing, the Commission shall grant a permit to such applicant to operate as tank truck carrier provided such tank truck carrier applies to the Commission for such permit prior to July 1, 1981, and submits adequate proof of such prior operations.

This application will be denied because, under the statutory changes described above, we may no longer issue a highway common carrier certificate for the type of service proposed. It appears that applicants may receive the requisite operative authority through conversion of their existing petroleum irregular route certificate pursuant to Code Section 3592.5, as the application clearly shows good faith operations as a tank truck carrier during 1980.

A filing fee of \$500 was required by Code Section 1064 with the filing of this application. That fee should be refunded to applicant.

Findings of Fact

1. Since January 1, 1981 a highway common carrier certificate is no longer required for the type of operations proposed by applicants in this proceeding.
2. The operative authority required by statute for the type of operations proposed by applicants is a tank truck carrier permit.
3. Applicants appear to meet the requirements for the issuance of a tank truck carrier permit under Public Utilities Code Section 3592.5 and may obtain such permit upon the filing of an appropriate application accompanied by a filing fee of \$50.
4. Applicants have submitted with their application a filing fee of \$500 pursuant to Code Section 1064.
5. The order herein complies with the guidelines set forth in the Commission's energy efficiency plan.
6. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. The highway common carrier certificate sought in this application should be denied.

2. The application fee submitted with this application should be refunded to applicants.

O R D E R

IT IS ORDERED that:

1. The highway common carrier certificate sought in Application No. 59789 is denied.

2. On the effective date of this order the Executive Director of this Commission shall refund to James W. Berg and John W. Berg the sum of \$500.

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

Dated MAR 17 1981, at San Francisco, California.

John E. Bryson
President
Richard D. Howell
Leonard H. Kimish
Victor Cabot
Commissioners