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Clerk, Supreme Court of Appeals
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Records Nos. 5221, 5222

In the
Supreme Court of Appeals of Virginia
at Richmond

PETROLEUM TRANSIT CORP. OF VA.
v.
COMMONWEALTH OF VIRGINIA, EX REL., ETC.

OIL TRANSPORT, INCORPORATED
v.
RUDOLPH D. STEWART

FROM THE STATE CORPORATION COMMISSION

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5221

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 21st day of September, 1960.

PETROLEUM TRANSIT CORP. OF VA., Appellant,

against

COMMONWEALTH OF VIRGINIA, EX REL., ETC., Appellee.

From the State Corporation Commission

Upon the petition of Petroleum Transit Corporation of Virginia an appeal of right is awarded it by one of the Justices of the Supreme Court of Appeals on September 21, 1960, from an order entered by the State Corporation Commission on the 12th day of April, 1960, in a certain proceeding then therein depending entitled: Application of Rudolph D. Stewart for transfer of Petroleum Tank Truck Carrier Certificate; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Corporation Commission in the penalty of three hundred dollars, with condition as the law directs.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5222

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 21st day of September, 1960.

OIL TRANSPORT, INCORPORATED, Appellant,

against

RUDOLPH D. STEWART, Appellee.

From the State Corporation Commission

Upon the petition of Oil Transport, Incorporated, an appeal of right is awarded it by one of the Justices of the Supreme Court of Appeals on September 21, 1960, from an order entered by the State Corporation Commission on the 12th day of April, 1960, in a certain proceeding then therein depending entitled: Application of Rudolph D. Stewart for transfer of Petroleum Tank Truck Carrier Certificate; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said Corporation Commission in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

Office of Commerce Counsel Jan. 25, 1960.
State Corporation Commission Virginia

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION FOR THE SALE OR TRANSFER OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PETROLEUM TANK TRUCK CARRIER.

Portsmouth, Virginia
January 23, 1960.

To the State Corporation Commission of Virginia:

Rudolph D. Stewart, the holder of certificate No. 15 and Reliable Transport of Virginia, Incorporated, the proposed purchaser or vendee of said certificate, respectfully request that authority be granted said owner of Certificate No. 15 to sell or transfer all.... rights, title and interest under said certificate to the said vendee or purchaser, and for the purpose of enabling the Commission to determine whether said request should be granted, submit the following information:

1. (a) Name of Owner or Vendor Rudolph D. Stewart
(b) Address of Owner or Vendor, 2000 Phyllis Drive, South Norfolk, Va.
2. (a) Name of Purchaser or Vendee, Reliable Transport of Virginia Incorporated.
(b) Address of Purchaser or Vendee, Post Office Box 394, Portsmouth, Va.
(c) Classification (corporation, individual or partnership) Corporation.
(d) If a corporation, when was it organized? December 1956.
Who is the President? William F. Beal, Jr. of Portsmouth, Va.
Who is the Secretary? Annie E. Cooper of Raleigh, N. C.
(e) If the vendee or purchaser is a partnership, submit and mark as Exhibit A, a copy of the partnership agreement

and as Exhibit B, a list of the individuals composing the partnership.

3. If the sale or transfer requested is allowed will the operations to be conducted by the vendee or purchaser be in accordance with rules and regulations of the State Corporation Commission, governing the operation of Petroleum Tank Truck Carrier? Yes.

4. Are the owner or vendor and vendee or purchaser familiar with the provisions of rules relating to the filing of fiscal report on cessation of operation? Yes.

5. Will the owner and vendee or purchaser, jointly, bind themselves to see that said rules are complied with immediately on being advised that transfer is granted? Yes.

6. Will the vendee or purchaser furnish before beginning operation, liability and property damage insurance or surety bond, covering all vehicles to be operated? Yes.

7. Does the vendee or purchaser desire to adopt the tariff of the owner or vendor on file with the State Corporation Commission? No.

8. If the vendee or purchaser does not desire to adopt the tariffs of the owner or vendor, on file with the State Corporation Commission, there must be filed as Exhibit C, three copies of the proposed tariff.

9. When is it desired that the sale or transfer become effective? Before March 7, 1960 if possible.

10. Attach as Exhibit D, the original Certificate proposed to be transferred.

page 2 } 11. Is the proposed sale or transfer being made in any way for the purpose of hindering, delaying or defrauding creditors? No.

Given under our hand this 23 day of January, 1960.

(Owner or Vendor) RUDOLPH D. STEWART

(Vendee or Purchaser) Reliable Transport of Virginia, Inc.
WILLIAM F. BEAL, JR., Pres.

County
City of Norfolk, to-wit:

I, Helen L. Gentry, a notary public in and for the County (City) aforesaid in the State of Va. do hereby certify that Rudolph D. Stewart and William F. Beal, Jr. whose names are hereunto subscribed, personally appeared before me this

day in my said County (City), and having been duly sworn, made oath and say that the matters and things stated and set forth in the statements hereunto, attached are true and correct, and further says that all questions or requests have been answered or complied with as fully as possible.

Given under my hand this 23 day of Jan., 1960.

HELEN L. GENTRY
Seal Notary Public.

My commission expires on the 22 day of April, 1963.

page 3 } Exhibit "C."

Vendee or purchaser will join tariff of Virginia Tariff Bureau, Inc., Agent, publishing for Virginia Tank Truck Carriers.

page 4 } COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

PETROLEUM TANK TRUCK CARRIER NUMBER 15.

Rudolph D. Stewart, Norfolk, Virginia having been found qualified and agreeing to comply with the laws of this Commonwealth and with the rules and regulations of the State Corporation Commission lawfully applicable, in accordance with Chapter 632 of the Acts of General Assembly of 1952, (Chapter 12.2, Title 56, Code of Virginia), is hereby granted a Certificate of Public Convenience and Necessity to operate motor vehicles as a Petroleum Tank Truck Carrier from the point or points of origin which were used in such transportation by said carrier prior to April 4, 1952, namely: South Norfolk and from such additional point or points of origin as the subsequent transfer of said carrier's source of supply may require.

Dated at Richmond, this 15th day of September 1952.

STATE CORPORATION
COMMISSION
H. LESTER HOOKER, Commissioner.

page 5} COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION
RICHMOND, 9

SUPPLEMENT NO. 2 TO CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

PETROLEUM TANK TRUCK CARRIER NUMBER 15.

Rudolph D. Stewart, Norfolk, Virginia
Certificate No. 15 is supplemented by the additional origin points of:

Broadmoor (letter 8-9-55, file P-22053)
American Oil Refinery near Yorktown (order 1-20-60 File P-22053).

Dated at Richmond, this 20th day of January 20, 1960.

(This supplement cancels STATE CORPORATION COMMISSION Supplement No. 1).

H. LESTER HOOKER, Commissioner.

page 6} COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 25, 1960.

CASE NO. 14673.

Application of
RUDOLPH D. STEWART

For transfer of Petroleum Tank Truck Carrier Certificate

Application having been made to the State Corporation Commission by Rudolph D. Stewart to transfer Certificate No. 15 authorizing the operation of motor vehicles in the transportation of petroleum products between certain points in Virginia to Reliable Transport of Virginia, Incorporated, and it appearing proper that this application should come before the Commission for a hearing;

IT IS ORDERED, That the application be, and it is hereby, docketed for hearing before the State Corporation Commission in its courtroom in the Blanton Building in the City of Richmond at 10:00 o'clock, a. m., on February 25, 1960.

IT IS FURTHER ORDERED, That the applicant serve notice of the date of the hearing of the application on any officer or owner of every petroleum tank carrier in the State of Virginia, which notice shall advise of the application for a certificate of public convenience and necessity, the time and place of hearing and shall be served at least twenty days prior to the hearing date.

IT IS FURTHER ORDERED, That the applicant have published at least once in a newspaper having general circulation in the Cities of Richmond and South Norfolk, Virginia, and in York and Nansemond Counties, Virginia, a notice to the public advising of the application, the date of the hearing and that all interested parties should appear before the Commission at the time and place assigned for the hearing and said notice shall be published not later than ten days prior to the hearing date.

A True Copy

Teste:

N. W. ATKINSON
Clerk of State Corporation
Commission.

page 7 } COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF RUDOLPH D. STEWART.

CASE NO. 14673.

In *Re*: Application for transfer of petroleum tank truck carrier certificate.

Present: Commissioners Ralph T. Catterall (Chairman) H. Lester Hooker, Jesse W. Dillon. (Commissioner Hooker presiding)

Appearances: W. C. Seibert, Commerce Counsel for the Commission.

Margaret P. Wootton, Official Court Reporter, State Corporation Commission, Richmond, Virginia.

Date heard March 14, 1960.

page 8 } Commissioner Hooker: Mr. Seibert, you have a statement you wish to make?

Mr. Seibert: If it please the Commission, this is an application to transfer a petroleum tank truck carrier certificate issued by this Commission to Rudolph D. Stewart to Reliable Transport of Virginia, Incorporated. Senator Gordon F. Marsh asked for the case to be assigned for hearing today, and after that assignment was made, Senator Breeden asked that the case be postponed to a later date on account of duties in the Legislature. Therefore, upon agreement, the case is asked to be continued to a date that will be agreed to jointly by them, and in order that there may not have to be a re-publication of the notice, I would like to present at this time Certificate of Publication of notice in the Times Dispatch of Richmond on February 5th, Certificate of Publication in The Daily Press of Newport News on February 6th; Certificate of Publication in the Virginian Pilot of Norfolk on February 6th, and Certificate of Publication of notice in the Suffolk-News Herald on February 8th. Also I
page 9 } would like to offer copy of notice sent to all petroleum tank carriers.

I would also like to ask that the names of Mr. Robert Barton and Mr. John C. Goddin be put in the record as objectors, and that they be furnished with a copy of any orders that may be entered.

Commissioner Hooker: The notices will be received as Exhibit A and the names of counsel entered as asked.

Mr. Seibert: Now we have to decide on the date of postponement.

Commissioner Hooker: All right, what date do you suggest?

Mr. Seibert: How about April 12th, 1960?

Commissioner Hooker: That would be satisfactory.

Chairman Catterall: Suppose before we enter the order, you see if everyone agrees on that date.

Commissioner Hooker: The Commission will wait until you advise us as to the date and we will then set it for the day that is convenient for all parties.

Note: Case, by agreement of counsel, later set for hearing April 12th, 1960 at 10 A. M.

page 10 } COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 14, 1960.

CASE NO. 14673.

Application of
RUDOLPH D. STEWART

For transfer of Petroleum Tank Truck Carrier Certificate.

At the request of counsel for the applicant, and for good cause appearing;

IT IS ORDERED, That the hearing of this matter be, and it is hereby, continued before the Commission in the Blanton Building in the City of Richmond at 10:00 o'clock, a. m., on April 12, 1960.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of State Corporation
Commission.

page 11 } COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HIGHWAYS
RICHMOND 19, VA.

Transfer of Certificate of Public Convenience and Necessity as a Petroleum Tank Truck Carrier—Reliable Transport of Virginia, Inc., Portsmouth, Va. Case No. 14673.

Office of Commerce Counsel Apr. 4, 1960.

Virginia State Corporation Commission.

April 1, 1960.

State Corporation Commission
Box 1197
Richmond 9, Virginia

Gentlemen:

We are enclosing Form T & P 13-A, in duplicate, showing approval of equipment proposed for use by the above styled applicant requesting a Certificate as a Petroleum Tank Truck Carrier.

This equipment is approved subject to the following conditions:

"This approval is based on the vehicle or vehicles involved not exceeding the statutory weight limits allowed by Section 46-334 of the Code of Virginia. In no case is this approval to apply to the operation of any equipment over any road or bridge in excess of the legal posted weight limits."

Sincerely,

J. P. MILLS, JR.
Traffic and Planning Engineer.

OB
Enc.
Cy: Mr. Gordon F. Marsh
Attorney and Counselor at Law
210 Law Building
Portsmouth, Va.

page 12 } T&P—13-A Sheet 1

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HIGHWAYS

CASE NO. 14673.

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BEFORE THE STATE CORPORATION COMMISSION, UNDER THE PETROLEUM TANK TRUCK CARRIERS ACT TITLE 56 CHAPTER 2.2 OF CODE OF VIRGINIA.

To Department of Highways, Richmond Virginia

Name of Applicant Reliable Transport of Virginia, Incorporated.

Business Address (street and number) 214 E. Ocean Drive, Portsmouth, Va.

City or Town and County .....

Applicant Desires Approval on Following Motor Equipment.

(List the maximum size and weight of each type of vehicle which will be used by applicant in this case).

NO.	TYPE OF VEHICLE (Truck, Tractor Semi-Trailer or Truck Full Trailer)	*MAXIMUM GROSS LOADED WEIGHT (Pounds)	LENGTH (Feet)	WIDTH (Feet)	HEIGHT (Feet)	NO. OF AXLES
1.	Tractor	56800	16′-10	8′-0	7′-10	Single
2.	Tractor	56800	16′-10	8′-0	7′-10	do
3.	Tractor	56800	16′-10	8′-0	7′-10	do
4.	Tractor	56800	16′-10	8′-0	7′-10	do
5.	Tractor	56800	16′-10	8′-0	7′-10	do
6.	Tractor	56800	16′-10	8′-0	7′-10	do
7.	Tractor	56800	16′-10	8′-0	7′-10	do
8.	Tractor	56800	16′-10	7′-11	7′-10	do
9.	Tractor	56800	16′-10	7′-11	7′-10	do
10.	Tractor	56800	16′-10	7′-11	7′-10	do
11.	Tractor	56800	16′-10	7′-11	7′-10	do
12.	Tractor	56800	16′-10	7′-11	7′-10	do
13.	Tractor	56800	16′-10	7′-11	7′-10	do
14.	Tractor	56800	16′-10	7′-11	7′-10	do
15.	Tractor	56800	16′-10	7′-11	7′-10	do

Petroleum Tank Truck Carrier

This approval is based on the vehicle or vehicles involved not exceeding the statutory weight limits allowed by Section 46-334 of the Code of Virginia. In no case is this approval to apply to the operation of any equipment over any road or bridge in excess of the legal posted weight limits.

*Weight of Vehicle and Load.

(Signature) RELIABLE TRANSPORT OF VIRGINIA, INCORPORATED
By W. F. BEAL, JR.
Title President
Date February 2, 1960.

Approved—as noted above

DEPARTMENT OF HIGHWAYS
By J. P. MILLS, JR.
Traffic and Planning Engineer.

Date of Approval April 1, 1960

ORIGINAL AND TWO COPIES MUST BE FILED TOGETHER WITH ONE COPY OF STATE CORPORATION COMMISSION FORM MC-32

page 13 } T&P-13-A Sheet 2

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HIGHWAYS

CASE NO. 14673.

APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BEFORE THE STATE CORPORATION COMMISSION, UNDER THE PETROLEUM TANK TRUCK CARRIERS ACT TITLE 56 CHAPTER 2.2 OF CODE OF VIRGINIA.

To Department of Highways, Richmond, Virginia.

Name of Applicant Reliable Transport of Virginia, Incorporated.
Business Address (street and number) 214 E. Ocean Drive, Portsmouth, Va.
City or Town and County

Applicant Desires Approval on Following Motor Equipment

(List the maximum size and weight of each type of vehicle which will be used by applicant in this case).

NO.	TYPE OF VEHICLE (Truck, Tractor Semi-Trailer or Truck Full Trailer)	*MAXIMUM GROSS LOADED WEIGHT (Pounds)	LENGTH (Feet)	WIDTH (Feet)	HEIGHT (Feet)	NO. OF AXLES
1.	Tractor Semi-trailer	56,800	44′-0	8′-0	8′-3	4
2.	do	56,800	46′-3	7′-11	9′-0	4
3.	do	56,800	45′-0	7′-11	9′-0	4
4.	do	56,800	45′-9	8′-0	8′-7	4
5.	do	56,800	42′-9	8′-0	8′-10	4
6.	do	56,800	45′-4	8′-0	8′-9	4
7.	do	56,800	47′-10	7′-10	8′-6	4
8.	do	56,800	46′-4	8′-0	9′-3	4
9.	do	56,800	43′-5	8′-0	8′-11	4
10.	do	54,330	36′-9	7′-11	8′-11	4
11.	do	56,800	43′-0	7′-9	8′-5	4
12.	do	56,800	43′-0	7′-9	8′-5	4
13.	do	56,800	44′-3	7′-11	8′-4	4
14.	do	56,800	48′-0	7′-9	8′-7	4

Petroleum Tank Truck Carrier

This approval is based on the vehicle or vehicles involved not exceeding the statutory weight limits allowed by Section 46-334 of the Code of Virginia. In no case is this approval to apply to the operation of any equipment over any road or bridge in excess of the legal posted weight limits.

*Weight of Vehicle and Load.

(Signature)

RELIABLE TRANSPORT OF
VIRGINIA, INCORPORATED
By W. F. BEAL, JR.
Title President.

Date February 2, 1960.

Approved—as noted above.

DEPARTMENT OF HIGHWAYS
By J. M. MILLS
Traffic and Planning Engineer.

Date of Approval April 1, 1960.

ORIGINAL AND TWO COPIES MUST BE FILED TOGETHER WITH ONE COPY OF STATE CORPORATION COMMISSION FORM MC-32.

EXHIBIT "A."
Vehicles

Kind	Make	Motor Numbers	Type	Rated Capacity	Length	Width	Height	Number Seats	Gallon Cap.
Tractor	International	L195-17503		55000 lbs	16′-10	8′-0	7′-10	2	
do	do	L195-21430		55000 lbs	16′-10	8′-0	7′-10	2	
do	do	L195-20005		55000 lbs	16′-10	8′-0	7′-10	2	
do	do	R195-3327		55000 lbs	16′-10	8′-0	7′-10	2	
do	do	R195-4687		55000 lbs	16′-10	8′-0	7′-10	2	
do	do	L195-13183		55000 lbs	16′-10	8′-0	7′-10	2	
do	do	R195-882		55000 lbs	16′-10	8′-0	7′-10	2	
White	do	457567		55000 lbs	16′-10	7′-11	7′-10	2	
do	do	408158		55000 lbs	16′-10	7′-11	7′-10	2	
do	do	457565		55000 lbs	16′-10	7′-11	7′-10	2	
do	do	422877		55000 lbs	16′-10	7′-11	7′-10	2	
do	do	437301		55000 lbs	16′-10	7′-11	7′-10	2	
do	do	417681		55000 lbs	16′-10	7′-11	7′-10	2	
do	do	422878		55000 lbs	16′-10	7′-11	7′-10	2	
do	do	437300		55000 lbs	16′-10	7′-11	7′-10	2	
Trailer	Joplin	1092	Tank	—	34′-6	8′-0	8′-3		5500
do	Custom-Bilt	T-799	do	—	36′-3	7′-11	9′-0		6100
do	Joplin	1104	do	—	34′-2	7′-11	9′-0		6100
do	Butler	4201837K	do	—	33′-11	8′-0	8′-7		6100
do	Trailmobile	15X11311	do	—	33′-2	8′-0	8′-10		5250

do	Custom-Bilt	T-775	do	—	35′-6	8′-0	8′-9	6100
do	Trailmobile	504137	do	—	34′-5	8′-0	9′-3	6800
do	do	65X11539	do	—	33′-3	8′-0	8′-11	5250
do	do	65X11589	do	—	26′-0	7′-11	8′-11	5250
do	Joplin	1119	do	—	33′-10	7′-9	8′-5	5250
do	do	1105	do	—	33′-10	7′-9	8′-5	5250
do	do	1077	do	—	34′-10	7′-11	8′-4	5500
do	Custom-Bilt	T-789	do	—	37′-0	7′-9	8′-7	6200
do	do	T-780	do	—	37′-3	7′-10	8′-6	6200

page 15 } COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF
RUDOLPH D. STEWART

For transfer of Petroleum Tank Truck Carrier Certificate.

This case, having been continued from March 14th, 1960 to this date, April 12th, 1960 at 10 A. M., comes on for hearing at 10:20 A. M. due to delay of Senator Breeden, who had plane trouble and was unable to get to the Courtroom on time.

Present: Commissioners Ralph T. Catterall (Chairman) H. Lester Hooker, Jesse W. Dillon (Commissioner Hooker presiding).

Appearances: Gordon F. Marsh, Counsel for Applicant.
Robert T. Barton, Jr., Counsel for Virginia Tank Truck Carriers Association, objector.
page 16 } Edward L. Breeden, Counsel for Oil Transport of Norfolk, Objector.
John C. Goddin, Counsel for Petroleum Transit Corporation, Objector.
W. C. Seibert, Commerce Counsel for the Commission.

Date of Hearing April 12, 1960.

page 17 } Commissioner Hooker: Proceed, Senator Marsh.
Senator Breeden: I feel that I should make some explanation as to my tardiness.
Commissioner Hooker: Your Secretary has already done that.
Senator Breeden: I feel that I should explain that I was seated abroad the Piedmont Airlines Plane ready for the trip to Richmond and was advised that there was engine trouble and I immediately got off and we hired a private plane at the cost of forty-eight dollars to bring us to Richmond.
I believe it might save the Commission some time because, as you can see from that explanation that, Col. Barton, Mr. Goddin and I have not had time to have an exchange of ideas, which otherwise we would have had, and I believe we will save the time of the Commission if you would indulge us for about fifteen minutes.
Commissioner Hooker: What is your opposition? Are you opposing both applications?

Rudolph D. Stewart.

Senator Breeden: Yes, we are opposing both ap-
page 18 } plications.

Commissioner Hooker: What is your opposition to the transfer? That is the case we called first.

Senator Breeden: If I might say so, we may be able to get rid of that case if I could have some time to confer with my colleagues in regard to this matter.

Commissioner Hooker: 10:25 A. M. The Commission will recess for fifteen minutes. We are in kind of a hurry but will recess to give you a chance to confer.

10:40 A. M. The Commission resumes its session.

Commissioner Hooker: All right, Senator Marsh.

Senator Marsh: May it please the Court, I represent Mr. Rudolph Stewart in his application to sell to Reliable Transport Company of Virginia, his rights under his certificate, and I also represent the purchaser, the Reliable Transport Company of Virginia, and Mr. Beal, its President, who lives in Norfolk. We have filed his application to transfer his certificate granted him and have complied with the requirements of the law and have notified the other carriers, and
page 19 } have filed the financial statement, which is deemed to be satisfactory, and have filed the approval from the State Highway Department at Richmond, and have filed the Certificate of Publication in four newspapers, and we are here to introduce our principals and permit them to be examined.

Commissioner Hooker: Senator Breeden, do you have any opening statement to make before we proceed with the evidence?

Senator Breeden: No, sir.

Commissioner Hooker: Proceed with your evidence.

page 20 } RUDOLPH D. STEWART,
a witness introduced on his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Senator Marsh:

Q. Will you please state your name?

A. Rudolph D. Stewart.

Q. Your address?

Rudolph D. Stewart.

A. 2000 Phyllis Drive, Norfolk, Virginia.
Q. Is that South Norfolk?
A. Norfolk 60, Virginia.
Q. You are the owner of Certificate 15 under the Petroleum Carriers Act?
A. Yes.
Q. What points have you been serving under this Certificate?
A. For the last four years I have been running from Suffolk to Virginia Beach and Norfolk locally.
Q. You had this permit at the time the law became effective in 1951, and were therefore classified as being under the Grandfather Clause, were you not?
A. Yes.
page 21 } Q. You have offered to sell and participate in a contract arrangement, subject to the approval of the State Corporation Commission, to sell this permit to Mr. Beal's Company known as the Reliable Transport of Virginia, Inc.?
A. Yes.
Q. And you filed an application January 23, 1960 with this Commission to permit you to do so?
A. Yes.
Q. And notices have been introduced in evidence showing your compliance with the rules and regulations and that all requirements have been met?
A. Yes.

CROSS EXAMINATION.

By Senator Breeden:
Q. When the Act went into effect you said you were in business at that time?
A. Yes.
Q. How many tanks did you have?
A. At the time I got the Grandfather rights?
Q. Yes.
A. Two, I think it was.
page 22 } Q. And you are still holding only those same two tanks?
A. No.
Q. How many do you have?
A. Three tanks.
Q. Do you not also use your equipment to do hauling outside of the petroleum field?

Rudolph D. Stewart.

A. I have one tractor that I lease to Turner Express Lines.

Q. And that tractor as it is is marked "Leased to the Turner Motor Express?"

A. Yes.

Q. And yet you use the tractor so labeled to haul these tanks?

A. Yes.

Q. And in your operations you have not exercised the rights that you have equipment that makes you capable of doing so?

A. We have exercised them to the extent we have had business to do so.

Q. You have a tractor that you lease to Turner?

page 23 } A. All of my tractors have a certificate so I can hook them on to the tanks. If I don't want to use it for Turner Express I can back under a tank and haul it, but business has not been so good, and I have leased it to Turner.

Q. And, because of that situation, you are not using the equipment you now own and propose to sell to the extent of its capabilities?

A. My business has not been so good this winter, so I have to use the tractor on the road in order to make a living.

Q. Your Certificate permits you to haul out of the American Oil Plant?

A. I can haul out of any oil company in Norfolk.

Q. The American Oil Company is at Yorktown?

A. Yes.

Q. That is your only supplier at Yorktown?

A. No, I don't know.

Q. You have not hauled for them?

A. No.

Q. You have never hauled for them?

page 24 } A. No.

Q. The public need for hauling out of that refinery has been supplied by other carriers among them the objectors today?

A. As far as I know. I would not know.

Q. They have supplied the equipment and personnel and furnished that service?

Note: Hesitation by witness.

Rudolph D. Stewart.

Q. Don't you keep up with the business you are in enough to know who supplies it out of the American Refinery?
A. No, sir.
Q. That is a blank as far as you are concerned?
A. I don't know who supplies the service.

Commissioner Hooker: Senator Breeden, the point you are trying to make is that he has not taken care of the needs and your client has had to supply the service?
Senator Breeden: Yes. He has not gone in there and rendered the service.

A. I have only had the authority for sixty days.

page 25 } Senator Breeden:
Q. You have had it as long as anyone else?
A. No, I would not think so.
Q. How about Broadmoor?
A. I have hauled for Phillips 66.
Q. You have not hauled out of there?
A. I have hauled out of there.
Q. When was the last time you hauled out of Broadmoor?
A. About two months ago.
Q. What was the amount of that?
A. One or two tank loads.
Q. What was it,—one or two tank loads?
A. It may have been one or two.
Q. Isn't it true that you have not hauled more than just a few over the past five years?
A. I have hauled out of there.
Q. How many out of Broadmoor in the past five years?
A. Fifteen to twenty loads.
Q. And the only person you haul for is Brenner
page 26 } Oil Company?
A. No.
Q. Who else do you haul for?
A. I haul for Allied Petroleum, East Coast Petroleum located in Richmond.
Q. Where do you load for them?
A. The Crown Central at South Norfolk.
Q. Anywhere else?
A. I load out of City Service Terminal.
Q. When were you last in there?
A. Practically every day.
Q. That is a regular point?

Rudolph D. Stewart.

A. Yes.
Q. Out of City Service and Crown?
A. Yes.
Q. Do you haul out of Pure Oil Company?
A. I originally loaded out of Pure Oil Company, but I don't have any customers out of Pure Oil Company now.
Q. You don't haul any regular customers out of Texas Oil Company?
A. I did until this year.

Chairman Catterall: You said you only owned one tractor?

page 27 } A. No, three tractors.
Q. And one you lease to Turner Express?
A. I lease it to Turner Express part of the time.

Senator Breeden:
Q. How long have you been leasing to Turner Motor Express?
A. Three years, part time. I have been leasing to him in the summertime and in the wintertime when the fuel oil business got heavy I had to stop.
Q. He has been hauling recently? You don't deny he was hauling on March 4th? You did not haul?
A. I have hauled this whole winter.
Q. When the equipment is going up to Baltimore, you can't haul?
A. My tractor is out of the State two days a week and other times it hauls petroleum products.
Q. It runs out of Norfolk?
A. Yes.
Q. Did you get permission from this Commission to do that?
A. I work under Turner and he attends to that.
page 28 } Q. You did not attend to it?
A. Yes. That is correct.
Q. You assumed he attended to it?
A. I assumed he had done so.

Commissioner Dillon: You did not lease your rights?

A. No, sir.
Q. Just the equipment?
A. Just the tractor.

Rudolph D. Stewart.

Senator Breeden:
Q. Just your tractor?
A. Just my tractor.

Chairman Catterall: When you said business was bad, did you mean your business or the hauling business as a whole was bad?

A. I meant the whole hauling business was bad as most of them will tell you, if they told the truth. The fuel oil business has been bad. We have only had one good month, which was last month when there was so much snow, but for the other months business has been very poor.

Mr. Goddin: Just a minute—

Col. Barton: Are you going to ask him some
page 29 } questions?

Mr. Goddin: I may have one or two questions after Senator Marsh and I confer.

Col. Barton: I will go on then with my cross examination.

CROSS EXAMINATION.

By Col. Barton:
Q. You haul locally?
A. Locally.
Q. What is the distance between the point of original destination on your deliveries?
A. About fifteen miles.
Q. You were in the exemption and did not have to have it?
A. The only time I had to have it was from Suffolk to Virginia Beach.
Q. How many times did you use that?
A. Once or twice a week.
Q. You say business is bad?
A. Yes.
Q. There is plenty of idle equipment?
A. Yes.
page 30 } Q. There is a lot of idle equipment set up down there?
A. Yes, I can show you yards full of it.
Q. You only filed a tariff recently?
A. Yes.

Rudolph D. Stewart.

Q. Only after the Commission directed your attention to it?

A. Yes, I filed one a couple of years ago and a couple of months ago I filed a new one.

Q. Your hauling is within the fifteen mile limit and you have authority out of Yorktown?

A. Yes. The Refining Company has.

Q. What do you mean? Did the Refining Company make application or you?

A. The lawyer took it for me.

Q. Do you have the certificate authorizing you to haul out of Yorktown?

A. I don't know whether the Senator has it or not.

Mr. Seibert: The American Oil Company is located at Yorktown, and when they went there, all of the
page 31 } carriers were given the authority. Nobody opposed anyone. Everybody was granted the authority.

Senator Breeden:

Q. But you have never exercised it?

A. No.

Q. Have you hauled out of Broadmoor?

A. Yes, occasional loads.

Q. How many loads?

A. Three or four a month.

Q. That is local?

A. Yes, all in the city.

CROSS EXAMINATION.

By Mr. Goddin:

Q. Mr. Stewart, I believe you have answered both Senator Breeden and Col. Barton to the effect that in your operation you have never served the American Oil Company at Yorktown?

A. No, sir.

Q. And you never expected to?

A. I never had the proper equipment to do it.

Q. Would you be willing from your viewpoint to abandon Yorktown as a point of origin?

Rudolph D. Stewart.

A. No, sir, I would not be willing to do that. I
page 32 } would love to have the authority.
Q. You have never served them.
A. It is possible I might change my mind.

Senator Breeden: How will he change his mind when he is selling his grant of the certificate?
Commissioner Hooker: This grant did not say he could not do that.
Mr. Seibert: The American Oil Company was a new plant and it was agreed that everyone could go in there.
Commissioner Hooker: Nobody opposed anybody else?
Mr. Seibert: No.
Senator Breeden: But that did not apply to this operator. We had a hearing in the old Court Room and everybody agreed to scratch each other's back—
Mr. Seibert: And that was for all of those that had Grandfather rights, and then in a supplemental application this certificate was granted in accordance with that agreement.
Senator Breeden: When was this supplemental
page 33 } agreement?
Mr. Seibert: The supplemental certificate was issued January 20th, 1960.
Senator Breeden: Was there a hearing?
Mr. Seibert: No.
Senator Breeden: I did not understand that people could come in here and get a supplemental certificate without a hearing.

RE-DIRECT EXAMINATION.

By Senator Marsh:
Q. Your equipment is not involved in this sale; all you are selling are your rights and permit?
A. Yes.
Q. Let's see who you serve out of Norfolk?
A. I serve from Cities Service Hartol Petroleum Corporation.
Q. Who is the other one?
A. Allied Chemical Company and I serve East Coast Oil Company. That is three.
Q. You named another one for me this morning.
A. Allied Petroleum, East Coast and Hartol.

Rudolph D. Stewart.

Q. And you got your certificate from Yorktown
page 34 } ninety days ago?
A. Yes.

Chairman Catterall: What are you going to do with your equipment?

A. I am only selling the Grandfather rights. I still have my local rights.
Q. You will still continue to operate there locally?
A. Yes.

RE-CROSS EXAMINATION.

By Senator Breeden:
Q. Why did you apply for this American Oil Company certificate in January?
A. What was that?
Q. Why did you apply in January to get some general right which you hold from American Oil and then turn around and sell that to Reliable?
A. The more points you have to pull from the more easy to get what you want.
Q. Had you already dealt with Reliable when you applied for this certificate?
A. No.
page 35 } Q. You had had no dealings at all?
A. We had been talking about this transfer for several years, but never came to any agreement.
Q. But negotiations were under way and you were talking about it?
A. I don't know what time we started talking about the rights.
Q. Lets' take it a little easy now. In the discussing of the selling to Reliable your application for the certificate from the American Refinery was discussed?
A. I think it was discussed. He may have asked me if I had the rights.
Q. And you told him "No"?
A. I told him I did not know for sure.
Q. But you thereafter applied for those rights?
A. I did apply for one.
Q. So you could turn around and make a sale which was more advantageous to you?

William F. Beal, Jr.

A. Surely it would make it more advantageous.

Q. Surely. I know that is what you did. One other thing, these companies that you called off,—are they the page 36 } consignees?

A. They are the people I haul to.

Q. You haul out of Cities Service Terminal to these people?

A. Yes, and out of Crown, and I haul out of Sinclair out of Portsmouth.

Q. You don't have rights out of there?

A. I haul for Allied. My certificate shows that I can haul out of any place to my customers, any place my customers want me to do it. It is mainly as to South Norfolk and I can pull out of Sinclair.

Q. Sinclair is in Portsmouth?

A. Yes.

Witness stood aside.

page 37 } WILLIAM F. BEAL, JR.,

a witness introduced on behalf of Applicant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Senator Marsh:

Q. Will you state your name and address please, sir.

A. My name is Willaim F. Beal, Jr., do you want my home address?

Q. Yes.

A. My home address is 109 Greenbrier Road, Portsmouth, Virginia.

Q. You are an officer of Reliable Transport of Virginia, Inc.?

A. I am.

Q. And what office do you hold with them?

A. President and Treasurer.

Q. You have been operating how long in Virginia?

A. The Reliable Transport has been operating for two years as a corporation.

Q. You have filed schedules showing approval of the equipment to be used in the operation if this transfer page 38 } is granted?

A. We have, sir.

Q. And also your financial statement?

A. Yes.

Q. And you have caused counsel to give notice to all parties interested?

A. I did, sir.

Q. You are qualified and able to handle the business and the duties imposed on you if this transfer is granted?

A. We are.

Commissioner Hooker: I would like to ask you a question. Would you go through with the deal if you did not get any rights from the American Oil Company?

A. There would have to be a re-negotiation as to our price for transfer since there is a difference as to the amount of traffic that would be our potential. The price we have negotiated at is based on a potential.

Q. At the time you entered into this proposal to transfer what consideration was given to the right to serve American Oil Company?

A. You mean what percentage?

Q. At the time you entered into the contract had page 39 } the certificate been issued by this Commission?

A. Probably it had. In talking we had been talking trying to get to some agreement for four or five years this fall, and at the time we concurred on the price it was our knowledge and my knowledge that the Commission was issuing Yorktown to those who held a certificate, and that all they had to do to receive a certificate was to write a letter to the Commission to get Yorktown. Phillips became an origin point sometime after we started talking and we had our attorney write a letter about Phillips and we were conclusive in thinking that Yorktown could be done in the same procedure.

CROSS EXAMINATION.

By Senator Breeden:

Q. Mr. Stewart seems to be a little confused because the application was filed in December of 1959?

A. No, sir. The application for transfer was filed in January. The other application was in December that you have in mind. The new application was docketed in December.

Q. In December you applied for rights yourself?

William F. Beal, Jr.

A. Yes.

page 40 } Q. And in January, sometime thereafter, this application for transfer was filed?

Commissioner Hooker: This application was received January 25th.

Senator Breeden: The other case was in December because I had some correspondence about it?

A. Yes.

Q. So the whole matter was deferred until the American Refiner rights were certificated?

A. No, sir.

Q. Tell us what you all said about the matter?

A. The application for rights filed in December had no correlation with the transfer at all. They are two separate cases. They are entirely separate.

Q. What did you say to Mr. Stewart about applying? Did you say "If you get the American Oil Company rights, I will pay you so much"?

A. No, it was not in those words.

Q. State what it was?

A. I have been negotiating with Mr. Stewart for four or five years and we found in this process when Phillips opened in Norfolk County that, due to the nature of his

page 41 } certificate he could have an attorney write the Commission so that he could have Phillips. This was to his enhancement whether I was the purchaser or not, and when the one at Yorktown came up I was certainly interested as to whether he had Yorktown, and in the process of our negotiations, he, in turn, had an attorney to write a letter and while it is an advantage to me if I purchase it, but whether or not I purchase it, it is an advantage to Mr. Stewart.

Q. You made a fine statement but you did not answer my question. What was said? Did you tell him to go ahead and get the rights to the American Refinery before we enter into your agreement?

A. No, sir, it was not said in that way.

Q. What part did it play in your negotiations? You obviously did not make the deal until the American Oil Company was in the picture. What made the delay?

A. As far as the delay is concerned, the delay is four or five years old. I have no knowledge that the American Re-

fining Company postponed our agreement or concurred in it to any degree.

Q. Let's see if we can ask a simple question and get an answer. You knew when Mr. Stewart applied for

page 42 } the certificate from American Refining Company?

A. State that again.

Q. You knew when he made the application?

A. Yes.

Q. And Broadmoor was made at your instigation?

A. Yes. I was aware that, if he would write to the Commission, Broadmoor could be added and that it would be to his advantage. At the time of that there was no agreement between Mr. Stewart and myself. I had no assurance that I would be given an opportunity to purchase.

Q. But, as the certificate grew, it became more attractive to you?

A. Yes, there was more potential.

Q. And then when they got to another phase, you suggested Yorktown?

A. I don't know whether or not I suggested it.

Q. You know if you did or did not?

A. I don't know whether it was Mr. Stewart or myself.

Q. When he applied he knew he was not going to haul but it made it more attractive to you?

A. That is something that would be in his mind,

page 43 } and I can't say. It is more valuable as far as I am concerned.

Q. And, after all these negotiations, you never entered into a contract to buy the rights until both Broadmoor and Yorktown had been added?

A. It was after these had been added that we got together on the transfer price pending approval by the Commission.

Q. Don't you think it would be fair to the Commission for you to state that the hauling out of South Norfolk means little to you and that it is Yorktown you are interested in?

A. As a common carrier I will solicit each oil company's business. If I am fortunate enough to get some from South Norfolk, and I can't solicit from Yorktown, I will be happy with South Norfolk. If I get Yorktown then I will be glad. I am a common carrier and any certificate is of help.

Q. You are a common carrier and that Yorktown certificate would be very good to hook up to your North Carolina operations?

A. To my notion you can't hook an Interstate Commerce

William F. Beal, Jr.

Commission certificate with an intrastate certifi-
page 44 } cate.

Q. Don't you intend to file for another step with these rights with the Interstate Commerce Commission for Reliable Transport?

A. You gentlemen may have told me something that is interesting. To my knowledge you cannot haul an intrastate movement and tack it on to an interstate movement. I don't believe you can take an intrastate movement and tack it on to an interstate movement and I have been told so by three attorneys.

Commissioner Dillon: Have you got interstate rights?

A. Yes.

Commissioner Dillon: You can't register this before the Interstate Commerce Commission.

Mr. Goddin: This application is for Reliable Transport of Virginia. His interstate rights are for Reliable Transport Company, which is a North Carolina Corporation, and what he would do would be that he would transport it from Yorktown to Norfolk and in interline movement from Norfolk.

A. May I make a statement . The interstate
page 45 } certificate is held by Reliable Transport of Virginia, and has been held by that Corporation alone for twelve months. The Reliable Transport has no rights that come in to Norfolk.

Mr. Goddin:

Q. Would you be willing to restrict the certificate so that there would be no inter-line movement either to or back?

A. So far as its being tied in with the interstate movement?

Q. Yes.

A. You gentlemen have raised a question in my mind that I thought was a dead one. I was positive that it could not be done.

Senator Marsh: Judge Dillon has made a statement to that effect.

Commissioner Dillon: I said, if he is a multiple state carrier, he could not register his intrastate carrier certificate with the Interstate Commerce Commission.

William F. Beal, Jr.

Mr. Goddin:

Q. Would you answer the question now please? Would you be willing to have it restricted?

page 46 } A. In view of the question you and Senator Breeden have raised, I will say no. You may have enlightened me on something I did not know about. I will say that there was no intent originally, but I don't know now.

Senator Breeden:

Q. Let's go over how Broadmoor came about. Do you know that those rights have not been exercised so far as the certificate is concerned? The certificate to that point has never been used.

A. You mean Certificate 15 has never been exercised?

Q. To Broadmoor?

A. I am not familiar with the customers Mr. Stewart has. I know some of them. I know during all of the negotiations Mr. Stewart has attempted to get additional capital to enlarge his operation. He had small tanks, as he said, and his potential was limited.

Q. He has never done an over-the-road business?

A. To my knowledge it was over-the-road up to thirty miles for one customer.

Q. Otherwise he has been a local hauler with

page 47 } light equipment?

A. Yes.

Q. That is not your business?

A. I know you cannot get into the over-the-road business with small equipment. You have to have large trucks.

Q. You have examined his equipment?

A. Yes.

Q. Could you describe it for us for the record?

A. He has a trailer truck, a Fruehauf I think, some ten or twelve years old of approximately five thousand gallons.

Commissioner Hooker: That is all in the record and approved by the Highway Commission.

Senator Breeden:

Q. You are of the opinion that it does not qualify for over-the-road use?

A. Within my scope of operation I could not operate that. As a supplement during a seasonal demand, maybe yes.

William F. Beal, Jr.

Q. If the transfer of these rights are approved, you will take it and use it in a fashion that they have not been using it?

A. Mr. Stewart can do his hauling in it.

page 48 } Q. That use has always been there that he makes?

A. As far as the physical use is concerned, that is correct, the potential has always been there.

Col. Barton:

Q. Am I correct that in December you filed for a certificate for Reliable Transport of Virginia from Broadmoor, South Norfolk, Norfolk County and Craney Island?

A. Yes.

Q. That is Case 14630?

A. I am not sure of the case number.

Q. Then on January 25th you filed to have transferred to you the certificate owned by Mr. Stewart?

A. Correct.

Q. Did you decide that you would be better off buying the Grandfather Clause certificate because you would be more assured of getting some rights that, if you proceeded on an original certificate you would not get, is that the reason you agreed to purchase?

A. As I stated, I have been in the process of negotiating with Mr. Stewart for four or five years this fall. I had practically given up hopes of ever getting to an agreement and that is the reason I had initiated the applica-

page 49 } tion back in December, and then, after this, Mr. Stewart and myself came to an agreement and in that way proceeded with it in lieu of the original application which was filed in December.

Q. Do you propose to abandon the original application?

A. If the Commission grants the transfer of Mr. Stewart's certificate to my corporation, that will happen.

Q. And it was subsequent to your application being filed in December that Mr. Stewart applied and received the certificate from Yorktown?

Chairman Catterall: He had it on January 25th.

Col. Barton: Will the Commission stipulate that that amendment was issued without a hearing?

Commissioner Hooker: We issued similar ones in 1955 to Broadmoor.

Senator Marsh: What Mr. Seibert stated.

Commissioner Dillon: It was agreed at the time that everyone holding a certificate under the Grandfather Clause would be granted rights from Yorktown.

page 50 } Col. Barton: I would like to get into the record that there was no notice of the hearing of the application of Mr. Stewart to get the Yorktown certificate.

Chairman Catterall: Mr. Seibert stated that.

Commissioner Hooker: It is already in the record because the certificate states "and from such additional point or points of origin as subsequent transfer of carrier's source of supply may require."

Col. Barton: May I put in the record the order entered by the Commission. Have you got a copy?

Commissioner Hooker: You are talking about the order when it was granted?

Col. Barton: No, the order in this case.

Mr. Seibert: It is an order of the Commission dated January 20, 1960.

Chairman Catterall: That has nothing to do with this case.

Mr. Seibert: It has nothing to do with this case. We followed the procedure we have always followed. It is a brand new source of supply and the Commission

page 51 } held that everybody having Grandfather rights had a right to go in there.

Col. Barton: I beg to differ with the Honorable Chairman of the Commission in saying that it has nothing to do with this case, because I understand it is a part and also the record when we let every carrier participate, it meant every carrier in the room.

Mr. Seibert: I disagree with that. It was any Grandfather carrier.

Commissioner Hooker: It was any Grandfather certificate anywhere in Virginia.

Sen. Breeden: Would the notice given as part of the record be considered as part of the record? I believe the law is such that the Commission is limited and that it could not have made a valid order on the notice, and there has never been another notice.

Mr. Goddin:

Q. In response to a question by Judge Hooker, you indicated that if Yorktown could be eliminated, that there

would have to be some re-negotiation of the agreement between your Company and Mr. Stewart?

page 52 } A. Yes, sir.

Q. Then, in your negotiations over a period of four or five years with Mr. Stewart, you never could reach an agreement until after he got Yorktown?

A. Yes, sir, that is true. He was asking more than the certificate was worth. Then after he enhanced the certificate, we came to agreement.

Q. Can you tell us how much of an abatement in the purchase price you would look for in the event Yorktown was eliminated?

Sen. Marsh: I think it is an irrelevant question.

Commissioner Hooker: It has nothing to do with the case.

Mr. Goddin: It has to do with the figures in the agreement.

Commissioner Hooker: If he agrees to it, he does but he doesn't have to accept it, and we have nothing to do with it.

Mr. Goddin:

Q. In the initial application you filed in December you did not include the site of the American Oil Company's

page 53 } plant at Yorktown as a point of origin, did you?

Sen. Marsh: I object to that. That is another case and has nothing to do with this matter.

Mr. Goddin: I think it has.

Commissioner Hooker: That application will speak for itself and has nothing to do with this case.

Mr. Goddin: I think I am entitled to a yes or no answer.

A. What was the question?

Mr. Goddin: Mrs. Wooton, will you read the question, please?

Note: Question read as follows:

Q. In the initial application you filed in December you did not include the site of the American Oil Company's plant at Yorktown as a point of origin, did you?

William F. Beal, Jr.

Mr. Seibert: The points were Norfolk, South Norfolk, Portsmouth, Norfolk County and Craney Point.

Mr. Goddin:
Q. So it did not include Yorktown?
A. No.
Q. You did not consider Yorktown as a place
page 54 } of importance in December?
A. I did. That was an oversight in failing to have Yorktown on it.
Q. How did you happen to overlook it? If it was so important, how did you happen to overlook it?
A. I am human and able to make mistakes.
Q. Did you sign the notices?
A. The Senator signed the notices.

Sen. Marsh: They were signed by counsel.

Mr. Goddin:
Q. So suddenly Yorktown became a place of importance?
A. Yes, it is a place of importance.
Q. And so is Richmond?
A. Yes, but Richmond is a hundred or so miles away from Norfolk.

Commissioner Catterall: You have only interstate rights at present?

A. Yes, sir.

Mr. Goddin:
Q. Are the Virginia interstate rights held by the transferee applicant in this case?
page 55 } A. The interstate rights between Norfolk and ten miles thereof and Hopewell and ten miles thereof are held in the name of Reliable Transport of Virginia, Inc.
Q. That is the transferee applicant in this proceeding?
A. Yes, sir.

Senator Breeden:
Q. You made your first application, I think Judge Hooker stated, in December?
A. Sometime in the month of December.

William F. Beal, Jr.

Q. And the American Oil certificate was granted January 25th?
A. I think they said it was granted the 20th.

Mr. Seibert: It was the 20th.

Senator Breeden:
Q. And this application was filed January 25th?
A. Yes.

Senator Marsh: The application shows January 23rd?

A. Yes.

page 56 } Sen. Breeden:
Q. So it was only after the granting of the American Oil Company rights that this application for transfer was made?
A. Yes.
Q. You had no agreement prior to that time?
A. We had come to a potential agreement. It is like buying a basket of apples. You want to know whether there is a peck or a bushel. I was representing my Company. I was given authority to do such and such on receiving such and such, and I was not willing, nor my Corporation not willing to pay more.

Commissioner Hooker: In other words, the more you received the more valuable it was?

A. Yes.

Senator Breeden:
Q. In other words, if Mr. Stewart applied and got the American Oil rights, the price would be one thing and if he did not, the price would be another thing?
A. Yes.
Q. And when did he advise you that he had received the certificate for the American Oil Company?
page 57 } A. As soon as he got the certificate.
Q. And the finalization of your transaction was held in suspense until that was granted?
A. The last few days of the transaction. He was holding out for a certain payment and I was not in position to concede, and he did not want to concede to that.

William F. Beal, Jr.

Q. When that certificate was granted he never intended to use it?

A. It was granted to him, and if he cannot operate it, he has the potential for the sale.

Mr. Goddin: May I ask you this one question?

Commissioner Hooker: I think the Commission is clear on what the understanding is.

Mr. Goddin: I will not go into the understanding.

Q. Is your Company, the Reliable Transport of Virginia, Inc. a subsidiary of any other Company?

A. Yes.

Q. Of what company?

A. The Reliable Transport, Inc.

Q. Is it wholly owned?

A. Yes.

page 58 } Q. Does the Reliable Transport have any authority from this Commission or the Interstate Commerce Commission?

A. It has from the Interstate Commerce Commission.

Q. What does it have?

A. Richmond, Virginia and ten miles thereof to destinations in the State of North Carolina on and off U. S. Highway 21.

Q. And Reliable Transport of Virginia is authorized to transport petroleum and petroleum products from Norfolk, Virginia, and ten miles thereof, and Hopewell, Virginia, and ten miles thereof, to North Carolina points on and off Highway 21?

A. Yes.

Sen. Breeden:

Q. Is there any other subsidiary of Reliable Transport?

A. No.

Q. And no other company, that is the whole thing?

A. No other company.

page 59 } Col. Barton:

Q. Do you hold the same position with them?

A. No.

Q. What is your position with them?

William F. Beal, Jr.

Senator Marsh: That is not relevant.

Commissioner Hooker: No, that has nothing to do with this case.

Witness stood aside.

Commissioner Hooker: Do you have any evidence, Colonel?

Col. Barton: Will the Commission take note of the fact that there are thirteen certificates from Norfolk; nine from Portsmouth and twenty from South Norfolk?

Commissioner Hooker: Yes.

Senator Breeden: I think the record is clear on this point but we have several representatives here who can testify from the Oil Transport Company that there is ample equipment in the area operated in by these companies who are objecting, and the companies represented by Col. Barton, but I understand Mr. Stewart testified that there is ample
page 60 } equipment, and if so, we can save parading a lot of witnesses to the stand.

Commissioner Hooker: I think there is no question about that evidence.

Sen. Breeden: I am not certain how these Broadmoor rights were granted.

Commissioner Hooker: The same as Yorktown; it has been there since 1955.

Sen. Breeden: But they have never been exercised except for local delivery in the area and I would like for the Commission to note the manner in which the certificate was issued to Mr. Stewart and also the fact that the record now shows that they have never been used. I don't know whether there was a hearing or not.

Commissioner Hooker: No.

Sen. Breeden: Will that be incorporated in the record?

Commissioner Hooker: That will be understood.

Commissioner Dillon: There has been much evidence of granting these rights out of Yorktown. It seems
page 61 } to me that I signed an order the other day granting rights out of Yorktown.

Mr. Seibert: You signed an order granting rights out of Yorktown but not from American Oil Company, but from the Naval Operating Depot and they were granted to the people making application. It was a Grandfather certificate.

Commissioner Dillon: And there was no hearing?

Mr. Seibert: It was a brand new operation. It was a transfer of the source of supply and we made an investiga-

tion and found it was not a transfer of source of supply but bought rights by O'Boyle which he could operate and transport there.

Sen. Breeden: Can anybody get those rights? That is not my understanding because we haul jet fuel to the airport and our customer transferred his source of supply and so applied and afterward it was my understanding under investigation that these others had rights there when they were Grandfather operators.

Mr. Seibert: It was developed that the operation from whatever point it was, I believe it was Craney Point, served by the Oil Transport and the Navy had acted for page 62 } new source of supply, and my letter showed and you showed that it was a new source of supply.

Sen. Breeden: It was a new source of supply.

Commissioner Hooker: That is the reason we have granted these transfers, as the record just shows, and if one is illegal, then all of them are.

This application will be granted as applied for. I should say by a majority opinion, Judge Catterall dissenting.

Commissioner Catterall: I would like to give my reason for dissenting. Section 56-338.34 says that the transfer of the certificate will serve public convenience and necessity and the evidence here is that they have more trucks now than they have need for, and to my mind that indicates that there is no need for it.

Commissioner Hooker: The other application of Reliable Transport of Virginia, Inc. will be dismissed.

Sen. Breeden: I think we should advise the Commission and counsel that we intend to appeal. That is the view of counsel at the table.

Commissioner Hooker: All right. The Commission will rise.

page 63 } COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

At Richmond, April 12, 1960.

CASE NO. 14673.

Application of
RUDOLPH D. STEWART

For transfer of Petroleum Tank Truck Carrier Certificate.

On this day came on for hearing the application of Rudolph D. Stewart to transfer Certificate No. 15, authorizing the operation of motor vehicles in the transportation of petroleum products between certain points in Virginia to Reliable Transport of Virginia, Incorporated, Commissioners Hooker, Catterall and Dillon sitting.

Gordon F. Marsh appeared as counsel for the applicant. For objectors: Robert T. Barton, Jr., for Virginia Tank Truck Carriers Association; John C. Goddin for Petroleum Transit Corporation; Edward L. Breeden, Jr., for Oil Transport of Norfolk. William C. Seibert appeared for the Commission.

It appearing to the Commission that the transfer of the certificate is proper;

IT IS ORDERED, That the transfer of the certificate be, and it is hereby, approved upon the filing of proper insurance and upon the adoption of tariffs or the publication of new tariffs as required by Chapter 12.2, Title 56, Code of Virginia.

IT IS FURTHER ORDERED, That a new certificate be issued to Reliable Transport of Virginia, Incorporated, covering the service authorized by the certificate transferred herein and that Certificate No. 15 be cancelled upon the issuance of a new certificate.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of State Corporation
Commission.

page 64 } Opinion, HOOKER, *Commissioner*:

January 25, 1960, Rudolph D. Stewart of Norfolk, Virginia, hereinafter called Transferor, applied to the State Corporation Commission to transfer Certificate No. 15, which authorizes the transportation of petroleum products by tank trucks, to Reliable Transport of Virginia, Incorporated, hereinafter called Transferee, a corporation duly organized under the laws of Virginia.

This application was set for hearing February 25, 1960, and subsequently continued by agreement of Counsel until April 12, 1960, when the matter was heard and the transfer approved by a majority of the Commission. Chairman Catterall

dissenting stated, "I would like to give my reason for dissenting. Section 56-338.34 says that the transfer of the certificate will serve public convenience and necessity and the evidence here is that they have more trucks now than they have need for, and to my mind that indicates that there is no need for it."

page 65 } The law applicable to transferring certificates, etc. is found in Section 56-338.34, which reads as follows:

"*Transfer, lease or amendment of certificate; notice required.*—(a) Any such certificate may be transferred, leased or amended if the Commission finds, after notice and hearing, that the transfer, lease or amendment will serve the public convenience and necessity, and the Commission may authorize the transfer or lease subject to such restrictions as the Commission finds will promote the public convenience and necessity.

"(b)) No certificate shall be sold, transferred, or assigned until notice as required by subsection (c) of §56-338.29 is properly made or served. (1952, c. 632; 1956, c. 450.)"

The sole question to be considered is whether the Commission was justified in approving the transfer of Certificate No. 15. The evidence shows that the Transferor was the holder of "Grandfather" Certificate No. 15 under the Petroleum Tank Truck Carrier Act which authorizes the right to obtain petroleum products from South Norfolk, Broadmoor and American Oil Refinery at Yorktown.

At the time Certificate No. 15 was granted, Transferor had two tanks and, at the time of hearing, had three tanks. The evidence shows that Transferor transported one or two tank loads of petroleum products to Phillips 66 about two months ago, and that, during the past five years, had transported fifteen to twenty tank loads of petroleum products from Broadmoor. The authority to obtain petroleum products from the American Oil Refinery at Yorktown had been held since January 20, 1960, and had not been exercised at time of hearing.

page 66 } It is obvious that Transferor is a small carrier with limited finances, unable to expand to any appreciable extent his operation; however, he had added one tank since he began business under his "Grandfather" Certificate. There must have been a justifiable need for the addition of this tank to his business; otherwise, it would not have been purchased. When business was slow, one piece of equip-

ment was leased to Turner Express Co. During long cold winter months, business is good. Mild winter weather is detrimental to this character of business.

The evidence shows that during the past winter, with the exception of March and the first part of April, business was bad because the weather was very mild.

The evidence also shows that not only was business bad for Transferor, but all of the petroleum tank truck carriers had idle equipment parked on their lots at times.

The transportation of petroleum products is a business that requires more equipment during long spells of bitter cold weather than is needed during the remainder of the year. If a carrier has sufficient equipment to adequately serve its customers during cold weather periods, it follows that there will be idle equipment in warm weather. During this off-season period, Transferor leased equipment to Turner Express Co., as he stated, to make a living. This was the wise thing to do, so long as it did not prevent adequate service to any of his customers. The Commission has never received any complaint as to any of his service from any

page 67 } customers, *and no one at all testified against the transfer of this Certificate at the hearing.*

The reason none of the objectors testified against the transfer of Certificate No. 15 appears obvious to the Commission because Oil Transport, Incorporated, one of the main objectors to this transfer, has had authority to use the American Oil Refinery at Yorktown since December 1956, and has never exercised it. Timlaph Company is not using origin points of Broadmoor and American Oil Refinery. O'Boyle Tank Lines, Inc. is not using Broadmoor and American Oil Refinery at this time. Green Motor Lines and Garland M. Canter are not using American Oil Refinery at Yorktown. This brings to mind the adage that, "Those who live in glass houses should not throw stones."

Petroleum tank truck carriers do not operate as motor carriers who hold themselves out to serve the general public. These carriers render service to individual customers with whom they have agreed to furnish petroleum products to meet the requirements of such customers. These customers change from time to time—some customers are lost, and new ones are added, which makes it more convenient and necessary to have several sources of supply.

The term "public convenience and necessity," as it applies to petroleum tank truck carriers, is vastly different from public convenience and necessity applicable to certificated common carriers who operate on regular schedule over specific

routes in accordance with their schedule on file
page 68 } with the Commission.

The operations of petroleum tank truck carriers are somewhat similar to operations of household goods carriers who have individual contracts with their customers, and who do not operate without a contract. The petroleum carriers may have various sources of supply, and not a large number of customers. The fact that a carrier has not had much business is not a valid reason for holding that his service is not needed. It is just not needed as badly as a carrier with a large number of customers. This is certainly no adequate legal reason to deny the transfer of a certificate. If this were the rule, and it could be lawfully enforced, there would be very few, if any, certificates transferred. All of these carriers have slack periods of business at times. Most of them have equipment parked on their lots for lack of business. It is inconceivable that any carrier would ever have all of its equipment busy all of the time.

As has heretofore been pointed out from our records, many of these carriers do not obtain petroleum products from their places of supply daily, weekly or monthly; in fact, some of them have not secured petroleum products from one or more of their origin points for a year or more, and some have never secured any at all from some points, and these carriers are among the objectors in this Case.

If the Commission should adopt the policy that certificates of petroleum tank truck carriers could not be transferred
unless the evidence showed that such certificate
page 69 } holder was using all of its sources of supply
regularly, there would be but few, if any, certificates ever transferred.

The objectors can have but one reason for opposing the transfer of Certificate No. 15, and that reason is competition. The Transferor is a small operator with limited financial resources. They do not fear him as much as the Transferee, who is a more substantial carrier and most likely a more formidable competitor. If this is not the reason, why have they opposed Transferor, because the Transferor will still have the certificate if not transferred, and can continue to use it.

It has been clearly set forth in *Atwood Transport Co.* v. *Commonwealth,* 197 Va. 325 pp. 331 and 332, that competition is not material in the granting of certificates under the "Petroleum Tank Truck Carrier Act." In that Case, the Court states:

"* * * §56-338.29 (b) points out dangers to be guarded against and the interests to be served. It contains no express provisions as to adequacy of service, and none on the subject of competition from existing carrier service, as are found in §56-281. The Petroleum Tank Truck Carriers' Act is a liberal statute. All that is required to be shown by the applicant for a certificate is that the proposed operation is 'justified by the public convenience and necessity.' It was apparently enacted to insure that every part of the State should have a complete and satisfactory supply of petroleum products, such as gasoline and fuel oil at all times. The fact that existing certificate holders might be able to provide this service is not of material significance, nor that such holders might suffer from competition by the granting of additional certificates of prime importance. The public convenience and necessity is of paramount consideration."

page 70 } The Commission has never refused to approve the transfer of a "Grandfather" Certificate and we are of the opinion that we were fully justified in approving the transfer of Certificate No. 15 in this Case. In our considered judgment the transfer was justified by the "Public Convenience and Necessity" as has been so well stated in the Case hereinabove cited, as follows: The law "was apparently enacted to insure that every part of the State should have a complete and satisfactory supply of petroleum products, such as gasoline and fuel oil at all times." This sound reasoning is equally as applicable to the transfer of these Certificates as to the granting of them.

In the case of *Jessup* v. *Commonwealth*, 174 Va. 133, 142, in dealing with the discretion vested in the Commission, the Court stated:

"The Commission is vested with wide discretion in the issuance of certificates of public convenience and necessity and in the supervision of transportation by all common carriers."

In all cases involving the transferring of certificates, the Commission is vitally concerned with and thinks that one of the main points to consider is whether the Transferee is as capable and in as good a position to adequately serve the public as the Transferor. In this Case, it cannot be questioned that the Transferee is in a much better position financially, and more adequately equipped to serve the "public

convenience and necessity" than the Transferor.
page 71 } From all of the facts and circumstances in this matter, the Commission is of the opinion that it was fully justified in the entrance of the Order of April 12, 1960.

Dillon, COMMISSIONER, concurs.
Catterall, CHAIRMAN, dissents.

page 71-A } Rec'd. 7/18/60.

H. G. T.

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

CASE NO. 14673.

July 15, 1960.

Application of
RUDOLPH D. STEWART

CATTERALL, *Commissioner,* dissenting:

The applicable sections of the Code of Virginia are:

"§56-338.29. Hearing and determination and basis thereof—(a) Upon the filing of an application for a certificate of public convenience and necessity as a petroleum tank truck carrier, the Commission shall, within a reasonable time, fix a time and place of hearing of such application. If the Commission shall find the proposed operation justified by public convenience and necessity, it shall issue a certificate to the applicant, subject to such terms, limitations and restrictions as the Commission may deem proper. If the Commission shall find the proposed operation not justified, the application shall be denied.

"(b) In determining whether or not the proposed operation is justified the Commission may consider, among other things, the public safety, the public necessity for the proposed operation, the volume and character of traffic on the applicant's proposed route or routes, especially the existing volume of petroleum products transportation thereon, the financial

condition of the applicant, and the condition of the highways involved in the proposed operation.

"(c) All certificated petroleum carriers shall be notified by receipted registered mail twenty days prior to the hearing and the notice of the application shall be published in a newspaper having general circulation in the city of Richmond and in the city or county in which each
page 71-B } point of origin applied for is located at least ten days prior to the hearing."

* * * * *

"§56-338.34. Transfer, lease or amendment of certificate; notice required.—(a) Any such certificate may be transferred, leased or amended if the Commission finds, after notice and hearing, that the transfer, lease or amendment will serve the public convenience and necessity, and the Commission may authorize the transfer or lease subject to such restrictions as the Commission finds will promote the public convenience and necessity.

"(b) No certificate shall be sold, transferred, or assigned until notice as required by subsection (c) of §56-338.29 is properly made or served."

A certificate cannot be transferred until the Commission authorizes the transfer; and the Commission cannot authorize a transfer without a public hearing. The law requires that every certificated petroleum carrier in the State be notified of the time and place of the hearing. These provisions make it certain that the transfer of a certificate is not a purely ministerial act. A carrier who decides to go out of business does not have an absolute right to sell his certificate. The statute requires the Commission to examine the facts existing at the time of the proposed transfer and decide whether or not the transfer will promote the public convenience and necessity.

Whenever an administrative tribunal is required to find "public convenience and necessity" it is required to find some need of the *public* for the proposed service. In
page 71-C } the case of a *transfer* of a certificate, the tribunal must inquire into the public need for the *transfer*.

The evidence in the present case proves beyond a reasonable doubt that the public does not need the services of the transferor, and no evidence that the public needs the services of the transferee was introduced or ever offered.

Mr. Stewart's testimony is that he wants to sell his certificate because the demand for his services is infinitesimal.

There is no demand for service under his certificate in the summer months and practically none in the winter months. His retirement from business will not inconvenience any consumer of petroleum products. Testifying in April, he said.

page 14: "My business has not been so good this winter, so I have to use the tractor on the road in order to make a living."

page 19: "The fuel oil business has been bad. We have only had one good month, which was last month when there was so much snow, but for the other months business has been very poor."

page 21: "Q. There is a lot of idle equipment set up down there? A. Yes, I can show you yards full of it."

As the Supreme Court of Appeals pointed out in *Atwood Transport Co.* v. *Commonwealth*, 197 Va. 325, 331, the object of this statute is "to insure that every part of the State should have a complete and satisfactory supply of petroleum products, such as gasoline and fuel oil at all times."

There are two sides to many questions and it is possible to argue that the best way to have plenty of
page 71-D } petroleum products is to have an unlimited number of carriers. This is a legislative question and the Legislature has decided that the best way is to have a limited number of carriers; and the command of the statute is that the number be limited to the number required by public convenience and necessity. The means adopted by the statute to insure a complete and satisfactory supply is to balance the supply against the demand. If you have so many carriers that no carrier can make a reasonable profit you run the risk that some carriers will go out of business and then there will not be enough. The only way to keep a businessman in business is to make it possible for him to earn money. Therefor statutes limit the number of public utilities, banks, small loan companies, taxicabs, household goods haulers, petroleum tank truck haulers and others. The constitutional justification for the limitation is that the services are so badly needed by the public that the public is interested in keeping the suppliers of the services out of bankruptcy. As a general rule a business operating at a profit gives better service than one operating in the red.

Since there is not a scintilla of evidence in this case tending to prove that the transfer of the certificate "will serve the public convenience and necessity" I disagree with the finding

of fact that it will. On the legal question involving the interpretation of the statute, it is evident that authorizing a transfer in the absence of any supporting evidence renders the statute inoperative. If the transfer of this certificate is sustained, it will be impossible to imagine any page 71-E } situation in which a transfer would not be *sutained;* and the transferring of certificates will be purely ministerial, which is not what the statute contemplates.

page 72 } COMMONWEALTH OF VIRGINIA
State Corporation Commission
Richmond

June 1, 1960.

CASE NO. 14673.

Application of
RUDOLPH D. STEWART

For transfer of Petroleum Tank Truck Carrier Certificate.

Oil Transport, Incorporated, having filed due notice of appeal in this case,

IT IS ORDERED that the only exhibit filed in the case, namely Exhibit A, Proof of Notice, be certified and forwarded to the Clerk of the Supreme Court of Appeals of Virginia, to be returned by him to this Commission with the mandate of that Court.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of State Corporation
Commission.

page 73 } COMMONWEALTH OF VIRGINIA
State Corporation Commission
Richmond

CERTIFICATE.

Pursuant to an order entered herein on June 1, 1960, the exhibit mentioned therein is hereby certified to the Supreme Court of Appeals of Virginia, to be returned by the Clerk

thereof to this Commission with the mandate of that Court.

It is further certified to the Supreme Court of Appeals of Virginia that the foregoing transcript of the record in this proceeding, with the exhibit, contains all the facts upon which the action appealed from was based, together with all the evidence introduced before or considered by this Commission.

Witness the signature of H. Lester Hooker, Acting Chairman of the State Corporation Commission, under its seal and attested by its Clerk this 16th day of June, 1960, at Richmond, Virginia.

H. LESTER HOOKER
Seal Acting Chairman.

Attest:

N. W. ATKINSON, Clerk.

CERTIFICATE.

I, N. W. Atkinson, Clerk of the State Corporation Commission, certify that within sixty days after the final order in this case Oil Transport, Incorporated, by Edward L. Breeden, Jr., 612 National Bank of Commerce Building, Norfolk, Virginia, its attorney, and Petroleum Transit Corporation, by John C. Goddin, State Planters Bank Building, Richmond 19, Virginia, of counsel, filed with me notices of appeal therein which had been delivered to Gordon F. Marsh, 505 Court Street, Portsmouth, Virginia, opposing counsel, to Counsel for the State Corporation Commission, and to the Attorney General of Virginia, pursuant to the provisions of Section 13 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia.

Subscribed at Richmond, Virginia, June 16, 1960.

N. W. ATKINSON
Clerk.

A Copy—Teste:

H. G. TURNER, Clerk.

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