

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Petition of) TRANSPORTATION DIVISION
Murphy Oil USA, Incorporated, for)
a Declaratory Ruling on the) DOCKET NO. T-9662
Characterization of Certain Motor)
Movements as Intrastate.) DECLARATORY RULING

TO: All Interested Persons

1. On January 31, 1991 the Montana Public Service Commission (Commission) received a Petition for Declaratory Ruling from Murphy Oil USA, Incorporated (Murphy Oil or Petitioner). On February 27, 1991 the Commission received an Amended Petition for Declaratory Ruling containing a more detailed presentation of the facts.

2. On March 6, 1991 the Commission issued a Notice of Petition for Declaratory Ruling setting forth the facts and issues presented and establishing a comment period extending to April 6, 1991. On April 5, 1991 Hornoi Transport, Inc. (Hornoi) filed written comments.

3. The facts upon which this ruling will be made are as follows: Petitioner is the purchaser of more than 6,300 barrels per day of crude oil production in Montana. Of this, approximately 3,400 barrels per day are trucked by contract haulers to one of the Petitioner's three pipeline entry points. Two of these entry points are located on the Texaco Pipeline at Richey, Montana and Poplar, Montana. The other facility is located on the Portal Pipeline at Reserve, Montana. Both pipelines are designated as common carrier, and all rates are governed by the Federal Energy Regulatory Commission.

4. Once the crude oil is delivered into these pipelines, it then moves out of state. The barrels of crude shipped on the Texaco Pipeline travel south to a common trading point at Fort Laramie/Guernsey, Wyoming. From there, the crude oil can be shipped to any one of several states. The crude oil delivered into the Portal Pipeline flows into North Dakota and eventually on to Petitioner's refinery in Superior, Wisconsin.

5. Petitioner maintains ownership of the crude oil throughout all of the above-described transportation movements.

6. The question of law presented for declaratory ruling is whether Petitioner's transportation of crude oil is properly characterized as intrastate commerce and, therefore, subject to the provisions Title 69, Chapter 12, Montana Code Annotated, which provide for the regulation of intrastate movements of motor carriers.

7. Petitioner contends that its transportation of crude oil is properly characterized as interstate commerce and is not subject to Commission regulation because it is the well established rule that the "essential character" of the commerce

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controls the nature of the activity, and the essential character of Petitioner's activity is interstate.

8. Hornoi contends that that Petitioner's activity is intrastate. Citing Southern Pacific Transport Co. v. ICC, 565 F.2d 615 (9th Cir. 1977), for the proposition that the character of commerce is manifested by the shipper's fixed and persisting transportation intent at the time of the shipment, Hornoi argues that Petitioner has no fixed and persisting interstate transportation intent at the time the oil is delivered to the contract carrier for carriage to the pipeline entry points. Since the interstate destination of the oil is determined only after it has been delivered to the pipeline, the transportation movement between the pipeline entry points and the oil wells is therefore properly characterized as intrastate.

9. The Commission disagrees. The facts as presented are that the crude oil is transported from oil wells in Montana to the pipeline entry points in Montana for delivery to locations in other states. The Commission is not concerned with which specific out-of-state location the oil is headed as long as the fixed and persisting transportation intent is to transport the oil out of state.

10. In this regard, the Commission notes that its ruling would be different if the oil delivered to the pipeline was also destined for points in Montana. In that case, the fixed and persisting transportation intent would not be established until the oil was delivered to the pipeline and directed to either its in-state or out-of-state destination. In Coe v. Errol, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715 (1886), the United States Supreme Court stated:

Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between States has commenced. But this movement does not begin until the articles have been shipped or started for transportation from one State to another.

Id. at 528, 6 S.Ct. at 479.

11. From the point at which the oil is purchased in Montana, Petitioner here has the fixed and persisting transportation intent to ship the oil out of state. These facts may be distinguished from those presented in Southern Pacific where the shipment of canned goods from the shipper's California canning plants to its California warehouse was held to be intrastate in nature. Since the shipper did not commit shipments to foreign, interstate or intrastate carriage until shipment from the warehouse, the court found that initial transportation to the warehouse retained its intrastate character because no contrary intent had been formed. Id. at 621. See also Burlington Northern, Inc. v. Weyerhaeuser Co., 719 F.2d 304 (9th Cir. 1983).

12. The Commission therefore finds under the facts presented that the essential character of Petitioner's activity

is interstate and not subject to those provisions of Title 69, Chapter 12 of the Montana Code Annotated which provide for the regulation of intrastate motor carrier movements.

DONE AND DATED this 11th day of April, 1991 by a vote of 5-0.

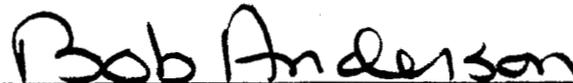
BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



HOWARD L. ELLIS, Chairman



DANNY OBERG, Vice Chairman



BOB ANDERSON, Commissioner



JOHN B. DRISCOLL, Commissioner



WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:



Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

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