

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION)
OF FLINT ENGINEERING & CONSTRUCTION)
COMPANY, 324 PETROLEUM BUILDING,) APPLICATION NO. 34502-Amended
BILLINGS, MONTANA, FOR A CERTIFI-)
CATE OF PUBLIC CONVENIENCE AND) INITIAL ORDER OF THE COMMISSION
NECESSITY TO OPERATE AS A COMMON)
CARRIER BY MOTOR VEHICLE FOR HIRE.)

- - - - -
July 26, 1983
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STATEMENT AND FINDINGS

BY THE COMMISSION:

On January 27, 1982, Flint Engineering & Construction Company (Flint) filed Application No. 34502. Subsequent to notice issued by this Commission on February 1, 1982, timely protests were filed by Pete's Water Service, Inc. (Pete's), B & M Service, Inc., Dawn Enterprises, Inc., dba Dawn Trucking Company, Ward Transport, Inc., and by Groendyke Transport, Inc. On March 8, 1982, Western Oil Transportation Company, Inc., filed its Petition for Leave to Intervene which was granted by Decision No. R82-406-I, issued March 23, 1982, over the objection of Flint. On February 23, 1982, Flint requested that its application be restricted against the transportation of gasoline, aviation gasoline, diesel fuel, propane, butane, jet fuel, road oil, and heavy fuel oils.

By notice issued April 1, 1982, this matter was set for hearing on July 13, 1982, at Denver, Colorado. By notice issued April 16, 1982, and at the request of Flint, the matter was set for additional hearing dates on July 14 and 15, 1982 at Denver, Colorado. On April 20, 1982, Staff of the Commission entered its appearance by counsel. On April 30, 1982, Flint requested that hearings set in this matter be continued and reset because of conflicts of shipper witnesses. By notice dated June 2, 1982, the matter was reset for October 20, 21 and 22, 1982, in Denver, Colorado. On June 18, 1982, Pete's Water Service, Inc., and Western Oil Transportation Company, Inc., filed a motion to dismiss the application on the basis that Flint had failed to comply with prefiling procedures. This motion was denied by Decision No. R82-1146-I, issued July 29, 1982.

On June 18, 1982, Flint filed a letter requesting that its application be amended to add the following restriction: "Restricted to transportation of shipments moving in vacuum type trucks." On June 21, 1982, Western Oil Transportation Company, Inc. filed a letter advising that it would withdraw its protest if the amendment submitted by Flint on June 18, 1982 was accepted by the Commission. On June 23, 1982, Groendyke Transport, Inc. and Ward Transport, Inc. advised by letter that they would withdraw their protests if the amendment submitted by Flint on June 18, 1982 was accepted by the Commission. On October 7, 1982, Dawn Enterprises, Inc., dba Dawn Trucking Company unconditionally withdrew its protest to this application. On October 15, 1982, B & M Service, Inc. unconditionally withdrew its protest to the application.

As rescheduled, hearings were held. As preliminary matters, the amendments proposed by Flint on February 23 and June 18, 1982 were accepted, however, the second amendment was clarified by the Examiner as follows: "Restricted to transportation of shipments in tank vehicles

equipped with vacuum pumps or vacuum devices." Accordingly, Western Oil Transportation Company, Inc., Groendyke Transport, Inc., Ward Transport, Inc., Dawn Enterprises, Inc., dba Dawn Trucking Company, and B & M Service Company, Inc., were permitted to withdraw their protests to the application.

Exhibits 1 through 16 were marked for identification and were offered into evidence. Exhibits 1 through 12 and 14 through 16 were admitted. At the conclusion of Flint's case, Pete's moved to dismiss the application. This motion was joined by Staff of the Commission and was taken under advisement. Protestant Pete's and Staff of the Commission were permitted to present evidence without waiving the motion to dismiss. At the conclusion of all evidence presented, the subject matter was taken under advisement. The parties were given until November 22, 1982 to file statements of position or closing arguments.

On March 4, 1983, Hearings Examiner Thomas F. Dixon issued Recommended Decision No. R83-333. By this decision, the Examiner recommended that the application be denied. As rationale therefor, it was found and concluded that the Commission had no jurisdiction over part of the subject matter of this proceeding because Flint was buying and selling the commodity transported. It was also found and concluded, as to the part of the application over which the Commission has jurisdiction, that insufficient evidence was adduced of record to establish public need therefor.

On June 23, 1983, Flint and Staff of the Commission timely filed exceptions to Recommended Decision No. R83-333. On July 5, 1983, Pete's and Flint filed replies to Staff's exceptions. Pete's also filed reply to Flint's exceptions on July 5, 1983.

In summary, Flint, by its exceptions, contends that the Hearings Examiner erred in failing to recommend a grant of that portion of the application which was unopposed by Pete's. Flint also contends that the evidence of record establishes a substantial public need for the proposed service and an absence of other carriers willing to provide the proposed transportation service. Flint also argues that Pete's failed to establish that such a grant of authority would result in destructive competition and a grant will comply with the legislative requirement of regulated competition.

Staff of the Commission, by its exceptions, contends that the Commission should adopt the primary business test to determine whether this Commission has jurisdiction over the requested transportation activities of Flint. Staff argues that if the primary business test is applied herein, the evidence establishes that Flint is primarily engaged in the transportation of water, rather than the buying and selling of its own water, and thus is subject to the jurisdiction of the Commission. Staff also contends that the evidence reflects that Flint is unfit to receive the authority requested, and therefore Application No. 34502 should be denied on this basis.

Pete's filed reply to exceptions of Staff and Flint on July 5, 1983. By this reply, Pete's also contends that the primary business test should be approved by the Commission in this matter. Pete's also argues that this application should be denied on the basis of lack of Flint's fitness. Pete's further recites its view of the evidence adduced of record and argues that the record of this proceeding fails to establish public need for the authority as requested.

Flint filed reply to Staff's exceptions on July 5, 1983. Therein, Flint contends that the Commission has previously ruled in Decision No. R83-100, issued January 21, 1983, that the primary business test is inappropriate in cases such as the instant matter. Accordingly, the Commission should reject the primary business test as the guideline for

determining the instant matter. Flint also argues that should the Commission adopt the primary business test, Flint has complied with such criteria, and the Commission should find that the proposed transportation is not the transportation of water, and Flint is therefore not subject to the jurisdiction of the Commission.

Although the Commission is not in complete disagreement with the recommended decision of the Examiner, for purposes of clarity, the Commission will enter its order containing its own findings of fact, conclusions on findings of fact, and order, without regard to Recommended Decision No. R83-333.

FINDINGS OF FACT AND CONCLUSIONS THEREON

Based upon all the evidence of record, the following facts are found and conclusions thereon are drawn:

1. Flint Engineering & Construction Company is a corporation whose principal address is 324 Petroleum Building, Billings, Montana 59101. Its Colorado mailing address is P. O. Box 155, Fort Lupton, Colorado 80621. Flint Engineering & Construction Company, hereinafter "Flint", seeks authority to operate as a common carrier by motor vehicle for hire for the transportation - on call and demand - of water, liquid petroleum, petroleum products, and liquid drilling mud, between all points in the area comprised of the counties of Elbert, Arapahoe, Boulder, and Larimer, State of Colorado, and between said points, on the one hand, and all points in the counties of Washington, Adams, Logan, Weld, Morgan, Phillips, Sedgwick, and Yuma, State of Colorado, on the other hand. Restricted against competing with line-haul carriers operating between fixed points; restricted against transporting gasoline, aviation gasoline, diesel fuel, propane, butane, jet fuel, road oil, and heavy fuel oils; and further restricted to transportation of shipments in tank vehicles equipped with vacuum pumps or vacuum devices. Flint presently holds contract carriage permit no. B-4458 as described in Exhibits 1 and 7, which permits Flint to transport "mercator" type commodities between points within a radius of 50 miles of Sterling, Colorado, and between points located within the counties of Washington, Adams, Logan, Weld, Morgan, Phillips, Sedgwick, and Yuma, State of Colorado. This permit is restricted against Flint entering into competition with line-haul carriers operating between fixed points. Flint has facilities located in Fort Lupton, Byers, Fort Morgan, and Cortez, Colorado, as well as in other states. Flint has adequate equipment to provide the service contemplated in its application and is financially fit to conduct the operations proposed. In the event Flint is granted the authority sought, it will have its insurance agent file the required certificate of insurance with the Commission, will file the necessary tariffs, will operate in accordance with all Commission rules and regulations governing common or contract carriers by motor vehicle for hire, and will file with the Secretary of the Commission the designation of agent for service of notices, orders and process.

2. Ronald R. Hanson is the area manager of Flint. Mr. Hanson oversees all operations in Colorado. Flint provides oilfield services such as constructing oil lines, building tank batteries, and general "roustabout" work. Flint transports certain supplies necessary to service oil rigs. Flint provides transportation services pursuant to Permit B-4458. Flint has tank vehicles equipped with vacuum pumps or vacuum devices which allow it to rapidly load liquids at low pressures. The vacuum system also assists in unloading these vehicles. Tank trucks with vacuum pumps and vacuum devices are suitable for the commodities requested in this application.

3. Some of the transportation conducted by Flint does not involve the use of the public highways. Flint has transported water

pursuant to "buy-sell" arrangements in Arapahoe and Elbert Counties. Presently, Flint holds no authority to transport water in Arapahoe or Elbert Counties from this Commission. Flint has also transported oil between lease sites it is servicing in Arapahoe and Elbert Counties. Flint holds no authority to transport oil in Arapahoe or Elbert Counties from this Commission. Flint has crossed county roads in order to get from one lease site to another.

4. In January 1982, Mr. Hanson was contacted by Floyd D. Irby, a transportation representative for the Commission. Mr. Irby reviewed certain records maintained by Flint to determine if there were any violations of Flint's authority. This investigation by Mr. Irby was prompted by a complaint filed with the Commission that Flint was transporting water in Arapahoe and Elbert Counties without PUC authority. On February 3, 1982, Oscar E. Franz, Supervising Transportation Representative, sent a letter to Mr. Hanson advising Mr. Hanson of 33 instances of transportation which Mr. Franz considered outside the authority held by Flint and further advising Flint that continued transportation of this nature would cause an action to be filed by the transportation department of the Commission. This letter also confirms subjects discussed at a meeting between Mr. Hanson, Mr. Irby, and Mr. Franz held in the Commission offices on February 2, 1982.

5. On March 5, 1982, Mr. Irby conducted an audit of the records in the Byers office maintained by Flint and photocopied certain records from the periods beginning February 8, 1982, through March 3, 1982, as set forth in Exhibit 4. These records reflected that Flint continued to transport water, potassium chloride solution (KCl water) and oil to certain oilfields located in Arapahoe and Elbert Counties. At the time Mr. Irby conducted his audit, he conferred with Melvin R. Burton, who is Flint's district manager in Byers, Colorado, about the alleged unauthorized activities. Mr. Burton advised Mr. Irby that the transportation of water and potassium chloride water was conducted pursuant to a legitimate buy-sell arrangement and that Mr. Burton did not believe this type of activity was regulated by the Commission. Mr. Irby advised Mr. Burton that the use of the buy-sell arrangement by Flint was a subterfuge and outside the scope of Flint's authority. During the conversations, Mr. Burton inquired as to whether such a buy-sell operation could be conducted properly so that such activity would not be regulated by the Commission and Mr. Irby advised Mr. Burton that Flint might change its method of billing its services but that Mr. Irby would even have to determine if this would be satisfactory to solve the alleged unauthorized transportation of water and potassium chloride water.

6. In its buy-sell arrangements, Flint purchases water from a source within the State of Colorado and delivers this water to rigs on call and demand as requested by oil rig operators. Flint maintains no inventory of water and only purchases water when called by rig operators to do so. Under this arrangement, Flint does add chemicals (potassium chloride) to the water as requested by the operators before delivering the water to the oilfields. Flint does make a small profit on the sale of the water and a small profit on the sale of the chemicals necessary to treat the water. On its invoices, Flint bills for the cost of the water, the cost of the chemicals, labor and transportation services.

7. The buy-sell arrangement like that used by Flint to sell water or potassium chloride water is a common method used within the oilfield industry to obtain water when drilling or servicing rigs. Generally, oil rig operators do not have local water supplies available to them; hence, the need to purchase the liquids elsewhere. Flint does purchase the water and takes "title" to the water or KCl water when the water is placed in its trucks. Flint then sells the water when it is delivered to the oilfield for use by the operator. Flint purchases the water generally on a monthly basis. While it is likely that Flint derives a profit from the transportation services associated with the

sale of the water, there is no evidence to determine how much, if any, profit is derived from the transportation services associated with the water.

8. After review of the record and evidence of this proceeding, the Commission states and finds that the primary business test is the appropriate test to determine, in this type of proceeding, whether or not the transportation activity in question is subject to the jurisdiction of this Commission. The primary business test criteria to be utilized herein, and in future matters of this nature, are:

- a. Whether the carrier owns the property transported;
- b. Whether orders for the property are received prior to its purchase by the carrier;
- c. Whether the carrier utilizes warehousing facilities and the extent of this use as a storage place;
- d. Whether the carrier undertakes any financial risk in the transportation connected enterprise;
- e. Whether the carrier adds an amount identifiable as a transportation charge to the purchase price and its relation to the distance the goods are transported;
- f. Whether the carrier transports or holds out to transport for anyone other than itself;
- g. Whether the carrier advertises itself as being a non-carrier business;
- h. Whether the carrier's investment in transportation facilities and equipment is the principle part of its total business investment;
- i. Whether the carrier performs any real service other than transportation from which it can profit;
- j. Whether the transportation of the considered products is coordinated with the movement in the opposite direction of other products so that empty vehicles are not ordinarily dispatched to pick up a load for one-way haul;
- k. Whether the carrier at any time engages for-hire carriers to effect delivery of the products, as might be expected, for example, when it is called upon to fill an order and its own equipment is otherwise engaged;
- l. Whether the products are delivered directly from the shipper to the consignee;
- m. Whether the buying and selling of the considered products is undertaken in order to balance the carrier's motor vehicle operations with a profit-yielding backhaul; and
- n. Whether the buying and selling cannot profitably be undertaken but for the availability of equipment which otherwise must be deadheaded incident

to the transportation of other merchandise in the opposite direction.

9. It is herein contended that the Commission should not adopt the primary business test, as set forth above, in view of Commission Decision No. R83-100, in re the application of Robertson Tank Service, Inc., issued January 21, 1983. It is contended that Decision No. R83-100 explicitly states that the repeal of Article 12, Chapter 40, Colorado Revised Statutes, reflects that transportation of goods, owned by the entity conducting the transportation, cannot be regulated by the Commission. Moreover, it is urged that Commission Decision No. R83-100 unequivocally establishes that the primary business test is not appropriate when the applicant owns the goods which it is hauling. The Commission states and finds that Commission Decision No. R83-100 became a decision of the Commission by operation of law and the issues raised therein were not specifically brought to the attention of the Commission. Moreover, the Commission is not bound by res judicata, nor stare decisis, and accordingly, may depart from previous legal principles announced in prior Commission decisions when good cause is shown therefor. The repeal of Article 12 of Chapter 40, CRS 1973, abolished the authority of this Commission to regulate the transportation of goods owned by the transporting carrier. However, should the purchase and sale of commodities be merely incidental to the primary activity of transporting such commodities and thus a subterfuge to avoid regulation by this Commission, the Commission then continues to maintain regulatory jurisdiction over such activity. As above stated, the Commission will henceforth use the primary business test to determine if such carriers are primarily engaged in the transportation of commodities rather than the sale or purchase of their own commodities, and the incidental transportation thereof. The Commission further states and finds that the mere purchase of a commodity by a carrier is not dispositive of whether or not this Commission regulates such a carrier.

10. The transportation of oil between lease sites located in Arapahoe and Elbert Counties by Flint as an operator of rigs is unauthorized activity when Flint crosses a public highway. However, while this activity is unauthorized, the fact that the unauthorized activity only amounts to crossing public highways to get from one lease site to another is not sufficient to warrant the denial of this application on the basis that Flint is unfit because it has conducted illegal activities. Rather, these violations tend to be minor in nature and will not affect the granting or denial of this application. Therefore, Flint is not unfit to conduct the operations proposed in its application by virtue of this transportation activity.

11. Tim Hopkins is a petroleum engineer for Champlin Petroleum Company located in Englewood, Colorado. Champlin has 200 wells located in Colorado, 60 of which are located in Arapahoe and Elbert Counties. Champlin needs water and KCl water to service its existing oil wells, or for drilling new oil wells. In addition, Champlin needs oil when wells are "worked over" or stimulated in order to enhance well production. Finally, Champlin needs waste water transported from oilfield sites. Champlin has rights to develop oil and gas wells in Arapahoe, Elbert, and eastern Boulder Counties. Further development in these areas will depend on gas prices and the economy in general. Champlin has used Flint for transportation of petroleum hydrocarbons on leasehold sites when such transportation did not involve the use of public roads. In 1981, Champlin experienced substantial oil activity; however, such business has been down by at least 50% in 1982. When activity was substantial, Champlin experienced some delays for its transportation needs. Champlin has used Pete's Water Service, Inc., for a majority of its water hauls and occasionally to transport hydrocarbons. Champlin has found that Pete's Water Service is satisfactory in meeting its transportation needs in general at present. Champlin's need for water, treated water, and hydrocarbons depends largely on the state of the economy in general. Because

of reduced oilfield activity, Champlin cannot provide information concerning the quantity of oil and water needed to drill and service its rigs. At the present, Champlin has no wells in Boulder or Larimer Counties in operation.

12. Jim Howerzyl is the president of Continental Gas Transmission Company, now known as CGT, Inc., a closely held corporation which develops and operates oil and gas wells as an independent operator. GCT presently has one well operating in Elbert County, and 40 wells within Flint's proposed service territory if it is expanded under this application. The majority of its activity is in Adams County, near Bennett, Colorado. In 1981, CGT drilled approximately 20 new wells, but none in 1982. CGT has no plans to drill any wells in Larimer or Boulder County in the near future, but may drill as many as two new wells in Arapahoe or Elbert County. It has no specific plans to do so at this time. For the existing wells, CGT occasionally needs hydrocarbons to stimulate and rework existing wells. In the event a hot oil treatment is required, approximately 50 to 100 barrels of oil are needed. In the event a well is stimulated, approximately 1,000 barrels of hydrocarbons are needed. If drilling activity increases, it anticipates that it may use Flint in Arapahoe or Elbert Counties in the future.

13. Stuart Rosen is a field engineer for Colorado Interstate Gas Company, a gas transmission company. CIG needs water and hydrocarbons in fracturing jobs, and also needs disposal of waste water. However, Mr. Rosen does not know in which counties such type of activity would be conducted at present and is unaware of any activity in Boulder or Larimer Counties. Mr. Rosen does not arrange transportation for CIG and is only vaguely familiar with CIG's transportation needs. Mr. Rosen confirms that drilling activity is down in 1982.

14. Bob Arceneaux is the vice president of production for B.W.A.B., Inc., formerly Bander Oil, located in the Denver Tech Center. His company is an independent oil and gas producer, drilling and reworking wells. B.W.A.B. has approximately 25 wells located in Arapahoe and Elbert Counties, and no wells in Boulder or Larimer Counties. Its primary need is for disposal of waste water and for the reworking and completion of wells for which it needs fresh water and KCl water. When it requires water, it purchases water pursuant to a buy-sell arrangement. It uses oil when it stimulates or reworks wells but this is rare and has not been done lately. It drilled no new wells in 1982. In the event it is necessary to stimulate a well, B.W.A.B. generally uses from 100 to 800 barrels of oil. Currently B.W.A.B. has enough carriers available to meet its present needs.

15. Neal Byers is the regional superintendent in charge of drilling, completion and production for Martin Exploration. Martin Exploration develops oil and gas wells. It has 125 wells located in Boulder County, 125 wells located in Weld County, and one well located in Adams County. It needs oil and water for the stimulation of wells, and fresh water for the drilling of wells. During the drilling process, waste water must also be disposed of. It is also necessary to use oil when it services a well with a hot oil treatment. When hot oiling, it uses from 300 to 400 barrels per well on the average. Martin Exploration has no plans to drill wells in Arapahoe or Elbert County at this time, but may drill additional wells in Boulder County at the rate of two per month if there are sufficient oil lines available from Panhandle Eastern Pipeline Company. When drilling wells, it uses approximately 5,000 barrels of water per well. Martin Exploration has been stimulating from one to two wells per week in which case it uses either oil or water. Approximately half of the time, Martin Exploration reworks wells using oil. Therefore, it is anticipated that there will be 40 workovers throughout its system in 1983 which will require 300 to 400 barrels of oil per workover. Martin has used several carriers to meet its needs and has found their service to be satisfactory and adequate.

16. Ty Taylor is the field operations coordinator for Vessels Oil and Gas Company. Vessels Oil and Gas Company is an independent oil and gas producer. It has approximately 200 wells, 30 of which are located in Boulder County, 100 in Weld County, 50 in Adams County, and 20 in Arapahoe County. It needs vacuum trucks for pipeline collection and separation of "drips" along its pipelines. These drips are collected by a vacuum truck and taken to a gas plant located in Brighton, Colorado. Peter's Water Service presently provides such service for Vessels Oil and Gas Company in Arapahoe County satisfactorily, and Flint has been used in Weld County occasionally. In its drilling and production activities, it purchases water when delivered and has used A & W Water Service and it is satisfied with those services. Vessels moves oil between rigs for reworking normally one to two times per week although recently it has only been doing this one to two times per month. Most of the transportation of oil for Vessels between rigs would be on site operations rather than between sites and off sites since Vessels doesn't generally transport oil to rework rigs between oil sites. Under these circumstances it uses its own oil to stimulate the wells. It anticipates more reworkings when Panhandle Eastern begins hooking up their wells to its pipeline. When moving oil between rigs, Vessels would use Flint's services. It also requires the removal of waste products.

17. Vessels Oil and Gas Company plans no activity in Larimer County and only has small leases in Elbert County. There are no plans to begin drilling operations in Elbert County. It would primarily use Flint's services in Boulder County if Flint were permitted and Weld County where Flint is already certified. Although business was better in 1981 and early 1982, activities have diminished during the latter part of 1982 and the present carriers meet all of the needs of Vessels Oil and Gas Company. In the event Panhandle Eastern begins hooking up wells, Vessels Oil and Gas Company anticipates doing more drilling in 1983.

18. Alan Miller is the corporate manager of purchasing for Sinclair Oil Corporation. Sinclair Oil Corporation is a diversified oil company involved in drilling, refining, and marketing oil. Sinclair has no wells in Colorado, however, Sinclair has a pipeline adjacent to Interstate Highway 25 from Wyoming crossing into the State of Colorado and terminating in Adams County at the Sinclair terminal. Sinclair uses Flint to maintain that pipeline and repair line breaks. It would use Flint's services to pick up spills in Weld, Larimer, and Adams Counties. In the past two or three years Sinclair has had approximately four spills of hydrocarbons which necessitated the transportation of approximately 2,500 barrels each. Sinclair needs a vacuum truck to remove the spills. In the event Flint is granted the authority sought, Sinclair will request that Flint remove all spills since Flint provides fully integrated pipeline service.

19. Dale Worden is the coordinator of well operations and liquid products for Panhandle Eastern. Panhandle Eastern has a network of pipelines and has facilities in Adams, Weld, Boulder and on the edge of Arapahoe Counties. Recently, Panhandle Eastern discontinued connecting wells to its lines because a Federal Energy Regulatory Commission (FERC) ruling required approval from FERC before Panhandle Eastern could continue connections. Panhandle Eastern now anticipates it will connect an additional 30 wells for the remainder of 1982 and is awaiting approval from FERC to connect more wells.

20. Edward Rutt is the vice president in charge of operations for Energy Oil, Inc. Energy Oil, Inc. is involved in exploration and production. Energy Oil has wells located in Larimer, Weld, and Adams Counties. In addition, Energy Oil holds leases in Morgan, Washington, Boulder and Yuma Counties. These leases have not been developed yet. There are 35 wells producing at present and eight completed but are not producing. Development of the lease properties would probably occur within the next two to three years. Energy Oil, Inc., contemplates

drilling an additional 30 wells in the next 12 months. One will be drilled near the Weld and Boulder County Line. The remainder, if drilled, will probably be located in Larimer, Weld, Adams and Boulder Counties. Energy Oil requires 3,000 to 5,000 barrels of water and KCl water when drilling wells. Energy Oil uses oil for reworking wells or for fracturing jobs. Approximately 120 to 150 barrels of oil are used to hot oil a well. In Larimer County, the wells have been hot oiled approximately every 60 to 90 days, however, the oil used is that on site. Virtually all oil produced from these wells is transported by the purchaser with the exception that Energy Oil's sludge, which is maintained in a tank battery, is occasionally transported to the Asamera Refiner when there are less than 200 barrels of sludge in that tank. The tank has just been installed and Mr. Rutt is unable to determine how often sludge will have to be transported to the Asamera Refinery.

21. Doyle Lasiter is the plant foreman for Sun Gas Company, located in Strasburg, Colorado. Sun Gas Company is an energy company involved in some production, but primarily involved in gas processing. In Arapahoe County, Sun Gas Company has three producing wells. Mr. Lasiter anticipates that water might be needed for workovers, however, workovers are not performed often by Sun Gas Company. During the last nine years, Mr. Lasiter only recalled a "couple" of workovers. In addition, Sun Gas Company normally uses oil for such workovers. Any liquid petroleum gas processed by Sun Gas Company is transported under arrangements made by the purchaser of such gas. Occasionally Sun Gas Company has the need to remove liquid from the pipeline system which is in the form of an emulsified product which is transported to the Strasburg Plant and pumped back into the system. These emulsions are reclaimable. The frequency of such transportation need varies with the weather. When the temperature falls below zero degrees Fahrenheit, Sun Gas Company has on the average of one load per month. In addition, Sun Gas Company occasionally needs water for hydrostatic testing of its lines; however, it is impossible to tell in the future how great the need will be for such water for this purpose. At present Sun Gas Company uses Flint for contract maintenance of its pipelines and for waste disposal. It would use Flint for transportation services if authorized by the Commission. The Sun Gas Company does not plan to drill any wells at the present.

22. Flint has failed to adduce sufficient evidence of record to demonstrate that the public needs an additional common carrier authorized to transport liquid petroleum, petroleum products, and liquid drilling mud, as proposed in its application. In regard to that portion of the application requesting authority to transport water or KCl water in buy-sell arrangements, the Commission, after applying the above primary business test to such activity, states and finds that said proposed activity is primarily the sale and purchase of Flint's own water and the carriage thereof is incidental thereto. Moreover, the carriage of such water is not a subterfuge for transportation activities which would otherwise be regulated by this Commission. Such activity is therefore not regulated by this Commission in that Flint owns such commodity it is transporting and the transportation of waste products as described by the shippers falls within the exempt waste commodities not regulated by this Commission.

23. The bulk of Flint's shipper support involved the movement of water or KCl water under buy-sell arrangements, or the disposal of exempt waste products which Flint can transport without authority from this Commission. The remainder of Flint's evidence from its shipper witnesses involve the movement of petroleum products. The evidence of record in this proceeding is insufficient to support the granting of a certificate as requested by Flint to transport liquid petroleum, petroleum products and drilling mud, in that the evidence shows that drilling activity is decreasing at present, and the present authorized carriers have been able to fully meet the needs of shippers. Delays in service which might have occurred in 1981 when drilling and production of gas and

oil were at a peak, have not occurred since that peak. Accordingly, this application should be denied.

An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The application of Flint Engineering & Construction Company is hereby denied.

2. The twenty (20) day time period provided for pursuant to CRS 1973, 40-6-114(1) within which to file an application for rehearing, reargument, or reconsideration shall commence to run on the first day following the mailing or serving by the Commission of the decision herein.

This Order shall be effective twenty-one (21) days from the day and date hereof.

DONE IN OPEN MEETING the 26th day of July, 1983.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Edythe S. Miller

Daniel E. Muse

Andy Schmidt
Commissioners

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