

Decision No. 26618.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
LAMB'S TRANSFER COMPANY for a certi-
ficate of public convenience and ne-
cessity to operate an automobile truck
service for the transportation of petro-
leum products in tank cars and trailers
between numerous points in the State of
California.

Application No. 18578.

ORIGINAL

In the Matter of the Application of
MIKE LANG and HOWARD M. LANG, doing
business under the firm name and style
of LANG TRANSPORTATION COMPANY, for a
certificate of public convenience and
necessity to operate an auto-truck line
for the transportation of petroleum re-
fined products between points within the
State of California.

Application No. 18619.

In the Matter of the Application of
PAULSEN & MARCH, INC., a corporation, for
a certificate of public convenience and
necessity to operate an auto-truck line
for the transportation of petroleum and
petroleum refined products between points
in the State of California.

Application No. 18620.

In the Matter of the Application of
ELLINGTON BROS., LTD., a corporation, for
a certificate of public convenience and
necessity to operate an auto-truck line
for the transportation of petroleum and
petroleum refined products between points
in the State of California.

Application No. 18621.

In the Matter of the Application of
H. I. MILLER for a certificate of public
convenience and necessity to operate an
auto-truck line for the transportation of
petroleum and petroleum refined products
between points in the State of California.

Application No. 18622.

In the Matter of the Application of
PACIFIC TRUCK SERVICE, INC., a corpora-
tion, for a certificate of public conven-
ience and necessity to operate an auto-
truck line for the transportation of pet-
roleum and petroleum refined products be-
tween points in the State of California.

Application No. 18623.

In the Matter of the Application of
GEORGE G. EARM and HAROLD B. FRASER,
doing business under the firm name and
style of TERMINAL WAREHOUSE CO., for
a certificate of public convenience and
necessity to operate an auto-truck line
for the transportation of petroleum and
petroleum refined products between points
in the State of California.

Application No. 18624.

In the Matter of the Application of
W. R. MILES for a certificate of public
convenience and necessity to operate an
auto-truck line for the transportation
of petroleum and petroleum refined prod-
ucts between points in the State of Cal-
ifornia.

Application No. 18625.

In the Matter of the Application of
B. O. THOMAS, for a certificate of public
convenience and necessity to operate an
auto-truck line for the transportation of
petroleum and petroleum refined products
between points in the State of California.

Application No. 18626.

In the Matter of the Application of
A. L. FARMER, doing business under the
firm name and style of CALIFORNIA TANK
LINE, for a certificate of public con-
venience and necessity to operate an
auto-truck line for the transportation
of petroleum and petroleum refined prod-
ucts between points in the State of
California.

Application No. 18627.

In the Matter of the Application of
CANTLAY & TANZOLA, INC., a corporation,
for a certificate of public convenience
and necessity to operate an auto-truck
line for the transportation of petroleum
and petroleum refined products between
points in the State of California.

Application No. 18628.

In the Matter of the Application of
P. R. McCUTCHEN, doing business under the
firm name and style of McCUTCHEN TRANS-
PORTATION CO., for a certificate of pub-
lic convenience and necessity to operate
an auto-truck line for the transportation
of petroleum and petroleum refined prod-
ucts between points in the State of Cali-
fornia.

Application No. 18629.

In the Matter of the Application of
GEORGE EARM for a certificate of public
convenience and necessity to operate an
auto-truck line for the transportation of
petroleum and petroleum refined products
between points in the State of California.

In the Matter of the Application of H. E. PHOENIX, F. J. PHOENIX, E. J. PHOENIX and P. A. PHOENIX, doing business under the firm name and style of OILFIELDS TRUCKING COMPANY, for a certificate of public convenience and necessity to operate an auto-truck line for the transportation of petroleum and petroleum refined products between points in the State of California.

In the Matter of the Application of MOTOR
FREIGHT TERMINAL COMPANY, a corporation,
for a certificate of public convenience
and necessity to operate an auto-truck
line for the transportation of petroleum
and petroleum refined products between
points in the State of California.

In the Matter of the Application of
PACIFIC TANK LINES INC., a corporation,
for a certificate of public convenience
and necessity to operate an auto-truck line
for the transportation of petroleum and
petroleum refined products between points
within the State of California.

In the Matter of the Application of
VENTURA TRANSFER & STORAGE COMPANY, a co-
partnership, for a certificate of public
convenience and necessity to operate an
auto-truck line for the transportation
of petroleum and petroleum refined prod-
ucts between points within the State of
California.

In the Matter of the Suspension by the Commission on its own motion of reduced rates on petroleum, petroleum products, etc., named in tariffs of the SOUTHERN PACIFIC CO., ATCHISON, TOPEKA AND SANTA FE RAILWAY, LOS ANGELES & SALT LAKE RAILROAD, PACIFIC ELECTRIC RAILWAY, WESTERN PACIFIC RAILROAD, SACRAMENTO NORTHERN RAILWAY, TIDEWATER SOUTHERN RAILROAD and PACIFIC FREIGHT TARIFF BUREAU applying between various points in California.

Sanborn & Roehl, for applicants in Applications 18619 to 18630 inclusive, 18637 and 18737; for petitioner in Case 3537; also for Tank Truck Operators' Association.

Richard T. Eddy, for applicant in Application 18578.

C. G. Anthony, Wallace K. Downey and Hugh Gordon, for applicants in Applications 18715 and 18716.

Berne Levy and G. E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company, protestant in all application cases, defendant in Case 3134 and respondent in Case 3537.

Richard E. Wedekind, for Pacific Electric Railway Company, protestant in all application cases, defendant in Case 3134 and respondent in Case 3537.

E. E. Bennett and E. C. Renwick, for Los Angeles & Salt Lake Railroad Company, protestant in all application cases, defendant in Case 3134 and respondent in Case 3537.

H. J. Bischoff, for Coast Truck Line, Borderland Express, Motor Service Express, Rice Transportation Company, protestants in all application cases.

L. N. Bradshaw, for The Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater and Southern Railway Company, protestants in all application cases, defendants in Case 3134 and respondents in Case 3537.

J. E. Lyons and H. W. Hobbs, for Southern Pacific Company and Northwestern Pacific Railroad Company, protestants in all application cases, defendants in Case 3134 and respondents in Case 3537; also for Pacific Motor Transport Company, protestant in the application cases.

F. B. Dorsey and E. W. Hobbs, for San Diego & Arizona Eastern Railway, protestant in application cases.

D. M. Swobe and E. W. Hobbs, for McCloud River Railroad Company, protestant in application cases.

W. T. Masengill and E. W. Hobbs, for Pacific Coast Railway Company, protestant in application cases.

C. E. Brown and E. W. Hobbs, for San Francisco, Napa and Calistoga Railway Company, protestant in application cases.

W. L. White and E. W. Hobbs, for Yosemite Valley Railroad Company, protestant in application cases.

Rex W. Boston, for Asbury Transportation Company, and Asbury Truck Company, interested party in all cases.

Boyd Oliver, for Northern California Tire Association.

Rex B. Goodcell, for Guasti-Gulif, Independent Tire Dealers of Los Angeles.

C. E. Donaldson, for Shell Oil Company and Sixth District Regional District of the Code for the Petroleum Industry.

George Millas, Jr., for Rubber Manufacturers' Association.

Paul Turner, for the Truck Industry Employees' Association of California.

Robert Hutcherson, for Associated Oil Company.

J. I. Sheridan, for Union Oil Company of California.

R. K. Malone, for The Texas Company.

R. N. Slingerland, for Standard Oil Company of California.

Hugh Gordon, for Southern California Trailer Manufacturers' Association.

Harry See, for the Railroad Brotherhoods.
William B. Hornblower, for Motor Car Dealers of Northern
California.
Fred J. Coulter, for Asbury Truck Company.
Paul Turner, for Truck Industry Employees' Association.

BY THE COMMISSION:

OPINION ON ORAL ARGUMENT

Decision No. 26443 of October 17, 1933, denied to the above named applicants certificates of public convenience and necessity to transport petroleum products as common carriers between various points in the State. The decision also held that certain reduced rates proposed by respondent rail carriers in Case 3537 for the transportation of petroleum products had been justified.¹ Petitions for rehearing were filed by applicants. Oral argument on said petitions was had before the Commission en banc on November 27 and 28, 1933.

Seventeen applicants, haulers of petroleum products in tank trucks, are before us in these consolidated proceedings. These, together with some 86 other tank truck operators not requesting certificates, are competitors of the railroads for the transportation of gasoline and other petroleum products between points directly served by the railroads. The railroads have heretofore placed in effect reduced rates in order to obtain a fair share of this business. They have thus far been unsuccessful. The rates² which they are now proposing and which are under suspen-

¹ The average reductions proposed range from 15% to 17%.

² The revenue from these rates will be considerably in excess of the out-of-pocket cost of operation. The rates however are not maximum reasonable rates.

sion, are designed to return to them all of the business now moving between rail points.³ Whether their goal will be reached is problematical. In their judgment it will be.

In the light of the oral argument the conclusion is inescapable that the tank truck haulers are not greatly concerned about obtaining certificates of public convenience and necessity. Their main purpose in these proceedings is to have the Commission require the rail lines to maintain the present level of rates. They want the railroad rates "pegged" without any adequate assurance being given the Commission that their own rates can or will be stabilized.

A fundamental question is thus before the Commission. Should the Commission prevent the railroads from establishing rates which in the exercise of their managerial discretion they believe are necessary to meet competition, without the Commission or any other regulatory body being able to control an agency of transportation which directly competes with the railroads? Granting certificates of public convenience and necessity to the 17 applicants would not enable the Commission to control the tank truck operators, for, as has been shown by the tank truck operators themselves, the 17 applicants here before us are hauling less than 50% of the gasoline moving by truck.⁴ But applicants contend that stabilization of their rates can be attained through the provisions of a

³ The tank truck operators are not entirely dependent upon the traffic moving between rail points. They also handle considerable tonnage to off-rail points without competition from the railroads.

⁴ According to the petition for rehearing filed by Motor Freight Terminal Company and Pacific Tank Lines, the tank truck haulers not requesting certificates operate approximately 55% of the equipment used in the State to haul petroleum products. Their rates are in practically all cases less than the rail rates.

prospective code under the National Recovery Administration. The code, however, does not place within the Commission's hands the power to establish minimum rates for truck lines. The establishment of rates is left to the industry, and under the provisions of the code the industry may establish rates based upon a percentage of the rail rates or a flat differential under the rail rates. In no case, however, may rates be maintained in excess of the rail rates.⁵ Both the majority and minority opinions in these proceedings express the thought that on a parity of rates with the trucks the railroads cannot obtain their fair share of the traffic and that a slight differential in rates may be necessary. Certainly if truck rates were less than the rail rates the movement would be entirely by truck.

Until both agencies of transportation can be effectively regulated it would be grossly unfair to the railroads for the Commission to freeze their rates and allow their unregulated competitors to take the traffic from them. If and when adequate regulation of competitive forms of transportation is attained the Commission will consider reopening these proceedings for the purpose of

⁵ Article VI Section 2(a) of the "Code of Fair Competition" submitted to the National Recovery Administration by the American Trucking Associations, Inc., provides as follows:

"Minimum rates and tariffs, and practices in connection therewith, may be formulated by trade agreements among the members of any territorial or natural group of the Industry, provided that such rates and tariffs are (a) directly related to and not more than rates and tariffs prescribed or approved by or on file with an appropriate State Regulatory Body for transportation by members of this Industry, or (b) are directly related to and not more than existing rates and tariffs of competing railroad services which are on file with the Interstate Commerce Commission or any other appropriate Regulatory Body. Such relation to the rates and tariffs prescribed in clauses (a) and (b) of this Section shall either be (1) a percentage relation to such rates equal to or under the same, or (2) a differential in cents per hundred pounds under the same."

establishing maximum reasonable rates.

The petitions for rehearing will be denied.

O R D E R

Oral argument on petitions for rehearing filed in the above entitled proceedings having been had, and the Commission being of the opinion that no good cause for the granting of a rehearing has been made to appear,

IT IS HEREBY ORDERED that said petitions for rehearing be and they are hereby denied.

IT IS HEREBY FURTHER ORDERED that our orders of suspension in Case No. 3537 be and they are hereby vacated and set aside as of December 16, 1933.

Dated at San Francisco, California, this 11th day of December, 1933.

CL Severy

WM H. Cunn

MB Harris

Commissioners.