

Decision No. 23267

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
by the Commission on its own motion)
into the rates, rules, regulations)
and practices of carriers engaged)
in the transportation of petroleum)
and petroleum products within this)
State.)

Case No. 4079

Sanborn & Roehl, by H. H. Sanborn, for Tank Truck Operators Association.
Bischoff and Christensen, R. N. Christensen, for Southern California Freight Lines.
Wallace K. Downey, for Pacific Tank Lines and for Pacific Freight Lines.
James E. Lyons, for Southern Pacific Co.; San Diego & Arizona Eastern Railroad; Northwestern Pacific Railroad Company; Petaluma & Santa Rosa Railroad; and for O. G. Steele, Receiver of the Yreka Railroad Company.
G. E. Duffy and Berne Levy, for The Atchison, Topeka & Santa Fe Railway Company; Modesto Empire Traction Company; Central California Traction Company; and Sunset Railroad.
R. E. Wedekind, for Pacific Electric Railway.
E. E. Bennett and E. C. Renwick, for Los Angeles & Salt Lake Railroad.
Victor E. Wilson, Wm. Moseley Jones and Culbert L. Olson, for Independent Petroleum Association.
L. N. Bradshaw and H. E. Poulterer, for Western Pacific Railroad Company, Sacramento Northern Railway, and Tidewater Southern Railway.
B. Elinn Bishop, for Petrol Corporation of Los Angeles.
R. N. Slingerland, for Standard Oil Company of California.
Robert L. Hutcherson, for Associated Oil Company.
Bart F. Wade, for Asbury Truck Company.
Gifford F. Max, for Texas Company.
J. M. Jessen, for General Petroleum Company.
Hal Cousins, for Service Truck Lines.
Edward M. Berol, for Truck Owners Association of California.
L. I. McKim, for The River Lines.
E. P. Werner, for the Brotherhood of Railroad Trainmen, Brotherhood of Locomotive Engineers and Brotherhood of Railway Clerks.
H. W. Baugh, for the Motor Truck Association of Southern California.

WARE, COMMISSIONER:

O P I N I O N

This case is the culmination of two historic struggles; first, the controversy between the oil refiners and the rail carriers that started in 1924 because of the alleged unsatisfactory and inadequate rail service and the excessive rail rates affecting petroleum and petroleum products; and, secondly, more than ten years of warfare between the rail carriers and the hitherto unregulated tank truck operators for the traffic of these products.

The objectives of these three factions, stripped of unnecessary verbiage, are briefly: first, the rails contend that they have the right to establish and maintain rates so low as to effectuate the recapture of 100 per cent of this traffic between rail points; secondly, the tank truck operators, now under regulation, contend that the Commission should fix a parity of reasonably compensatory rates for both rails and tank trucks, in compliance with the provisions of the Public Utilities Act and the Highway Carriers' Act; thirdly, the oil refiners are conciliatory to the fixation by this Commission of reasonably compensatory rates so as to effectuate the perpetuation of both rails and tank trucks.

While the scope of this investigation was sufficiently wide to invite rate fixation for the entire field of "petroleum and petroleum products," the evidence that was adduced has limited and defined the issues involved in this case, and, in meeting these issues it now becomes the specific purpose of the Commission herein to establish order and stability out of chaos through the fixation of just, non-discriminatory, reasonable and sufficient rates on refined petroleum products moving in tank cars and in tank trucks

(1)
within California.

The rates which comprise the subject matter of this decision are the rates which shall apply on refined liquid petroleum products, including compounded oils having a petroleum base as described in Supplement No. 17 to Western Classification No. 65 (Supplement No. 17 to C.R.C. No. 580 of M.A.Cummings, Agent) under the heading "Petroleum or Petroleum Products * * * "when moving in tank cars, tank trucks, tank trailers or tank semi-trailers or combination of such highway vehicles, excepting that the rates herein prescribed will not apply on petroleum crude oil, petroleum

(1) Petition filed with the Commission and dated October 8, 1935, of Tank Truck Operators' Association, a non-profit California corporation composed of members engaged in the movement of practically all of the refined petroleum products which move in the State of California by tank trucks, alleged: "That the rates charged for the transportation of petroleum and petroleum products by highway carriers and common carriers by railroad are unduly and unreasonably low, insufficient and discriminatory" and asked specifically "that the Commission make its order instituting an investigation upon its own motion, and after due notice and hearing fix and determine just, reasonable and non-discriminatory maximum or minimum or maximum and minimum rates to be observed, charged and collected by highway carriers for transportation of petroleum and petroleum products within the State of California, * * * "

Thereupon and on the 21st day of October, 1935, the Commission ordered: "that an investigation be and it is hereby instituted and initiated by the Commission upon its own motion for the purpose of establishing just, reasonable and non-discriminatory maximum or minimum or maximum and minimum rates to be observed, charged and collected by any and all highway carriers, as that term is defined in Chapter 223, Statutes of 1935 of the State of California, for the transportation of petroleum and petroleum products over the public highways within this State.

"IT IS HEREBY FURTHER ORDERED that an investigation be and it is hereby instituted by the Commission upon its own motion into the rates, rules, regulations and practices of common carriers by railroad, as defined in the Public Utilities Act of the State of California, for the transportation of petroleum and petroleum products within this State, particularly to determine if any or all of said rates, rules, regulations and practices are unduly or unreasonably low, insufficient, discriminatory or in any other manner unlawful."

fuel oil and petroleum gas oil. Said rates must be assessed on the weight of the commodity shipped, computed on a basis of 6.6 pounds per gallon, subject to the following minima: (a) When moving by rail to the weight minima provided in respondents' tariffs on file with this Commission and in effect on the date of this order; (b) when moving by highway to the full legal carrying capacity of the tank or tanks in which the shipment is transported but in no event shall the transportation charges for quantities less than 5800 gallons be less than those applicable on shipments of 5800 gallons.

ANTECEDENTS OF CASE 4079

Rate War.

As early as 1924 the large oil companies of California became dissatisfied with the service accorded to them by the railways, and failing in their effort to procure lower rates and better service, turned to tank trucks for relief. The rail lines were aware of these conditions but remained adamant in their refusal and failure to meet the more favorable service demanded by the shippers and supplied by the tank truckers. In consequence of this policy and attitude adopted by the rails there ensued an unprecedented era of tank truck development and expansion, in the course of which the rails lost to their tank truck competitors an alarming percentage of the gasoline traffic moving within the State of California.

Eventually awakened by the force and danger of this competitive factor the rails assumed the offensive in a series of rate war reductions, and it is this continuing struggle which has necessitated the instant case.⁽²⁾

A check of Commission records reveals that in 1929 the rail lines filed a series of substantial reductions in rates on refined

(2) See Table I appended to the order herein

petroleum products, for the purpose of stemming the diversion of the gasoline traffic. Their first drastic reductions were issued and filed with the Commission in July and August, 1929, to become effective September 1, 1929. The unregulated tank truck operators requested the suspension of these reduced rates on August 30, 1929. The Commission had little or no time to investigate the controversy and declined to suspend. (Informal Complaint File 40962).

Subsequently, in June 1931, the rails filed supplements containing further sharp reductions in their gasoline rates to become effective July 20, 1931. Again said unregulated tank truck operators asked for a suspension of the reduced rail rates, and again the Commission refused to suspend.

The rail lines made further reductions in rates, effective December 27, 1931, and again the same unregulated tank truckers protested. Meanwhile, the Tank Truck Operators' Association, a California corporation composed of members engaged in the unregulated movement of a substantial proportion of the refined petroleum products transported in California by tank trucks, ⁽³⁾ had filed a complaint with the Commission in Case 3134, attacking the rail rates as being unduly and unreasonably low. The Commission declined to suspend these reduced rail rates, doing so expressly without prejudice to any conclusion that might be reached in Case 3134. Before this case came to trial the rail lines attempted further reductions in rates, effective September 20, 1932, which the said Association protested. These rates were suspended by the Commission in Case 3350, but before the matter was heard, the rail lines withdrew said rates. However, the same rates were republished in tariffs issued by the rail carriers and filed with the Commission in February

(3) Exhibit 2 offered by witness Howard M. Lang shows 30 members in Tank Truck Operators' Association as of November 14, 1935, operating 288 units of tank truck and trailer.

1933, to become effective March 25, 1933. These proposed reductions were suspended by the order of the Commission in Case 3537 on March 9, 1933, and did not become effective until December 16, 1933, following the decisions of this Commission, No. 26443, of October 17, 1933, and No. 26618 of December 11, 1933, in Case 3537, and related proceedings. (39 C.R.C. 37-51; 153-158)

Case 3537, et al.

Adequate chronology of this problem necessitates at this point a brief review of Case 3537, supra. As just indicated, this case involved primarily the suspension of the last reduced rail rates affecting petroleum and petroleum products. Previous to the hearing thereon 17 unregulated tank truck operators, members of the Tank Truck Operators' Association and among the respondents herein, filed severally their applications for certificates of public convenience and necessity to operate as certificated common carriers, thereby proposing to change their status from that of the hitherto unregulated contract carriers, which each applicant claimed to be, to that of regulated common carriers, as defined by the Auto Truck Transportation Act. (Chapter 213, Statutes 1917, and amendments.)

During the period of these repeated reductions in rates, hereinabove outlined, these tank truck operators were not subject to regulation as were the common carrier truck operators, and the object of these 17 applicants was to surrender to the jurisdiction of this Commission and thereby subject their rates to the scrutiny and control of this Commission.

By the divided Commission Decision 26443, supra, the suspension was lifted, the rates were permitted to become effective, and all applications for certificates of public convenience and necessity were denied.

The majority held that it would be a grave abuse of discretion to permanently suspend the rates then under suspension, largely because of the fact that contract truck carriers were not subject to regulation. The majority also felt that the Commission could not

consistently grant certificates of public convenience and necessity for the many duplicated services involved in these 17 applications.

The following is quoted from the majority opinion, Case 3537, supra, (39 C.R.C. 43):

"The record as here developed requires the removal of the suspension on the rates proposed by the carriers and the denial of the several applications.

"1. It is not an exaggeration to say that in no instance since the writer of this opinion has been a member of this Commission have the rail carriers so fully and convincingly justified a rate under suspension as have the carriers justified the rates here under suspension. The history and development of rates on gasoline were displayed at great length, indicating a somewhat haphazard development of a rate structure for this class of traffic and the need for some stable and logical basis for the construction of the tariff. The suspended rates, it was shown, are constructed on such a basis. Evidence was presented in detail showing that rates heretofore in effect did not and would not retain this traffic and that in the absence of a comprehensive revision and reduction in rates the traffic would gradually leave the rails. Economic studies were presented on costs of moving the traffic and indicating the prospective earnings from the gasoline movement on the assumption that the suspended rates would attract back to the rails varying percentages of the movement lost. While it may be said that the course of the carriers in thus seeking to reduce rates on gasoline represents a somewhat daring exercise of managerial discretion and judgment, it can not be said that the effort is hasty or ill conceived or without prospect of bettering the financial condition of the carriers. It would be a clear abuse of discretion for this Commission to permanently suspend the rates proposed." (Emphasis supplied)

At the expense of breaking the continuity of this opinion, it seems appropriate to point out right here that the net result of these reduced rates brought the rails in California 52,000 more tons of gasoline in the year 1934, the 12 months following said reduction, than they had hauled in the year 1933 and \$3,000 less gross receipts. Therefore, instead of "bettering the financial condition of the carriers" the net result of these depressed rates resulted in harm to "the financial condition of the carriers". The rails actually hauled 52,000 additional tons of freight and received \$3,000 less money for their services.

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We resume further quotation from the majority opinion in Case 3537, supra, (39 C.R.C. 44):

"2. The applications present an anomalous situation. If granted there would be eleven authorized operations between Los Angeles and Bakersfield, nine between Los Angeles and San Luis Obispo, seven between San Francisco Bay points and upper Sacramento Valley points, and so on. While all of these operations would be public and theoretically and legally open to all, the evidence indicates that each operator would continue with a limited patronage. Many now haul for but a single oil company. Under certification apparently the same would hold true. The various oil companies would each have its particular public carrier doing its truck transportation. The only real change would be that rates would be published and public instead of being the subject of contract. * * *

"The most plausible and practical suggestion is to grant certificates as applied for and having thus acquired control over transportation agencies now without its jurisdiction, to establish and maintain rates which will fairly apportion this business between these two agencies of transportation, truck and rail. * * *

" * * * Indeed, the course suggested involves entering upon an uncharted and tumultuous sea with the danger of wreck and disaster far outmatching the possible benefits which might result from the venture."

The minority (Case 3537) felt that the 17 applications should be granted, and the suspended rates ordered cancelled as a means toward stabilizing the transportation industry and thereby ending this rate war. It appeared to the minority that the Commission should grasp this opportunity and bring within its jurisdiction and regulation this large group of tank truck operators, who were willing to dedicate their facilities to the public service and become common carriers. We quote from the minority opinion (39 C.R.C. 48):

"The applications should be granted and the rates of both the trucks and the railroads stabilized notwithstanding this action may embark the Commission upon an uncharted and tumultuous sea.

"This is the constructive course to follow. Transportation conditions in California are demoralized and should be stabilized when this is possible of attainment. (See In Re Investigation of Transportation Systems of California, Decision No. 25243, rendered October 10, 1932.) Here the opportunity is presented to the Commission

to accomplish stability in the haulage of petroleum products and this opportunity should not lightly be cast aside.

"The consequences flowing from any other course of action would be disastrous and far reaching. Denying the applications and granting respondents authority to make effective the suspended rates, as the majority have done, will precipitate a violent rate war. The struggle between the rails and the trucks for the gasoline tonnage will continue unabated. True, it is respondents' judgment that the proposed rates will return to them a major portion of the gasoline tonnage. Their judgment is, of course, based upon the assumption that these rates will not be met by the tank truck operators. Past experience shows this to be a fallacious assumption." (Emphasis supplied.)

On a petition for rehearing, Case 3537 went to oral argument on November 27 and 28, 1933, before the Commission en banc, and the same Commissioners who had subscribed to the majority opinion subscribed to the opinion denying rehearing and in their Decision 26618 (39 C.R.C. 157) said:

"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 establishing maximum reasonable rates." (Emphasis supplied)

Upon appeal to the Supreme Court of California in re Lang vs. Railroad Commission the action by the majority of the Commission as hereinbefore outlined was sustained. We quote the concluding portion of that decision (2 Cal. (2nd) P. 550,565):

"But the more serious question, as it appeared to the majority members of the Commission and as it appears to us, is that any schedule of rates the Commission might fix would not be binding upon the truck carriers, therefore it would be an idle act for the Commission to attempt to adjust the differences between the two classes of carriers, when only one class would be bound by such arrangement, leaving the members of the other class to conform to it or violate it, as to their interest might seem best. Even if the Commission should grant the applications of the petitioners for certificates of public necessity and convenience, assuming that this could legally be done, and the truck carriers brought within the

jurisdiction of the Commission and therefore subject to the rate fixing power of the Commission, that would not prevent other private truck carriers from springing up and fixing rates lower than those established by the Commission, and in that manner drawing this business away from both the petitioning truck carriers and the railroads. Until truck carriers are brought within the jurisdiction of the Commission and the latter is given power to fix rates to be charged by them, we see no way that the Commission can stabilize this business between them and the rail carriers." (Emphasis supplied)

At this point we defer the final analysis of Case 3537, which we shall presently resume, to afford timely emphasis upon another important antecedent to the instant case.

General Commission Investigation of Transportation.

Probably no single decision of this Commission was more instrumental in concentrating public as well as legislative interest and consideration in the necessity for adequate transportation regulation than was Decision No. 25243 (38 C.R.C. 31) dated October 10, 1932, and which decision was rendered in "The Matter of the Investigation Upon the Commission's Own Motion Into the Operation of the Various Transportation Systems Doing Business in the State of California." (4)

The primary object of this investigation was to determine what steps should be taken to bring about stability. The evils surrounding unregulated rates of one set of carriers in competition with the regulated rates of regulated carriers were fully disclosed, and the Commission recognized that without control of the rates of all forms of transportation, a chaotic condition would exist for which no remedy was available. Common carriers by rail, water and truck were, under existing statutes, subject to regulation, and their rate policies were controlled and regulated.

(4) Pursuant to said investigation, more than 13,000 special notices revealing the purpose of said investigation were effectively served throughout California; more than 12,000 questionnaires were sent to representative shippers and receivers of freight; and 24 hearings were held during the year 1932 in many of the larger cities in California.

We quote from said Decision 25243 (38 C.R.C. 84, 93):

"The Railroad Commission on December 16, 1931, on its own motion instituted an investigation of freight transportation conditions in California. The reasons for the investigation were the radical changes taking place in transportation and the very apparent unsettled state in which transportation agencies and general business found themselves as a result of these changed and changing conditions. The purpose of the investigation was to find the facts and suggest remedies, and, as stated by the Commission at the opening hearing, 'upon the completion of this investigation to either take such positive regulatory action, even though it be of a most drastic character, that is necessary and possible under the existing law, or to make definite recommendations for legislative action, or both, as may be warranted in the general public interest.'

" * * * The advent of new transportation agencies, and the shifting of transportation from the rail and the water to the truck and the highway have brought about changed conditions which the law does not adequately cover. The very evils which regulation is intended to correct have returned in even more vicious form under a condition of the law where some of the transportation agencies are rigidly regulated, some are or may be partly regulated and some are not regulated at all. The public interest demands that regulation be extended alike over all or that it be withdrawn from all and the law of the jungle be given full and equal play.

"Which of these two courses should be pursued is a matter of State policy to be determined by the Legislature."

DIFFERENTIALS AND REGULATORY LEGISLATION

Recurring to Case 3537, supra, we pause to reflect that this Commission in its majority opinion said: (In re 1933 Petroleum Case 3537, supra, 39 C.R.C. 45.)

"It is perfectly clear from the record that with rail and truck rates the same, the business would steadily gravitate to the trucks. A differential in favor of the rails clearly would be necessary if the rails are to participate substantially in the traffic."

The writer of this opinion, on October 17, 1933, subscribed to the dissenting opinion in Case 3537, supra, from which we quote: (39 C.R.C., page 51.)

"However the record is clear that upon an equality of rates the rails cannot hope to seriously compete with the trucks. The value of the truck service to the oil companies is greater than the rail service, due principally to the flexibility of the

trucks and reciprocal trade agreements between the applicants and the oil companies. What the differential should be to equalize the value of the service and allow the rail lines to obtain a return of a fair share of the traffic to which they are entitled, is hard to determine. On this record it is impossible of determination with any degree of certainty. Nevertheless we must recognize that some differential should be maintained."

Freshly cognizant of the decision of the Supreme Court in re Lang v. Railroad Commission, supra, (2 Cal. (2nd) 550) and being mindful of the conclusions on the question of a differential as expressed by every member of the Commission in Case 3537, supra, and possessed with the knowledge of the significant conclusions expressed in Decision 25243, supra, in re Investigation of Transportation Systems in California, the Legislature of California at the next ensuing session of 1935, as one of the provisions to preserve for the public the full use and benefit of the public highways and recognizing the necessity of obtaining a proper rate structure between all agencies of transportation, enjoined the Commission to "establish or approve just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any highway carrier other than a highway common carrier, now subject to the jurisdiction of said Commission under Chapter 213 of the Laws of 1917, and as amended, for the transportation of property and for accessorial service performed by said highway carrier." (From Section 10, Highway Carriers' Act, Chapter 223, Statutes of 1935.) On the specific question of "differentials," said legislature further declared by law this succinct restriction:

"*** such rates (minimum rates for transportation services by highway carriers) shall not exceed the current rates of common carriers for the transportation of the same kind of property between the same points." (From Section 10, Highway Carriers' Act, Chapter 223, Statutes of 1935. Parenthesis and emphasis supplied.)

It is not difficult to recognize the historic facts and economic forces which impelled this legislation. The record in Case 3537, and the instant record, afford conclusive proof that the rails have already suffered the loss of the major movement of gasoline in California because of rates that were originally high and service that was originally unsatisfactory and indifferent.

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We repeat what is already patent that the shippers turned to trucks some ten years ago for relief and, as stated, thereupon was ushered into the history of transportation the enormous utilization and development of the tank truckers.

The rail lines' representatives knew of their losses in the gasoline traffic and made no attempt to retain or recover the traffic for five years after the truckmen inaugurated their service. The rail lines now have no inherent right to the exclusive handling of the gasoline traffic, and will not be permitted to publish less than reasonable rates which are below those of their tank truck competitors, for the purpose of controlling 100 per cent of the traffic and thereby eliminating truck competition. Should we countenance such action we would be flying in the face of our early decisions in Pacific Gas & Electric Co. v. Great Western Power Company, 1 C.R.C. 203, and in the Oro Electric Case, 1 C.R.C. 253. In re Application of Valley Motor Lines, Inc., 36 C.R.C. 866, we refused to concede to the rail lines the monopoly of handling all of the traffic in the San Joaquin Valley, as against a proposed motor-truck service, and we there pointed out that a carrier would be protected in its field only so long as it met all reasonable requirements of its patrons.

The rails now contend that they have the right to monopolize the entire traffic of petroleum and petroleum products between rail head points in California. The Witness C. E. Donaldson, Traffic Manager, Shell Oil Company, (Tr. p. 531, line 17, et seq.) affords the shippers' answer to this contention:

" * * * in order to have tank truck service to points beyond rail heads, it is necessary to have the trucks also in service between rail head points. It follows that if the trucks are ruled off the highways to rail head points there would be no truck service - not sufficient truck service to take care of the points beyond."

The belated yet persistent efforts of the rails to recover this traffic comprise a series of successive rail rate reductions heretofore categorically outlined and constituting the major offensive of the petroleum freight rate war that has been waged in California for the past decade. If it can be said, as indeed the facts warrant, that present rates are extremely low and service most abundant and satisfactory, then we must ascribe these salutary results to truck competition. There is no wonder that the shippers, to whose testimony we shall hereafter advert, have advocated herein, with complete unanimity, the preservation of these tank truckers.

The critical point was reached with the final adjudication of C. 3537, supra, in December, 1933, and in re Lang v. Railroad Commission, supra, in February, 1935, where the tank truckers, who were responsible for forcing low rates and abundant service, were to experience one of two destinies: first, destruction as the result of a rate war unchecked by adequate regulation; secondly, preservation in a field of regulated competition. The Legislature of 1935 spoke promptly in favor of the latter.

The Public Utilities Act, under which we function in the regulation of common carriers, declares that all rates shall be just and reasonable, and that every unjust and unreasonable charge made, demanded or received for any commodity or service is prohibited and declared to be unlawful. (Section 13 (a), Public Utilities Act.)

The legislature in 1935 added a new section, to-wit, 13 $\frac{1}{2}$, to the Public Utilities Act, which specifically prohibits any common carrier subject to the jurisdiction of the Commission from establishing a rate less than a maximum reasonable rate for the purpose of meeting competition of other carriers or the cost of other means of transportation which shall be less than the charges of competing carriers or the cost which might be incurred through other means of transportation, except upon such a showing as may be required by the Commission and a

finding by it that the rates are justified by transportation conditions.

We quote Section 13 $\frac{1}{2}$, Public Utilities Act:

"Nothing herein contained shall be construed to prohibit any common carrier from establishing and charging a lower than a maximum reasonable rate for the transportation of property when the needs of commerce or public interest require. However, no common carrier subject to the jurisdiction of the California Railroad Commission may establish a rate less than a maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which shall be less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as may be required by the commission and a finding by it that said rate is justified by transportation conditions; but in determining the extent of said competition the commission shall make due and reasonable allowance for added or accessory service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency of transportation. (Added Statutes 1935, Chapter 700.)"

Of additional significance is the enactment by the legislature in 1935 of another new section, to-wit, Section 32 $\frac{1}{2}$ of the Public Utilities Act, which we quote:

"Whenever the commission, after a hearing had upon its own motion or complaint, shall find that any rate or toll for the transportation of property is lower than a reasonable or sufficient rate and that said rate is not justified by actual competitive transportation rates of competing carriers, or the cost of other means of transportation, the commission shall prescribe such rates as will provide an equality of transportation rates for the transportation of property between all such competing agencies of transportation. When in the judgment of the Railroad Commission a differential is necessary to preserve equality of competitive transportation conditions a reasonable differential between rates of common carriers by rail and water for the transportation of property may be maintained by said carriers and the commission may by order require the establishment of such rates. (Added Statutes 1935, Chapter 700.)"

Thus, the views and wishes of the shipping public have been seen to coincide precisely with the mandate of California's Legislature to the effect that public interest demands and requires the competitive force and preservation of highway truck competition. In a word, the verdict of public interest is in favor of regulated and perpetuated competition.

The policy of the Legislature follows closely the policy of Congress in the regulation of interstate commerce. The decisions of the Interstate Commerce Commission and the courts have condemned rate wars, calculated to destroy competition, in clear and unmistakable language. The publication of rates lower than necessary to meet competition has likewise been condemned, and it has been uniformly held, over a period of nearly forty years, that a rate may be unreasonable, and therefore unlawful, when it is too low as well as when it is too high.

In I.C.C. v. C.N.O. & T.P.R. Co. (167 U.S. 479-511), decided May 24, 1897, Mr. Justice Brewer laid down the rule that a rate may be unreasonable because it is too low as well as because it is too high.

In Ex Lake Iron Ore from Chicago to Granite City, (123 I.C.C. 503) the Commission said at page 504:

"Plainly we are justified in condemning a rate on the ground that is unreasonably low, where it is shown that it will cause loss rather than gain to the publishing road or roads and will thus impose a burden upon other traffic."

In the Matter of Container Service, (173 I.C.C. 377) the Interstate Commerce Commission said at page 430:

"The question here presented in respect of the measure of the container rates is whether they are too low. A rate may be unreasonable because it is too low as well as because it is too high. Lake Cargo Coal, 139 I.C.C. 367, 386. And we have repeatedly refused to find proposed reductions in rates justified when it was shown that they would be harmful to the rate structure as a whole, or as applied to a particular commodity, ***" (emphasis supplied)

In Lake-Cargo Coal from Kentucky, Tennessee and Virginia, etc. to Lake Erie Ports, (139 I.C.C. 367) the Commission said at page 386:

"Little or no effort was made by the southern respondents to prove that the proposed rates are just and reasonable, measured by the rates on like traffic from the Ohio No. 8, Cambridge and Pittsburgh districts. Their position, in substance, is that in the absence of undue prejudice and preference the only limitation on the measure of the proposed rates is that they shall not be less than minimum reasonable rates per se or be so low as to cast a burden on other traffic. That construction of the law, as we view it, is too narrow. Section 1 declares that rates shall be just and

reasonable, and prohibits every unjust and unreasonable rate. In other words, it requires that rates shall not only be reasonable per se, but just and reasonable in their relation to other rates on like traffic in the same territory that afford a proper standard of comparison, and applies to instances in which rates are below that standard, distance and transportation conditions considered, no less than to those in which the rates exceed that standard." (Emphasis supplied)

In Anchor Coal Co. v. U.S. (25 Fed. (2nd), 462-480) at

page 471 the Court said:

"Of course, since the passage of the Transportation Act of 1920 (49 USCA sec. 71 et seq.; Comp. St. sec. 10071 $\frac{1}{2}$ et seq.), the Commission has the right to prescribe minimum rates, and we agree with the Commission that a construction of the law is too narrow which limits its right to prescribe such rates to cases where the rates proposed are unreasonable per se, or are so low as to cast a burden on other traffic. It has the right to prescribe minimum rates also to prevent ruinous rate wars and to guarantee reasonable earnings, not only to the carriers affected, but also to competing carriers, who may labor under a higher cost of doing business. (New England Divisions Case, 261 U.S. 184; Dayton-Goose Creek R. Co. v. U.S. 263 U.S. 456)." (Emphasis supplied)

In U.S. v. Illinois Central R.Co. (263 U.S. 515), at

page 525 the Supreme Court, speaking through Mr. Justice Brandeis, said:

"In view of the policy and provisions of that statute, the Commission may properly have concluded that the carrier's desire to originate traffic on its own lines, or to take traffic from a competitor, should not be given as much weight in determining the justness of a discrimination against a locality as theretofore. For now, the interests of the individual carrier must yield in many respects to the public need, *** and the newly conferred power to grant relief against rates unreasonably low may afford protection against injurious rate policies of a competitor, which were theretofore uncontrollable." (Emphasis supplied)

In Jefferson Island Salt Mining Co. v. U.S. (6 Fed. (2d)

315), at page 318 the Court said:

" * * * the Commission is empowered to raise the rates, not merely because noncompensatory to the carrier receiving them, but because they are unjust or unreasonable from the point of view of other carriers and localities." (Emphasis supplied)

In Transcontinental Southwestern Cases, 1922. (74 I.C.C.48)

at page 71 the Commission said:

"Too wide an extension of the out-of-pocket theory would transpose the entire burden of producing

dividends and interest and meeting other fixed charges upon only a part of the traffic carried.

"In the light of these and similar considerations, we are of opinion and find that in the administration of the fourth section the words 'reasonably compensatory' imply that a rate properly so described must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; and (4) not impose an undue burden on other traffic or jeopardize the appropriate return on the value of carrier property generally, as contemplated in section 15a of the act." (Emphasis supplied)

In Transcontinental Southwestern Cases (185 I.C.C. 357), the Commission authorized certain rates lower than it had prescribed as maximum, only when said rates were designed to meet "bona fide existing or impending truck competition" and were "not lower than reasonably necessary to meet such competition."

In Ocean-Rail Rates from Atlantic Seaboard Territory (196 I.C.C. 443), the Commission condemned certain low rates and refused to grant relief from the long and short haul provision of the Fourth Section because such lower basis proposed for application over the route through New Orleans was lower than necessary to meet competition.

Recurring to the California legislative measures of 1935, they clearly present a mandate that unequivocally compels this Commission to fix a fair level of just, non-discriminatory, reasonable and sufficient rates, applicable alike to every common and highway carrier and thereby conclude this chaotic era of ruinous, cut-throat competition, through which the rails and trucks have been destructively warring. Manifestly, the necessity for restoration of order throughout the freight rate structures of California impelled this firm stroke of legislation.

In obedience thereto, and in definite recognition that public interest requires adequate, economic, and enduring transportation facilities, the Commission now assumes the task of fixing rates on a

fair and reasonable basis for every carrier.

For the first time in history, as the result of the legislation of 1935, this Commission attained jurisdiction and equipment with which to administer regulation for all carriers. Through such regulation it is anticipated and believed that the transportation facilities and industries will be stabilized and strengthened and that the shipping public will find relief in a cessation of rate wars and in the inauguration of rates that shall remain just, reasonable, non-discriminatory and compensatory, and which shall afford the enduring advantages of security to both shippers and carriers.

It is obvious, as we shall show in greater detail hereafter, that the shippers need and demand both rail and trucks in the movement of petroleum and petroleum products throughout California. In a word, all of the shippers want a sustained and healthful condition of competition as a safeguard against recurrence of the unsatisfactory rates and services accorded them before the day of competition. Unless these rates are fixed and thereafter remain compensatory the carriers will cease to exist and the traffic will return to monopoly.

Any rate war carried to its logical conclusion ends in the inevitable annihilation of the weaker combatant. Were we to permit such warfare, being now possessed with the means of preventing it, the rails that depend upon countless and unlimited commodities for their livelihood, could level their most powerful offensive weapon, rate reductions, upon any competing carrier depending upon a single commodity and compel such competitor to retire from the field of competition. This is true beyond any question of doubt and wholly irrespective of which form of carrier is in fact the more economical operator.

In passing, it is appropriate to say at this point that

neither the rails nor the trucks, from the record that is before us, have any proven right to claim the more economical form of operation.

The consensus of opinion of all the witnesses, however, would justify the conclusion that the rails enjoy an inherent advantage in long hauls, and that trucks conversely enjoy an advantage in short hauls. There is no unanimity as to the point of distance where these advantages divide, but said distance is probably not less than 250 miles. The rates which we shall hereafter fix, and adjust to both long and short hauls, we believe to be fair and compensatory. Each form of carrier will be free to compete with the other form of carrier for the traffic of both long and short hauls. Future operating experiences will demonstrate what are the actual inherent advantages of the rails and the tank trucks in the long and short hauls respectively. Obviously, if the entire rate structure of both carriers affecting all commodities were to be established upon a reasonably compensatory status, the financial stability of both rails and trucks would experience a much needed stimulation and recovery. The rates fixed by this order afford a plank for the platform of an entirely rehabilitated rate structure for transportation in California.

Were we concerned primarily with choosing between these private enterprises, the rule of the jungle might be invoked in this case. If the public interest were wholly unaffected and, therefore, unconcerned with the disappearance of any particular type or kind of transportation then it is likely that unrestrained and continuing rate reductions would result in the elimination of the carrier depending upon a single commodity. But the primary function of regulation is to fairly control public utilities and transportation agencies in subordination to the requirements and mandates of public interest. That very considerable and formidable factor of the public interest recognized as the shipping public has spoken through this record in unmistakable terms. Moreover, the citizenry of California has

spoken through its Legislature of 1935. We must conclude that it is in the public interest, and that the public demands, that a course of regulation which will stabilize, strengthen and perpetuate both kinds of carriers be effectuated by this Commission.

Our task of rate fixation has been defined and prescribed. As a rate-making tribunal we have been legislatively enjoined against fixing minimum rates for tank truckers on any basis higher than those currently charged by rail and other common carriers for the transportation of the same kind of property between the same points, and for a comparable service. It follows irresistably that the public has demanded and legislatively commanded a rate structure affecting rails and trucks upon a substantial parity, and has thereby called a halt to the continuation of ruinous rate wars between carriers, and to the chaotic uncertainty which has so sorely harrassed and perplexed the shipping and consuming public. Sections 13 $\frac{1}{2}$ and 32 $\frac{1}{2}$ of the Public Utilities Act together with the Highway Carriers Act present an unmistakable legislative edict against cut-throat and ruinous competition. In plain effect these laws establish a conspicuous mile-post which says "This far and no farther."

Neither the rails nor the trucks have the right to any definite or guaranteed portion of the flowing traffic, if we regard and measure such right from the sole standpoint of the carriers' own selfish welfare and interest. The determining influence is public interest and not private interest. In response to public interest, this Commission must chart the course of private interests engaged in supplying transportation. It, therefore, follows that the rails on the one hand, and the trucks on the other, shall and will accommodate their service to such relative proportions of the traffic as gravitate to each respective carrier in simple obedience to the demands and best interests of the shipping public. These carriers will prosper and thrive in direct ratio as they accommodate the demands of public interest.

Both forms of transportation deserve and need regulation in order, first, to preserve to the public the full use and benefit of the public highways; second, that each form of transportation should survive; and, third, that the public may have a dependable, stabilized service at just, non-discriminatory, reasonable and sufficient rates. Any regulation which has for its object the diversion of traffic from one carrier to another can be justified only by the existence of a public interest which unmistakably requires and impels the preservation of the carrier thus favored to the possible or even probable resultant destruction of the carrier thus prejudiced. The avowed objective of the rails is for rates and regulation which will eliminate the tank truck from the field of competition. But manifestly public interest has concluded against such elimination. The rates which will be justified by this opinion and determined by this order are designed to stabilize the flow of the traffic of refined petroleum products between both carriers to the advantage and benefit of each.

Illustrative of public interest, both the shippers and the legislature have spoken for the preservation of highway transportation and the preservation of both forms of transportation, rails and trucks. The preamble of the Highway Carriers' Act (Chapter 223, Statutes of 1935) reads:

"The use of the public highways for the transportation of property for compensation is a business affected with a public interest and it is hereby declared that the purpose of this act is to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public."
(Emphasis supplied)

If public interest requires the preservation of both forms of transportation, and it is obvious that it does, then we must not chart our course of regulation so as to permit rates which will destroy either form of transportation. The plain and frankly admitted purpose of the rails is to recover 100 per cent of the traffic of petroleum and petroleum products between railhead points through rates, which we shall later show are depressed, not fully compensatory, and unreasonably low. Spoken more plainly, the avowed purpose of the rails is to entirely eliminate their competitor the tank trucks from this field of traffic. We must therefore declare as unreasonable and unlawful these depressed rates whose sole purpose has been to crush and destroy this necessary agency of transportation.

This discussion of recent legislation has been unavoidably intermingled with the foregoing observations, which relate to the question of differentials. Reverting again to the opinion expressed in both majority and minority opinions in Case 3537, supra, wherein each member of this Commission expressed the conclusion that the rail carriers would be at a disadvantage in competing with the trucks for the petroleum traffic upon an equal rate basis, the more complete record in this case presents a very different picture.

In this case⁽⁵⁾ the Commission's staff under the direction of J. G. Hunter, Chief Transportation Engineer, went exhaustively into the question of the advantages and disadvantages of rail and truck service, to determine what, if any, additional or accessorial transportation service was rendered by either agency and what, if any, value should be placed thereon. This phase of the case was covered from every conceivable angle, to ascertain any existing elements which

(5) This case required 11 days of hearing, divided between San Francisco and Los Angeles; comprises 1254 pages of transcript, 58 exhibits, among which are voluminous and exhaustive cost studies by representatives of the Commission's staff, the rails, and the trucks; and the testimony of the traffic managers of the major oil companies of California.

might justify any spread in rates for additional or accessorial service specified in Section 10 of the Highway Carriers' Act.

The major oil companies maintain bulk or distributing stations throughout the State, from which points smaller trucks are used to distribute products to service stations. These bulk or distributing stations have tanks of large capacity and are, with few exceptions, served by spur tracks and highways, so that the major oil companies may avail themselves of both forms of transportation.

The rails cannot successfully or convincingly contend that they will be deprived of their fair share of the petroleum traffic should rail and truck rates thereon be increased and fixed upon a reasonably compensatory basis. Contrarily, this record affords the Commission convincing proof that the rails will continue to enjoy a favorable ratio of the volume of this traffic, and upon the basis of fixed, fair, and reasonably compensatory rates, the rails will enjoy greater net operating revenues than they have been experiencing throughout this era of devastating reductions.

While Exhibit 18 shows that 20.74 per cent of the movement of gasoline in the State of California is by rail and 79.26 per cent is by truck, the consensus of the shipper witnesses is to the effect that between 60 per cent and 65 per cent of all petroleum and petroleum products that move in California are moved by the rails. (Robert Hutcherson, Tr. 471, l. 23; Tr. 486, l. 14. W. O. Narry, Tr. 509, l. 2. R. K. Malone, Tr. 513, l. 19.) It is therefore evident that a very favorable percentage of the fuel oil, road oil, package goods and petroleum products other than gasoline are moving by rails.

The fact that the shippers have favored the tank trucks in recent years with the major portion of the gasoline traffic moving to bulk or distributing stations may be readily explained, and does not augur that in the future the trucks will get all the

petroleum traffic upon the basis of a parity of rates. This partiality in patronage has been doubtless prompted, if not necessitated, upon the part of the shippers, because of three impelling forces: first, the refineries have become fully appreciative of the absolute need for, and advantage of, tank truck competition; secondly, this highway transportation agency has hitherto been without the jurisdiction and regulation of this Commission; and, thirdly, unless the refiners assumed a firm hand in the selective and protective distribution of their traffic, the driving and destructive force of the rail rate reductions would have scored conclusive victory long ago.

It is logical to assume, and we believe, that under this new regime of regulation for both rails and tank trucks, wherein each will be protected against the cut-throat competition of the other, and wherein the rates of both will be made equal, fixed, and reasonably compensatory, that the shipping public will be relieved of its former anxiety over the necessity to favor and perpetuate the tank trucks, and with the comfortable realization that both the rails and tank trucks are hereafter vouchsafed fair and reasonably compensatory rates, the said shipping public will be hereafter free to distribute, and will distribute, the petroleum traffic between the rails and trucks so as to insure the preservation in a proper state of vigor and health of both of these transportation agencies.

Since the petroleum Case 3537 of 1933, the railroads have greatly developed and enlarged their truck and bus operations. The Commission has patent knowledge that the present and prospective tendencies presage still greater highway transportation activities by the rails. These facts have won for the railways very definite increased motive for patronage by petroleum

shippers. These immense producers and shippers of petroleum and petroleum products have been ever alert in fostering transportation which affords large usage and consumption of their products. The record shows that there has been a recent tendency upon the part of the petroleum shippers to reserve considerable movements for the rails in preference to the trucks. (Testimony of C. G. Anthony, p. 166 L 15) The very nature of the commodity involved presents unique opportunities and advantages of a reciprocal character, between shipper and trucker. Gasoline and oil differ from most other traffic in that the transporting agency is a great and valuable consumer of the product transported; therefore the shipper and the carrier, whether rail or truck, enjoy tremendous reciprocal advantages in the movement of petroleum and petroleum products.

In so far as rates affecting refined petroleum products are concerned, this record is, in many ways, the most illuminating of any record heretofore adduced before this Commission. At the request of the Commission, the traffic managers representing seven major oil companies of California appeared and testified in substantially identical manner.⁽⁶⁾ Each of these witnesses was a traffic expert and was competent and authorized to speak for his respective company. We shall hereafter discuss their testimony in greater detail but we must register now the fact that they were none the less helpful in convincing this Commission that their companies, with an eye single to the preservation of both forms

(6) R. N. Slingerland, Traffic Manager, Standard Oil Company.
 Robert Hutcherson, " " Associated Oil Company.
 W. O. Narry, " " Richfield Oil Company.
 R. K. Malone, Ass't. Superintendent of Shipping, The Texas Company.
 C. E. Donaldson, Traffic Manager, Shell Oil Company.
 C. E. Ziegler, " " General Petroleum Corporation.
 J. O. Pfeifer, " " Gilmore Oil Company.

of transportation, will fairly and faithfully distribute their patronage between the rails and trucks in the manner best designed to perpetuate the rails and trucks, subserve the best interests of the shippers, and preserve the advantages of competition through just, fair and reasonably compensatory rates and satisfactory service.

All of these witnesses alike unqualifiedly denied that either form of transportation afforded any additional or accessorial service, not afforded by the other, which could be translated into monetary value. Not one of these witnesses did concede that the service of either form of carrier between refinery and bulk or distributing station was a more valuable service than the other. Likewise the consensus of their testimony was to the effect that the movement of their commodities from refineries to bulk or distributing plants is a matter of total indifference, from a service standpoint, as to whether they choose the rails or the trucks. Therefore, their testimony that they will strive to equitably distribute their patronage between the two forms of carriers is consistent and convincing, and is helpful in determining this question of differentials.

On this point we feel justified in quoting some of their testimony:

(Tr. p. 467, line 5, et seq.)

J. G. HUNTER: "Q. *** What will be the policy of the producer with respect to dividing transportation between rail and truck if the rates are made the same?"

MR. SANBORN: No objection.

WITNESS ROBERT HUTCHERSON (Traffic Manager Associated Oil Company): A. I can make the same answer that I have made in previous instances, we would lend ourselves earnestly to an equitable solution of that problem.***

COMMISSIONER WARE: And in your effort to deal equitably, as indicated in your third or fourth last answer, between the rails on the one hand and trucks on the other, is it a fair statement, Mr. Hutcherson, speaking on behalf of the Associated Company, that you recognize the desirability of having both forms of transportation, truck and rail?

A. Very much so.

Q. Is it also a correct statement, speaking for

the Associated Oil, that you would desire to see both forms on a compensatory and an enduring basis? A. Yes.

Q. Would you extend your best efforts to accomplish that? A. Yes.

Q. And would you endeavor fairly to proportion and divide the patronage as between rails on the one hand and the trucks on the other?

A. To that end, yes."

And again we quote:

(Tr. p. 523, l. 15, et seq.)

"COMMISSIONER WARE: Do you feel there is room for both? (rails and tank trucks)

WITNESS C. E. DONALDSON (Traffic Manager, Shell Oil Company):

A. I feel, Mr. Commissioner, there is room for both and it would be my effort to divide that business between them as nearly as I could on a reasonable basis.

Q. In order to preserve them? A. In order to preserve both of them.

Q. Make them both available? A. Yes, sir.

Q. To your purposes and services? A. That is correct.

Q. Have you any quarrel with a rate that is compensatory, just, reasonable and non-discriminatory?

A. No, sir, I never have had.

Q. Would it be your policy, in administering the affairs of the Company that are allotted to you, Mr. Donaldson, to equitably distribute the shipping of your Company as between the two in order that they might both survive? A. Yes, sir, it would.

Q. And operate with a profit? A. Well, Mr. Commissioner, it is obvious that no Company can continue in business unless it makes a profit."

From the mass of testimony of these shipper witnesses, the following forms a digest of uncontradicted and proven facts:

Split deliveries occur infrequently and have no value to the shipper or the bulk plant.⁽⁷⁾ Split deliveries may be of benefit to individual dealers, and here it should be said the truckers propose additional charges when such service is performed. The factors of minimum weights, speed in transit, flexibility of

(7) Witness Howard M. Lang testified that his split deliveries in the traffic of petroleum and petroleum products are "very, very rare" (Transcript page 60, l. 26). Split deliveries are less than one per cent of total traffic. (Transcript page 61, l. 11.)

service, loading and unloading, credit arrangements, and settlement of claims, as they are related to the rails on the one hand, and the trucks on the other, justify no monetary differential in rates.

From this more extensive and comprehensive record, it is clear that a differential in rates as between the two forms of transportation for a comparable service is not justified, nor, as we construe Section 10 of the Highway Carriers' Act, Statutes of 1935, could we lawfully prescribe such differential; and that if in the previous Case 3537 the Commission had enjoyed the benefit of the testimony of these representatives of the major oil companies, supplemented by the exhaustive investigation of the Commission's staff, our conclusions as to the necessity for a differential would have been contrary to the views expressed therein.

RAIL CONTENTIONS.

An effort was made by the Witness C. E. Day, to show that the existing rail rates were profitable to the railways, and that the existing scale of 8 cents per hundred pounds per hundred miles is more than sufficient to cover the out-of-pocket cost of service. If we were to concede the accuracy of this latter statement, it is nevertheless sufficient to categorically specify what the record unmistakably proves:

1. The present rail rates have experienced sharp and successive drops for the past ten years so that they are now depressed to a level which is admittedly much less than reasonable maximum rates and to a level which is considerably lower than rates found to be reasonable maximum rates by this Commission.
2. The present rail rates have resulted in an actual diminution of gross revenue to the railways in spite of increased tonnage.

3. The present rail rates have reduced the trucks to a basis of operation which is generally near or below the line of zero net profits.
4. The present rail rates are admittedly depressed rates conceived to recover 100 per cent of the traffic between railhead points.
5. The present rail rates are constructed upon the "added traffic" or "out-of-pocket-cost theory." The rails have failed in their attempt to justify them as reasonable rates or sufficient rates contemplated by Section 32½ of the Public Utilities Act.
6. The present rail rates are demonstrably insufficient to cover full costs. (8)

Therefore, we cannot conclude with safety that said rates are reasonably compensatory; nor are we justified in concluding that these rates do not cast an unreasonable burden upon other traffic. Manifestly the perpetuation of such depressed rates has resulted in the impoverishment of the revenues of the railways which created and charged them, and has also threatened to cripple and destroy the competing tank truck transportation agency. Both of these latter resultants are subversive to public interest and result in casting an unjustifiable and an unreasonable burden upon other traffic.

The rails, with propriety and force, contend herein that they must be allowed to meet competition at compensatory rates, and that in deciding whether rates and charges made at a low level to secure freight which would go otherwise to a competing carrier are compensatory, the fair interests of the affected

(8) The rails Exhibit No. 40, which was intended to justify the conclusion that the present rail rates are sufficient and compensatory, contains no expenses, whatever, for bond interest, dividends, taxes and many other items.

carrier and the welfare of the community which is to receive and consume the commodities must be given important consideration. We concur in this contention. However, the meeting of competition is one thing, its destruction is another; and as we apply "important consideration" to the welfare of the communities and carriers affected, we cannot conclude that any rate is justifiable which, first, results in diminution of gross revenue to the carriers charging the same; which, secondly, for relatively high grade commodities such as refined petroleum products, fails to pay full costs; and which, thirdly, proves unduly perilous to competing carriers.

The full effect and meaning of the shippers' testimony will not warrant any conclusion that the tank truck rates have been lower than the rail rates since the last drastic reduction effective in December, 1933. It therefore follows that the purpose and effect of these repeated reductions in rail rates have been to drive the competitive tank truck rates into progressive depressions. It cannot be said that these reductions were intended and made for the justifiable purpose of meeting competition. The railroads have frankly admitted that their reduced rates have been designed for the purpose of recovering and holding all of the petroleum traffic between railhead points. The record shows, through the statement of counsel for the railroads, that the rails are now studying the wisdom and efficacy of further drastic reductions in petroleum rates with the avowed motive of hastening the day when the rails will haul 100 per cent of this petroleum traffic. It is therefore our conclusion that the existing rail rates on petroleum products are "insufficient" as that term is used in Section 32½ of the

Public Utilities Act, and we must, pursuant to law, prescribe and determine reasonable and sufficient rates to be charged hereafter.

Under Section 13 $\frac{1}{2}$ of the Public Utilities Act a common carrier may establish a lower than maximum reasonable rate when the needs of commerce or public interest require. The record is clear that the needs of commerce, that is the requirements for the successful marketing of refined petroleum products, do not require the publication or maintenance by carriers of less than fully compensatory and reasonable rates. Similarly the record is convincing that fully compensatory rates will permit this traffic to move freely. Nowhere in the record is it contended that gasoline traffic requires less than maximum reasonable rates in order to move with the greatest freedom.

The consuming public, the shippers, and the carriers comprise the three groups most directly concerned with the cost of transporting refined petroleum products. We reiterate that the shippers need and urge the preservation of both forms of carriage. They uniformly advocate just, non-discriminatory and reasonably compensatory rates, and in recognition of the existing depressed status of said rates they welcome the chance to meet any just fixation of the same by this Commission. They neither threaten, nor do they desire to engage plant facility in the movement of their petroleum products, for they are content to further the patronage of both rails and for-hire

trucks for the tremendous reciprocal advantages that flow between these shippers and carriers as the result of the normal and healthful operation of both.

The record is clear that the oil companies marketed their products when rates were four or five times as high as existing rates.⁽⁹⁾ The record proves conclusively that refined petroleum products are high grade commodities and can stand fully compensatory rates. The reasonably higher rates, formerly in effect, as distinguished from those which may have been originally unreasonably high, as one witness testified, never curtailed any of his company's markets, and never imposed any burden upon his company. (Slingerland, Tr. p. 446-7) We quote again the testimony of these shipper witnesses which without refutation affords convincing proof that the present rail rates are insufficient and that the shippers recognize the need for, anticipate, welcome, and will pay whatever reasonable rates this Commission may fix.

We quote from the testimony of Robert Hutcherson (Traffic Manager of the Associated Oil Company, Tr. p. 476, L. 11):

"We will be willing to pay any rates by rail that the Commission feels to be proper *** whether they are lower, higher or what they are." ***

(Tr. Page 477:)

"MR. LYONS: Mr. Hutcherson, are you satisfied with the present level of the rail rates between points in California?

A. What do you mean by being satisfied?

Q. Do you think they are too high? A. no.

Q. Do you think they are too low? A. Well, I think they are low."

(9) See Table 1. appended to the order herein.

(Tr. page 478)

MR. LYONS. "Q. So that there is no secret about the fact that your company is interested in the most economical form of transportation that is satisfactory to you?

A. Yes. But I said as an abstract proposition, Mr. Lyons; now, there might be instances -- have been instances where we have told the railroads that we felt that rates they have been willing to establish were probably lower than necessary and that the traffic could reasonably stand a little higher, and in those cases we have been willing -- we do not expect the last drop of blood. We would like to have rates --

Q. I am not suggesting that in my questions.

A. We want rates economical but we do not insist that they be the cheapest or most economical rates."

We quote from the testimony of W. O. Narry, Traffic Manager for the Richfield Oil Company. (Tr. p. 510, l. 14):

MR. LYONS. "Q. Are you advocating any change in the present rail rates on any of the commodities involved in the proceeding?

A. That would be a matter of personal opinion and I would say that I do anticipate an increase.

Q. You do anticipate an increase? A. I do.

Q. Have you any personal or official complaint to make against the present rail rates on any of these commodities?

A. I haven't any complaint to make against any rate that the Commission might set."

Directing our attention now to the welfare of the consuming public we firmly recognize as being of controlling importance that the public should at all times be protected against rates that may unduly strain the cost of the delivered product. This record however is convincing proof that the freight rate is a relatively unimportant factor in the distribution of gasoline, and this can be readily understood when consideration is given to the effect of freight rates in cents per gallon. The average intrastate rail haul is 85.25 miles. Hereafter, we have increased the current rates for this length of haul

approximately 5 cents per 100 pounds. Equated to gallons this amounts to one-third cent per gallon. It is a matter of common knowledge that the price of gasoline fluctuates from time to time as much as 5 and 6 cents per gallon. With these facts before us it is not difficult to understand why the matter of the volume of the freight rate is of little consequence, and is not considered as being relatively important by the refiners excepting in the matter of relationship in rates between the various producing points.

We do not feel that the increases in the rates contained in this order will inflict any unreasonable hardship upon the consuming public. Contrarily we believe that increases in rates, as provided for in this order, will redound to the very definite benefit of the consuming public, the shippers, and the carriers. California is a vast agricultural area and largely depends for its prosperity upon transportation facilities for the movement of its perishable fruits and vegetables and other seasonal crops to the eastern markets. Every dollar that the rails lose on account of depressed rates applied to such intrastate movements as refined petroleum products must be charged to some other traffic. Conversely, every dollar that the intrastate petroleum traffic of California can add through the medium of reasonably compensatory rates, affords the rails greater possibility to accommodate a rate structure for California's agricultural products which must find an eastern market via cheap transportation. Raising and stabilizing these transportation rates will terminate this destructive warfare, will strengthen

and perpetuate both carriers, will insure the shipper with both essential facilities, and will not result in any unreasonable increase in the cost or burden to the consumer. We must therefore conclude that it is, first, definitely in the public interest and, secondly, helpful and protective to the private interests, that we now fix reasonable and sufficient rates for movement of refined petroleum products.

A rate is not reasonable and sufficient if it fails to contribute its fair share of all operating expenses and a just proportion of fixed charges beyond interest and a reasonable return on the investment represented by the equity of the stockholders, provided, of course, the traffic can stand it and will continue to move freely. If it can pay such a rate and does not do it, other traffic is burdened to support these legitimate charges.

In the days of unrestrained and unregulated competition many rates were justified where they contributed anything over the bare out-of-pocket cost of transportation, but when that competition is brought under control and the rates of all competing agencies are regulated, the necessity of handling traffic of this nature on an out-of-pocket cost basis approaches the vanishing point, and the sooner we put the rates for such traffic on a reasonable and sufficient basis for all agencies the sooner we can have a return to normal conditions in transportation.

Under Section 13 $\frac{1}{2}$ of the Public Utilities Act upon such showing as may be required by the Commission and a finding by it that said rate is justified by transportation conditions any common carrier may establish and charge "a rate less than a

maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or cost of other means of transportation which shall be less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation."

Before concluding this opinion we shall have completely exploited all phases of the plant facility factor. At this point it should be observed that if plant facility were an important factor, or worthy of serious consideration in this case, the plant facility trucks would have appeared on the scene when freight rates were four and five times as high as they are today. The record is entirely devoid of any showing that lower than reasonable rates are justified because of the existence of plant facility competition or the likelihood of its coming into existence. Since the refiners are, first, willing to pay just and reasonable rates; and, secondly, uniformly recoil from engaging in and furnishing their own means of transportation; and, thirdly, admit that the existing rates are too low, and that they are willing to pay any reasonable increase therein which may be fixed by this Commission, we see no reason for speculating upon any development of plant facility competition in deciding this case. If and when that competition manifests itself, due consideration can be given to it.

CEMENT CASES 3981, 4071.

In this connection, the rails have argued that the Commission recently established a precedent in the consolidated cement cases 3981, 4071, as reported in Decision 28334 (39 C.R.C. 523) by therein approving depressed rates; and also by therein

attempting to establish a differential in favor of the rails affecting deliveries to off-rail facility points. This affords timely opportunity to dispose of these two points.

Relative to the question of depressed rates we first observe that this case is readily distinguished from the cement cases, *supra*, which involve the cost of moving cement and cement clinkers from the inner mills and outer mills, in southern California to the Los Angeles market. In the instant case, we find the shippers enjoying enormous trade advantages in the purchase and consumption by the rails and trucks of vast quantities of the products shipped. Here the shipper wants each carrier perpetuated and to this end welcomes rates that are just and compensatory with no threat or thought of exterminating the carrier through the employment of plant facility. In the cement cases, the inner and outer mills exercised no such solicitude for the welfare or perpetuity of either carrier, and in addition to their fight over the differential between the inner and outer mills, they adopted the position that unless said carriers' rates were depressed to meet their demands as to size and differential, the mills would haul their own freight. In the cement cases the two groups of shipper mills, whilst fighting between themselves for advantages in differentials applicable to the inner and outer mills, were also the threatening aggressors against both rails and trucks, and the carriers were each fighting for sufficient traffic and rates to justify their continued service. In the instant case the carriers, with divergent theories, and opposing battle fronts are fighting for all, or a fair portion, of the flow of traffic, whilst the petroleum shippers pursue a conciliatory course wholly compatible to the preservation of both carriers. In the cement case, the shipper mills had in some instances already employed the weapon of plant facility, and were effectively using this weapon; whilst the other shipper mills boldly threatened to employ

plant facility if the rail and truck rates were not hammered down to meet their varying demands. Therefore, it was plain that if the carriers were to participate to any extent in this cement traffic they were, out of necessity, compelled to reconcile themselves to rates depressed to approximately the hammered down point of plant facility operation. It was upon this ground, and no other, that the Commission was justified in the cement case in establishing those low rates. There is no available ground or justification in the instant case warranting the establishment of depressed rates.

As further distinctions between these cases, the cement shippers had no qualms about exposing to the Commission the full details and facts regarding the contractual relationships and the rates between themselves and the private truck carriers engaged by them. They offered this testimony voluntarily and without hesitation as a means of commandeering the situation and to further dictate, control and fix future rates and desired differentials. They argued that these rates furnished justification for a basis for depressed rate structures. In this instant petroleum case the major oil companies were represented by their respective traffic managers who attended every session both in San Francisco and Los Angeles, who received and analyzed the respective exhibits offered by rails and trucks and which disclosed cost studies for each respective service. These representatives of the oil companies offered no criticism of the proposed increased rates, unanimously concurred in a willingness to meet reasonably increased rates, and vehemently opposed and protested any disclosure of the existing rates established by private contracts between themselves and the tank trucks, rates and contracts which were recognized as belonging to an era of transportation that immediately antedates the jurisdiction, the right, or the power of this Commission to inquire into or control.

Answering the question of differential, there is similarly a sharp distinction between the two cases on the question of the establishment of a differential in favor of the rails affecting deliveries to off-rail facility points. In the case of cement, from 30 to 50

per cent of the traffic moved directly to the job, which of course involved deliveries to off-rail facility points. Both rails and trucks looked enviously upon this traffic and it was therefore regarded as a matter of much importance. In this petroleum case, 24.85 per cent of the gasoline traffic moves directly to consignees or plants not served by rail spur-track and located in communities having rail service while an additional 4.10 per cent of the gasoline traffic moves directly to consignees or plants located in communities not having rail service (Exhibit 18); and the record is silent as to the possible desire of the rails to compete for this traffic. It is readily observed that most of this off-rail gasoline traffic is delivered to distributing plants from which points it must be hauled again by tank trucks to the retailer or the consumer, whilst the off-rail cement deliveries are frequently direct to the jobs where the commodity is used and thereby spared this additional handling as is the case with gasoline. Apparently, the off-rail gasoline traffic is not regarded as a matter of much importance because, as we view the matter, it would be very difficult if not impracticable, to move this traffic from the refinery to a rail-head point and there transfer it twice by truck to its ultimate destination.

It is quite true that in establishing rates for highway carriers, it is the duty of the Commission under Section 10 of the Highway Carriers' Act to give due and reasonable consideration to the cost of truck service beyond the regularly established termini of common carriers. As we construe this section, where a highway carrier performs some service beyond the termini of a common carrier, such additional charges may be fixed for highway transportation to the point beyond the common carrier terminal, so that the rates of the common carrier to its terminal and the cost of moving the traffic beyond to the ultimate destination will be, as nearly as possible, equal to the

through rate of the highway carrier, in order to fairly equalize the competitive conditions.

In this case there is no showing by the rails of any desire to compete for this off-rail facility point traffic. In fact the testimony offered by the rails conceded that this traffic will continue to move by truck (Paul P. Hastings, General Freight Agent for the Atchison, Topeka and Santa Fe Railway Company Tr. 570, l. 13). Counsel for the rails in their opening brief approve and adopt the language in Decision No. 26443, Case 3537, supra, found in 39 C.R.C. page 41 which we quote:

"Large quantities of gasoline are transported from refineries to bulk or distributing stations and from refineries or bulk stations to garages and service stations. In addition to gasoline, various other petroleum products are transported - smudge oil from refinery to farms and ranches, road oil from refinery to construction jobs, fuel oil from refinery to consumer's tank, package goods to various destinations. Usually there are rail facilities at the refineries, although in a few instances there are not. Bulk stations are usually but not always located on rail spurs. Service stations and garages generally have no spur track facilities. The business of transporting gasoline and petroleum products has so developed that in the course of the hearing all parties recognized that in part the transportation of these commodities by truck was non-competitive with rail, the competitive portion being confined to transportation from rail spur to rail spur." (Emphasis supplied.)

It is therefore unnecessary upon this record to provide for any such additional charges affecting deliveries to off-rail facility points. If necessity arises for the adjustment of rail rates to permit them to compete on an equality of through transportation rates to off-rail points with those of the truck carriers, proper consideration will be given the matter upon its being called to our attention by the interested carriers.

Minimum Weights.

The rails have seriously argued that they should be favored with a lesser carload rate than the truckload rates because of the fact that most tank cars haul 12,000 gallons as against the 6,000 gallon capacity of the tank truck. In support of this contention, the rails have offered Exhibit 23 which is a collation of 14 decisions of this Commission and the Interstate Commerce Commission, all of which decisions held that the weight is a part of and must be considered with the rate. This case is distinguished from those cases in that the facts herein are different. Hence, the well established and oft quoted rule which was applied therein cannot be applied to the facts herein.

Rate structures are built upon well established and orthodox principles. One basic rule arises from the economic force of the element of maximum capacity of the facility used in making the haul. Obviously, the carrier is advantaged when this facility is loaded to capacity and maximum efficiency with a single commodity. This is true for the combined reasons that with such load there is experienced the maximum economy in the factors of loading, delivery and unloading and, at the same time, the facility employed is used to its full capacity. Hence, when a freight car is filled with a single shipment, in compliance with reasonable minimum weight requirements, the railway extends to the shipper the carload rate. When a car contains one or more smaller shipments, the rate applied is normally higher. This same rule applies with equal justification in the field of trucking where we naturally find truckload rates upon a lower scale than less-than-truckload rates.

A rail witness testified herein that livestock cars vary widely in their capacity and minimum weight requirements, and yet the shipper of cattle pays the railway, for large and small cars, the

(10)

same carload rates translated in cents per hundred pounds of shipment. Correspondingly, the same witness in this record revealed the fact that the rails have and use different sizes of petroleum cars, ranging in capacity from 6,500 gallons to 14,000 gallons. The published rail rates call for the same rates per hundred pounds for capacity loads in any sized car.

There should be and is a limit to the weight, size, and load capacity of vehicles using the public highways. Hence it may neither prove practical nor in the public interest to build trucks to the size of freight cars. But were we to give serious credence, which we cannot, to the position assumed by the rails on this question of differential in minimum weights justifying and necessitating a differential in rate, all that the trucks would have to do to meet the requirements would be to load and move on one shipment two units of tank and trailer, and thereby the tank car minimum requirements of load and rate would be fully met.

If anything further were needed to support our conclusions upon this point, it is amply afforded by the fact that refined petroleum products are unloaded in a very large percentage of the movement in the immense distributing and storage plants of the shippers which are, in almost every instance, so located as to fully utilize the services of both the rails and the trucks. The huge capacity of these plants is not concerned with the capacity limits of a car or a truck. So long as either the tank cars or the tank trucks keep these plants reasonably filled at all times, the shippers are fully satisfied on the score of capacity deliveries. Moreover, every traffic manager who testified for the major oil companies herein, definitely

(10) Testimony of H. C. Hallmark, Freight Traffic Manager, Southern Pacific Company. (Tr. p. 664, l. 6, et seq.)

said that the shipper neither recognized anything of advantage or value to the smaller loads contained in the tank truck, nor would he pay a higher rate per hundred pounds for such smaller load. Therefore, we cannot justify any differential favoring either rails or trucks on account of the difference of their load and delivery capacity.

"Artificial Rates"

The rail respondents contend that we are without authority to compel them to increase their rates. The rails also argue that any such increase would be for the sole benefit of their truck competitors.

If the present rail rates were on a reasonable basis or as high as the traffic could reasonably bear, and the truck carriers could not afford to meet those rates and successfully operate thereunder, we would certainly not impose upon the shipping public a burden of rates higher than reasonable rates, simply to support another agency of transportation. That, however, is not the situation which confronts us. The truck operators ask the Commission to prescribe reasonable and sufficient rates for their rail competitors in compliance with a mandate of the legislature as expressed in the Public Utilities Act, and to prescribe minimum rates for the tank truck operators in conformity with the provisions of the Highway Carriers' Act. When this is done, the tank truckers say they will be willing to take their chances in the competitive field. The tank truckers contend, however, that there is no warrant in law, nor foundation in justice, for the rail lines to slash their otherwise reasonable rates to an unreasonably low basis for the sole purpose of eliminating the trucks as competitors.

In the furtherance of their argument, the rails have assailed any present effort by this Commission to fix equal minimum rates for rail and trucks alike upon any level higher than the present scale, and have decried any such increases as an attempt by this Commission to encourage tank trucking of petroleum products between rail-head points by imposing upon the rails "artificial minimum rates." This argument is apparently constructed without regard to the fact that we no longer live under the economic system of laissez faire. Insufficient attention has been paid by the rail lines to the purposes of the regulatory legislation, in California, which had as its purpose the restraining of certain of the economic forces that were driving carriers close to the brink of bankruptcy by reason of unrestrained competition.

Counsel for the rails have herein protested any increase in the present depressed rates and have expressed their abhorrence for such increased rates by referring to them as "artificial" and conducive to the loss of all of the petroleum traffic to the competing trucks. Any concurrence with such views would force us to the unwarranted and unsound conclusion that any rate fixed by rails sufficiently low to drive and destroy competition from the field is a natural rate, and that any upward regulatory interference with such a rate amounts to unwarranted meddling and the creation of artificial rates. In a word, the position of the rails is bluntly this: Their existing depressed rates - conceived to recapture 100 per cent of the gasoline traffic - are natural, whilst the same rates increased to a reasonable and sufficient basis would be "artificial." It must be conceded that what is "natural" is indigenous, native, normal, and within common experience. The fallacy of this reasoning becomes apparent when the same "natural" depressed, out-of-pocket plan of rate making

is projected through the whole gamut of the rate structure. The carrier is reduced to bankruptcy and his service collapses. The only thing that justified these depressed rates was the previously unregulated competition. This condition no longer besets the railroads and the true test of the rates now is a value that is reasonable, sufficient and non-discriminatory. Rates which comply with such test are indeed the natural and normal rates. Any other kind of rates would be artificial.

It is plain that what the rails are striving to accomplish in their vehement defense and advocacy of depressed rates is the total annihilation of their competitor the tank truck operator between the railhead points. It is equally plain that the existing California rail rates applicable to refined petroleum products are unreasonable and insufficient and that it is in the public interest for this Commission to fix and determine reasonable rail rates for this traffic.

Regulatory Statutes Construed.

Counsel for the rails have argued in effect that Section 13½ of the Public Utilities Act, supra, has no direct application to the rate problems which comprise the subject matter of this decision because it is their contention that said Section 13½ deals with the original establishment of rates and has no direct application where such rail rates as are under investigation herein were established before Section 13½ became a part of the Public Utilities Act. Counsel for the rails have further stressed the omission from said Section 13½ of the words "and maintain" following the word "establish" therein contained.

We believe that we have adequately analyzed and emphasized

the purposes of and reasons for the various legislative measures of 1935 affecting the regulation of transportation. It will suffice in this connection to stress again the legislative intent as expressed in Section 32½ of the Public Utilities Act as being primarily centered in the inauguration of a regulation for means of transportation so that destructive rate wars would be terminated and rates rehabilitated upon a basis that will be reasonable, sufficient and non-discriminatory.

In our solution of these rate problems we have construed all of the germane provisions of the Highway Carriers' Act conjointly with the Public Utilities Act. As we construe Section 32 (Amended Statutes 1923, Chapter 388, page 837) of the Public Utilities Act this Commission has the power, after a hearing, to find the rates of any public utility insufficient; and likewise has the power to determine for any public utility sufficient rates and fix the same by order. We quote the germane portions of Section 32 of the Public Utilities Act:

"Sec. 32(a) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates *** demanded, observed, charged or collected by any public utility for any service *** are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law, or that such rates *** are insufficient, the commission shall determine the just, reasonable or sufficient rates *** to be thereafter observed and in force, and shall fix the same by order as hereinafter provided."

"(b) The commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single rate, *** or any number thereof, or the entire schedule or schedules of rates *** or any thereof, of any public utility, and to establish new rates, *** in lieu thereof."

"(c) The commission shall have power and it shall be its duty, upon a hearing, had upon its own motion or upon complaint, *** to fix and determine the just, reasonable and sufficient rates for such service ***."

Sections 13½ and 32½ of the Public Utilities Act (Added Statutes 1935, Chapter 700) have been heretofore quoted. As we construe these sections they are intended to more fully equip this commis-

sion with the means of determining and fixing both the existing and the future rates of common carriers. Moreover under Section 13 (a) of the Public Utilities Act "every unjust or unreasonable charge made, demanded or received" is prohibited and declared unlawful; and as we have previously pointed out a rate may be unreasonably low as well as unreasonably high, and in either event such an unreasonable rate is unlawful.

The very narrow construction urged by counsel for the rails and as applied to Section 13¹/₂ of the Public Utilities Act would serve to freeze into solid perpetuity the existing rail rate structures however insufficient they may be. To adopt this construction would in effect destroy the purpose of this Statute. Such a construction is at once unwarranted and repugnant to the rule applicable to statutory interpretation.

As was heretofore indicated one of the objects of the instant case is to investigate the rates of common carriers by railroad for the transportation of refined petroleum products within this state and particularly to determine if said rates are unreasonably low and insufficient. As to our jurisdiction to accomplish this object the laws hereinbefore outlined afford sufficient authority. Pursuant to this object we have herein determined that said rates are unreasonably low and insufficient. In consequence of this finding the first portion of the order herein shall be directed toward the establishment of reasonable and sufficient rail rates for the transportation of refined petroleum products. Upon the effectiveness of this portion of the within order such rates will become the lawful rates of the rails.

Having in this manner performed the first object of this proceeding we shall consummate the second object, to-wit, the determination of just, non-discriminatory and reasonably compensatory tank truck

rates for refined petroleum products moving in this state.

Were we to concur in the constricted interpretation of the measure of our authority as advanced by counsel for the rails, these objects would be impossible of attainment. Any such concurrence, however, would vitiate the purpose of the law, would effectively tie the hands of this commission and would hereafter prevent any alteration by us of unreasonably low and insufficient existing rail rates. For the reasons given it is impossible for us to accept the construction of these statutes advanced by counsel for the rails.

Reasonably Compensatory Rates

The persistent and rigid resistance of the rails herein against increased rates is at strange variance with the testimony of their witnesses. The record shows that in September of 1934, prominent representatives of the Southern Pacific Company and Western Pacific Railroad Company conferred with representatives of the tank truck operators for the purpose of agreeing upon increased petroleum rates which all agreed were imminently necessary. (These representatives then agreed that "the rails would be heartily in favor of an increase in petroleum rates." Tr. 1088). The record is replete with testimony to the effect that in recent years the railways operating in California have been in stringent if not desperate financial straits due to diminishing freight and passenger revenues. Witness Amos (Tr. 744) admitted that the Western Pacific Railroad Company is in the hands of a trusteeship under the Federal Bankruptcy Law. Northwestern Pacific Railroad Company and San Diego and Arizona Eastern Railway Company, wholly owned by the Southern Pacific Company, have depended upon the Southern Pacific Company for their livelihood in recent years.

Witness Berne Levy, then Assistant General Freight Agent for The Atchison, Topeka and Santa Fe Railway Company, admitted that the existing rates on petroleum and petroleum products are not "reasonable maximum rates" and that "they have been depressed." (Tr. 1028, l. 24, et seq.) Witness H. C. Hallmark, Freight Traffic Manager of the Southern Pacific Company in charge of rates and divisions, with headquarters in San Francisco admitted: "Gasoline is one commodity that ought to be able to stand some higher level of rates than the general level." (Tr. 676, l. 25). The same witness admitted that his company's financial stability and the general net operative results, might be greatly enhanced by a general raising of the rate structures and rate levels. (Tr. 690, l. 17). Mr. Hallmark also stated: "Generally, I think we are generally agreed that we ought to have higher rates, if they can be gotten." (Tr. 709, l. 25).

We are also mindful that all of the major lines in California filed with this Commission in September 1934, their application 19610 wherein they asked for a general increase in rates and wherein these railways alleged:

"That at the present time carriers by steam railroad are confronted with very substantial increases in their operating expenses, due principally to an increased level of wages and increased prices of material and supplies, which increased expenses will seriously impair their financial resources and threaten to impair their capacity to continue in the public interest an efficient and adequate railway transportation service. It is, therefore, necessary in the public interest, as well as in the interest of your applicants and other common carriers by railroad similarly situated that increases in freight rates and charges be made effective at the earliest practicable date."

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
PRISON INDUSTRY AUTHORITY

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I, the undersigned, hereby certify to the following in connection with the accompanying microfilm (photographic reproduction):

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WITNESS my hand and the seal of the Department of Corrections Prison Industry Authority

16, day of SEPT, 1985.

Thomas R. Coupe'
(name)

california



prison
industry
authority

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
PRISON INDUSTRY AUTHORITY

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WITNESS my hand and the seal of the Department of Corrections Prison Industry Authority

16 day of SEPT, 1985

Thomas R Coupe'
(name)

california



prison
industry
authority

On February 26, 1936, the rail respondents again filed a similar application with this Commission (Sixth Supplemental Application No. 19610), in which they sought permission to continue in effect the previous increases which were authorized for the period ending June 30, 1936. The carriers sought a continuance of these increased charges because they regarded " *** the continuance of these charges as absolutely necessary to enable them more nearly to meet their increased cost of operation, including the restored wages of their employees ***". There is nothing in this record to justify the conclusion that the rail respondents are not still in need of increased revenues.

Upon the record in this case, and pursuant to the rate making provisions of the Public Utilities Act and the Highway Carriers' Act, it becomes our duty to prescribe lawful rates which shall provide an equality of transportation rates for the transportation of property between all competing agencies of transportation. When we have done this, if we find the reasonable level of minimum truck rates is lower than the rail rates so prescribed, then the rail carriers shall be permitted under the statutes to meet those rates but not to go below them. If, on the other hand, after considering the full cost of operation, including the length of haul, any additional or accessorial transportation service and the value of the facility reasonably necessary to perform such transportation service, we find that minimum truck rates should be higher than the reasonable

rates prescribed for rail, then the tank truckers shall be permitted under the statutes to meet the lower rates prescribed for the rails but not to go below them. The Commission is empowered to prescribe minimum rates below which these carriers may not go, and thereby demoralize the entire rate structure.

As to the common carriers, the law now says that they may not establish less than maximum reasonable rates for the alleged purposes of meeting competition, which rates would be lower in fact than the rates or charges of competing agencies of transportation for hire or the costs incurred by privately owned vehicles.

Thus, the rail lines and common carriers by motor truck are protected against irresponsible contract carriers and their promiscuous rate-cutting policies, and the contract carriers are likewise protected against reductions in rates by strongly entrenched common carriers who might be inclined to reduce rates far below a reasonable basis and below the rates of their contract carrier competitors, for the purpose of eliminating them from the field of competition.

The present rail rates in California for petroleum and petroleum products are generally based on a scale of 8 cents per hundred pounds per 100 miles, minimum 4 cents. The rails contend that these rates are not unreasonably low or insufficient, and in support of these contentions they have presented certain cost

studies which they claim show the cost of handling gasoline traffic.

Two exhibits were presented dealing with the subject of rail costs, viz: Exhibit No. 40 by C. E. Day, representing Southern Pacific Company, and Exhibit No. 56 by C. G. Anthony, representing Pacific Freight Lines.

Witness Day's exhibit 40 attempted to show that the present rail rates are compensatory in that they not only provide revenue sufficient to take care of out-of-pocket costs but contribute to fixed expenses. This exhibit purports to first develop the out-of-pocket cost of hauling gasoline and then expands this out-of-pocket cost to full cost by the application of a factor. This factor is the ratio that the out-of-pocket expenses bear to the total expenses. It is understood that these "total expenses" do not include dividend requirements, interest on obligations, bond redemptions, taxes, and many other items. The basic figures employed are taken from the annual reports of the Southern Pacific Company for the years 1931 and 1934 as being representative of current conditions. Analysis of general statistics of the Santa Fe, Western Pacific and Los Angeles & Salt Lake railways have also been made for comparison with the figures covering Southern Pacific Company. Witness Anthony in his Exhibit No. 56 did not pretend to set up costs of his own. He simply took Day's figures and made some unimportant revisions to indicate what the costs should be using Day's theory.

The figures presented in these exhibits are the result of taking average costs of handling carload traffic over the entire

system of the Southern Pacific Company for the years 1931 and 1934. It is assumed that the average cost of handling all traffic on the Southern Pacific Lines (Pacific System), including operations in the States of Oregon, California, Nevada, Utah, Arizona and New Mexico, represents the cost of handling gasoline traffic in California alone. Then, after these average system costs have been thus developed, they are offered as representative costs of traffic handled by the following railroads:

A.T. & S.F. Ry.
L.A. & S.L. Ry.
Northwestern Pacific R.R.
Pacific Coast Railway.
Pacific Electric Railway.
Sacramento Northern Railway.
San Diego & Arizona Eastern Ry.
Southern Pacific Company.
Sunset Railway.
Tidewater Southern Railway.
Western Pacific Railroad Company.

The operating ratio of the Southern Pacific for its entire Pacific System as shown on Exhibit No. 40, Statement I, for 1931, is 65.29 per cent. According to the annual report of the Southern Pacific on file with this Commission, the earnings of this company from freight traffic in California for 1931 were \$52,259,014. and the expenses chargeable to handling this traffic amounted to \$40,332,163. The ratio of operating expenses to earnings was therefore 77.2 per cent for California compared with the average used of 65.29 per cent.

The operating ratios of the more important carriers of gasoline traffic are shown for the years 1931, 1932, 1933 and 1934 on Exhibit No. 12, an average from 72.88 per cent to 79.72 per cent

for the handling of all traffic in California, from which it is apparent that the average costs of handling all traffic in California are much greater than the average costs of handling all traffic on the several systems.

In arriving at their costs the rails have arbitrarily apportioned certain items of expense to what is termed the "amount affected by added traffic", and finally arrived at a cost of 0.968 mills per gross ton mile for the cost of handling added traffic. (Exhibit 40, Statement III, page 2.) The alleged "direct cost" of handling gasoline for the average distance of intrastate California haul of 85.25 miles of all the rail lines, shown on Exhibit No. 31, is then shown in Exhibit 40, Statement II-C. This calculation of "approximate" cost based on Southern Pacific average system costs for the handling of freight of every kind and description is then applied to hauls of varying distances for a tank car of 10,000 gallons capacity. The gross ton miles the gasoline is supposed to move is multiplied by 0.968 mills per gross ton mile and the cost of moving gasoline is then approximated. The figures arrived at by the employment of these methods furnished us no help in the erection of a structure of reasonably compensatory rates.

The respondent railways have assumed that the cost of handling all traffic in California is the same as the cost of handling all traffic throughout the entire Pacific System of the Southern Pacific Company, and this is not a fact. The respondent railways have assumed that the cost of handling short haul traffic throughout

California is the same as the cost of handling long haul traffic throughout their entire system. This conclusion is contrary to the testimony of C.E. Day, their own witness who presented the cost studies for the railways, to the effect that it cost from two to three times as much to handle short haul traffic in way-freight trains as it costs to handle freight in through freight trains, the latter lower costs being included in the so-called system averages. (Tr. p. 979)

Still, we find the railways using the average cost per gross ton mile for the entire Pacific System of the Southern Pacific lines in their attempted determination of the "direct" or out-of-pocket cost of handling short haul traffic moving in way-freight trains in California. Correspondingly, we find in Exhibit No. 31 of the respondent railways that out of a total of 750,881 tons of gasoline moved by the rails in California, more than 500,000 of these tons moved distances less than 90 miles, and that approximately 350,000 of these tons, or nearly one-half of the rails' entire California petroleum traffic, moved less than 60 miles. Obviously, these short haul way-freight costs, either direct or out-of-pocket costs or full costs, cannot be accurately approximated by the use of any system average costs.

The costs computed along the lines indicated are neither the actual out-of-pocket costs, nor do they represent the full costs, in any respect, of the Southern Pacific, or of the Santa Fe, Western Pacific, Los Angeles and Salt Lake, San Diego and Arizona Eastern,

Northwestern Pacific, and the numerous other rail lines handling gasoline in California.

Counsel for the rail lines admitted that it is impossible to ascertain the cost of handling a particular commodity moving in trains handling countless other commodities of different volume, size, weight and transportation characteristics, and all moving in different classes of equipment; and one of the principal traffic witnesses (Hastings Tr. 626 1.9 et seq) for the rail carriers admitted that a reasonable rate could never be measured on the basis of system average earnings.

This method which was used herein by the rails in arriving at the purported costs of handling gasoline traffic was resorted to by the regulatory Department of the State of Washington and was condemned by the United States Supreme Court in Northern Pacific R. Co. v. Department of Public Works, (268 U.S. 39, 69 L. ed. 836). The rail lines in that proceeding objected to the use of system averages by the Washington Department as a basis for predicating the cost of handling logs within the State of Washington. In condemning the action of the Washington Department, the U.S. Supreme Court, speaking through Mr. Justice Brandeis, said at pages 43 and 44:

"The Department's findings concerning operating costs rested largely upon deductions from data found in published reports of the carriers and in their exhibits filed in this case. Instead of attempting to show by evidence, reasonably specific and direct, what the actual operating costs of this traffic was to the several carriers, the Department created a composite

figure representing the weighted average operating cost per 1,000 gross-ton miles of all revenue freight carried on the four systems, and made that figure a basis for estimating the operating cost of the log traffic in Washington.⁽⁴⁾ This was clearly erroneous.

A precise issue was the cost on each railroad of transporting logs in carload lots in Western Washington, the average haul on each system being not more than 32 miles. In using the above composite figure in the determination of this issue the Department necessarily ignored, in the first place, the differences in the average unit cost on the several systems; and then the differences on each in the costs incident to the different classes of traffic and articles of merchandise, and to the widely varying conditions under which the transportation is conducted. In this unit cost figure no account is taken of the differences in unit cost dependent, among other things, upon differences in the length of haul;⁽⁵⁾ in the character of the commodity; in the configuration of the country; in the density of the traffic; in the daily loaded car movement; in the extent of the empty car movement; in the nature of the equipment employed; in the extent to which the equipment is used; in the expenditures required for its maintenance. Main line and branch line freight, interstate and intrastate, carload and less than carload, are counted alike. The Department's error was fundamental in its nature. The use of this factor in computing the operating costs of the log traffic vitiated the whole process of reasoning by which the Department reached its conclusion.

"(4) The figure taken for the Oregon-Washington was the average cost per 1,000 gross ton-miles of that company -- not of the whole Union Pacific System. The lines of the Oregon-Washington are located in three states, with an aggregate of 2,218 miles of road."

"(5) On the Northern Pacific the average length of haul of all its intrastate traffic in Washington was 99 miles; of all its traffic in Washington, interstate and intrastate, 142 miles; of all its traffic on the whole system, 334 miles. Compare *Shepard v. Northern P.R. Co.* 184 Fed. 765, 781, 782."

(Emphasis supplied. For convenience in copying and printing, we have added the Court's footnotes to the quoted portion of the Court's decision.)

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Thus we see that the error of the Washington Department was so serious as to vitiate "the whole process of reasoning by which the Department reached its conclusion." In making this error, the Washington Department took the system averages for four railways and applied the aggregate system averages to the transportation of logs on each of these four railways regardless of operating conditions. This mistake constituted reversible error.

Should the California Commission accept the conclusions afforded through the methods adopted by the rails herein our error would be even worse than that which has just been outlined by Mr. Justice Brandeis. In the instant case, the witness, C. E. Day, testifying for the rails, has taken the entire system averages over the Pacific System (6 Western States) of the Southern Pacific Company, and asks the Commission to apply these averages to the intrastate petroleum movement not only of the Southern Pacific Company in California but to 10 other California operating railways, three of which are electric lines (Pacific Electric Railway, Sacramento Northern Railway, Tidewater Southern Railway), one a narrow gauge (Pacific Coast Railway), one steamroad now in the hands of trusteeship under the Federal Bankruptcy Law (Western Pacific Railroad Company) and two other steamroads (Northwestern Pacific Railroad and San Diego and Arizona Eastern Railway) whose reports to this Commission show severe losses and practical dependence upon the Southern Pacific Company which owns them.

If the Washington Department were wrong in attempting to compute its cost of service on a basis of system averages which did not reflect the costs of a particular commodity for varying hauls under different circumstances, then the conclusions reached by the rail carriers in this petroleum case in estimating their costs upon even more fallacious theories can not be accepted by this Commission.

Chart A, hereto attached, graphically depicts in addition to certain other data, the results of the Day and Anthony studies of rail costs. This chart also shows the current rail rates now in effect plotted for a number of representative hauls. A glance at this chart is sufficient to arouse misgivings as to these rail costs. The current rail rate on a 300 mile haul is indicated at about 25 cents per hundred pounds. But Mr. Day has drawn a line which indicates that the rail costs, including fixed expenses, are $15\frac{1}{2}$ cents less than the current rail rates on a 300 mile haul, to-wit $9\frac{1}{2}$ cents. It is not reasonable to suppose that this apparent difference of $15\frac{1}{2}$ cents per hundred pounds is actually available for dividends, interest on obligations and taxes. In complete refutation of such conclusion, the evidence without contradiction has characterized the current rates as being less than fully compensatory rates. Therefore, we are forced to the conclusion that these alleged rail costs, including fixed expenses, which have been established by Day at $9\frac{1}{2}$ cents per hundred pounds for 300 miles, are in fact 38 per cent of the current costs and that even these current costs are lacking many elements that should be present in fully compensatory rates. This brief analysis illustrates the impossibility to attach weight to the studies and conclusions of the Witnesses Day and Anthony regarding rail costs.

It becomes evident that both Day and Anthony were in error in basing their costs upon system averages for the following reasons:

1. Obviously long hauls from, to, and through California, Oregon, New Mexico, Arizona, Nevada and Utah reduce average costs per gross ton mile.
2. Train service expenses in these states are less than they are in California.
3. Station expenses are higher in California.
4. The average length of California intrastate rail haul of gasoline is 85.25 miles - much shorter than the distance from San Francisco to Ogden or from Los Angeles to Albuquerque, New Mexico. Short haul costs are greater per ton mile than long haul costs.
5. Gasoline does not move in train load lots, and seldom on through trains, but does move in way-freights. The cost of moving gasoline by way-freights is admittedly higher than on through trains.

It must be remembered that this is not a case wherein we are called upon to justify or suspend "out-of-pocket" rates invoked by a carrier to meet unregulated competition; nor are we really concerned herein with the size and characteristics of actual or alleged "out-of-pocket" costs. We repeat that the specific purpose of the Commission in this case is to fix reasonable, sufficient and non-discriminatory rates for rails and tank trucks in the movement of refined petroleum products within California. Therefore the evidence, even if it were accurate, that was offered to establish direct or "out-of-pocket" costs, standing alone and without the necessary amplification of every cost, including interest on investment, dividends, bonded redemption, taxes and all the other actual rate making items, becomes unavailing in determining the specific issue herein.

We are here concerned with the stability and perpetuity of the entire transportation industry. Stability and

perpetuity cannot be attained unless carriers can meet their fixed charges, bond interest, and earn reasonable dividends for their stockholders on the fair value of their properties.

The Interstate Commerce Commission has placed a value of \$582,783,568 on the Southern Pacific operative properties in California, not including working capital. The bond and stockholders were, therefore, entitled to receive approximately \$35,000,000 on their investment, in 1934, in California. A witness for that company testified that the entire system (six Western States) only had a net earning of \$17,000,000 in 1934, of which 40 per cent or \$6,800,000 would be the amount to be credited to California if we use the rate of return allowed the railroads by the Interstate Commerce Commission. Furthermore, the testimony indicates that the Southern Pacific Company was \$55,000,000 short of making a fair return on the entire system. The last dividend paid by Southern Pacific Company was in 1929.

A reasonable rate is one that will produce as nearly as possible all expenses, including a fair and just proportion of fixed charges, overhead, bond interest, and all other charges as the nature of the traffic will permit. It is clear that the rail rates do not measure up to this standard, and are less than just and reasonably compensatory and are not sufficient to meet all costs fairly chargeable to the transportation of refined petroleum products. Nowhere in the calculations of the respondents is any allowance made for fixed charges, bond interest and reasonable dividends. The question to be determined is what are reasonable and sufficient rates for rail service.

The nature of the traffic, the needs of commerce, and public interest do not require the continued maintenance of less than reasonable and sufficient rates, except in cases where the

minimum truck rates, which we shall prescribe, are lower. On the contrary, public interest requires that rates be stabilized and put on a reasonable and sufficient basis, and that both forms of transportation be permitted to function properly.

It is conceded in briefs of the rail respondents, and testimony of witnesses, that transportation costs of a single commodity of commerce moving in a great variety of trains, under widely varying conditions, such trains containing innumerable other commodities requiring different types of equipment, cannot be accurately determined. We must, therefore, be guided largely by comparisons of rates fixed by regulatory bodies and published and maintained by the carriers themselves before these rates were started.

In the case of Bird v. Southern Pacific Company, et al., (33 C.R.C. 259), decided June 18, 1929, the complainants attacked a rate of 56 cents per 100 pounds in effect prior to August 20, 1927, and 45 cents per 100 pounds in effect subsequent to that date, for hauls ranging from 213 to 237 miles from the Los Angeles Basin area to Imperial. In that case, the Commission found the rate of 56 cents per 100 pounds to be unreasonable on shipments moving prior to August 20, 1927, but found that the rate of 45 cents for 100 pounds in effect thereafter was not unreasonable. Our conclusions that the rate of 45 cents was not unreasonable were based largely on our findings in Richfield Oil Company v. Sunset Railway Company, et al. (24 C.R.C. 736), decided April 2, 1924. In that case, notwithstanding a vigorous defense by the rail carriers of their then existing rates, we reduced the rate from Bakersfield to Modesto for a haul of 200 miles from 45½ cents per 100 pounds to 40 cents, and for a haul

of 229 miles from Bakersfield to Stockton we fixed the rate at 45 cents, and for a haul of 235 miles from Bakersfield to Redlands, involving the movement over the Tehachapi Mountains, we fixed a rate of 51 cents. Thus, from 1924 to 1929, it may be said safely that for a haul approximating 225 miles, a rate of 45 cents for 100 pounds was within the zone of reasonableness.

In this same case, Richfield Oil Company v. Sunset Railway Company, et al., supra, for a haul of 63 miles from Bakersfield to Tulare, we condemned as unreasonable a rate of $21\frac{1}{2}$ cents and prescribed as reasonable a rate of $18\frac{1}{2}$ cents. For a haul of 87 miles from Bakersfield to Hanford, we found that a rate of $24\frac{1}{2}$ cents was not unreasonable, and we, likewise, found as not unreasonable a rate of 29 cents for a haul of 107 miles from Bakersfield to Fresno. For a haul of 209 miles from Taft to Merced, we condemned as unreasonable a rate of $47\frac{1}{2}$ cents for 100 pounds, and found a reasonable rate to be 39 cents. For a haul of 345 miles from Taft to Woodland, we prescribed a rate of $55\frac{1}{2}$ cents as reasonable, contrasted with a rate of 64 cents in effect prior to this decision.

In Richfield Oil Company v. Sunset Railway Company, et al., supra, the complainant attacked the rates on petroleum products, including gasoline from Kerto, Taft, Fellows, Shale and Bakersfield to Los Angeles, for distances varying from 169 to 215 miles. The complainant insisted that a reasonable rate would be $25\frac{1}{2}$ cents per 100 pounds from Bakersfield to Los Angeles, as against an existing rate of $45\frac{1}{2}$ cents. We condemned the rate of $45\frac{1}{2}$ cents from Bakersfield to Los Angeles, and found as reasonable for the haul of 169 miles a rate of $38\frac{1}{2}$ cents per 100 pounds, while from Taft and Kerto to Los Angeles we condemned a rate of 50 cents per 100 pounds and found as reasonable a rate of $41\frac{1}{2}$ cents per 100 pounds for hauls of 209 and 215 miles, respectively. In

that case, the defendants introduced numerous comparisons of rates from San Francisco Bay refineries in justification for the then existing rates from the Bakersfield area to Los Angeles. These comparisons were largely for valley hauls, where the rates ranged from 33½ cents per 100 pounds for a haul of 141 miles, Avon to Chico, to 38½ cents for a haul of 190 miles, Richmond to Fresno. The complainant relied, in justification for its demand of a rate of 25½ cents from Bakersfield to Los Angeles, on a rate established by this Commission in Ventura Refining Company v. Southern Pacific Company and others (17 C.R.C. 328), decided October 3, 1919, in which case we fixed a rate of 7 cents per 100 pounds from Fillmore to Los Angeles for a haul of 55½ miles, and 8 cents for a haul of 62 miles, Fillmore to Slauson. These rates were established before the war-time increases and reductions, which resulted in changing these rates to 13 cents and 14 cents per 100 pounds, respectively.

In Richfield Oil Company v. Sunset Railway Company, et al., supra, we had under consideration rates on petroleum and petroleum products from Kerto and Taft to Bakersfield of 13 and 16 cents per 100 pounds, respectively, for hauls of 39 and 46 miles, respectively. In that case we found these rates not to be unreasonable.

In Guardian Gasoline Corporation, et al v. Sunset Railway Company, et al. (26 C.R.C. 598), decided June 15, 1925, the complainant attacked a rate of 48 cents per 100 pounds on casinghead gasoline from Pentland to Los Angeles as unreasonable. A co-complainant in the same proceeding attacked the rate of 60½ cents from Fellows to Los Angeles. In that case, for hauls from 200 to 220 miles, we prescribed a rate of 43½ cents per 100 pounds.

In Standard Oil Company v. Sunset Railway Company, et al., (26 C.R.C. 900), decided August 12, 1925, we condemned a rate of 63 cents for a haul of 344 miles, Taft to Richmond, and prescribed in lieu thereof, as just and reasonable, a rate of 56½ cents.

In Union Oil Company v. Southern Pacific Company, et al., (30 C.R.C. 226), decided July 21, 1927, we found that a rate of 43½ cents for a joint movement via the Southern Pacific and Tidewater Southern Railway from Coalinga to Aurora, 186 miles, to be unreasonable, and found as reasonable a rate of 41½ cents per 100 pounds.

In Associated Oil Company, et al., v. Southern Pacific Company, et al. (33 C.R.C. 581), decided September 27, 1929, we upheld as not unreasonable rates of 11 cents, 13 cents and 13 cents, respectively, per 100 pounds, from Wadstrom to Los Angeles, El Segundo and Watson, respectively, for distances of 79, 95 and 96 miles, respectively, for the movement of casinghead gasoline. We found these rates not to be unreasonable largely because they were lower for comparable distances than the rates prescribed for the movement of gasoline in Richfield Oil Company v. Sunset Railway Company supra, and because they compared favorably with what the rates from Fillmore to Los Angeles would have been considering the general wartime increases and reductions added to the rates prescribed by us in Ventura Refining Company v. Southern Pacific Company, et al. (17 C.R.C. 328).

Respondent truck operators, who are complaining against the low level of rail rates have directed our attention in their exhibit No. 15 to the scale of maximum reasonable rates prescribed by the Interstate Commerce Commission in Mountain-Pacific Oil Cases, (192 I. C. C. 599 - 650), decided May 2, 1933.

We have analyzed this decision, -- not only the majority opinion, but the dissenting opinion of Commissioners Porter and Tate, who opposed the reduction in rates ordered in this case. Commissioners Meyers and Mahaffie also dissented but did not express the grounds of their dissent.

Comparing rates which we have prescribed as reasonable as

well as those found not unreasonable with the rates prescribed by the Interstate Commerce Commission in the Mountain-Pacific cases, we find that for distances comparable to the haul from the Los Angeles Basin area to Imperial, for which we prescribed a rate of 45 cents, the Interstate Commerce Commission has prescribed rates of 39 and 40 cents.

For the haul of 200 miles from Bakersfield to Modesto, for which we prescribed a rate of 40 cents, the Interstate Commerce Commission prescribed a rate of 37 cents.

For a movement from Bakersfield to Stockton, 229 miles, we prescribed a rate of 45 cents, and the Interstate Commerce Commission prescribed a maximum reasonable rate of 40 cents.

For the haul from Bakersfield to Redlands, over the Tehachapi Mountains, 235 miles, we fixed a rate of 51 cents, while the Interstate Commerce Commission, which apparently did not consider specific instances of mountain operation, fixed a rate for this length of haul at 41 cents.

As contrasted with a rate of $18\frac{1}{2}$ cents, which we prescribed from Bakersfield to Tulare, 63 miles, the Interstate Commerce Commission established a rate of 22 cents.

We found a rate of $24\frac{1}{2}$ cents was not unreasonable for a haul of 87 miles from Bakersfield to Hanford. For a similar distance, the Interstate Commerce Commission prescribed a rate of 26 cents.

For a haul of 345 miles, Taft to Woodland, we found a reasonable rate to be $55\frac{1}{2}$ cents, while the Interstate Commerce Commission prescribed a rate for that distance of 47 cents.

As against a rate of $38\frac{1}{2}$ cents, which we prescribed from Bakersfield to Los Angeles for a distance of 169 miles, the Interstate Commerce Commission prescribed a rate of 34 cents.

This Commission refused to consider as a proper com-

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parison a rate of 7 cents fixed by us from Fillmore to Los Angeles, 55½ miles, and 8 cents from Fillmore to Slauson, 62 miles, which rates were fixed in 1919, and did not include the war time increases at the time the comparisons were made by complainant in Richfield Oil Company v. Sunset Railway Company, et al., supra. We there stated that the compared rates from Fillmore should be considered in the light of war-time increases, which resulted in a rate of 13 cents to Los Angeles and 14 cents to Slauson. Comparing these rates with what the Interstate Commerce Commission prescribed in the Mountain-Pacific Cases, supra, we find that the rate prescribed by the Interstate Commerce Commission in the Mountain-Pacific Cases, for the same distance as Fillmore to Los Angeles, would have been 21 cents per 100 pounds, and for the distance from Fillmore to Slauson the rate would have been 22 cents per 100 pounds.

Our attention has also been called to the decisions of the Interstate Commerce Commission relating to rates on petroleum products in Refined Petroleum Products in the Southwest (171 I.C.C. 381), and decided January 5, 1931, and (174 I.C.C., 745), decided June 2, 1931. Comparisons are shown between the rates finally prescribed by the Interstate Commerce Commission on further consideration in 174 I.C.C. 745, and with the rates proposed by the rail lines as reported in that case. In the Mountain-Pacific Cases, supra, it was stated that the Interstate Commerce Commission held in a number of cases that, -

"* * * traffic other than in agricultural commodities in Mountain-Pacific territory may well take rates about twenty per cent higher than in the Southwest." (Page 645)

The Mountain-Pacific decision was rendered by the Interstate Commerce Commission May 2, 1933, and there was no evidence offered herein that transportation conditions had so changed since any of

our decisions or those of the Interstate Commerce Commission were rendered that would justify slashing all rates to the present low level. As before stated, it was admitted that in the absence of unregulated truck competition the present rail rates would not be maintained.

Now that the truck competition is regulated and we will fix minimum rates for transportation by truck, no justification will exist in the future for rail lines to reduce otherwise reasonable rates below the minimum truck rates for the purpose of meeting competition.

Following hereinafter is Table VII, which is a statement of rates prescribed by the Interstate Commerce Commission in Mountain-Pacific Oil Cases (192 I.C.C. 599), decided May 2, 1933, compared with rates prescribed by the same Commission in Rates on Refined Petroleum from to and between Points in the Southwest, Rate Structure Investigation Part 4-A, Docket 17,000, (174 I.C.C. 745). It has been held in a number of cases by the Interstate Commerce Commission and similarly has been advanced by the rail carriers, that the rates in Mountain-Pacific territory should be approximately twenty per cent higher than the rates in Southwestern territory. Correspondingly, we have increased the column of rates under "Southwestern Scale" in Table VII, to afford better comparison with the "Mountain-Pacific Scale." These scales of rates are compared with rates for varying distances prescribed by this Commission in the several cases mentioned in Table VII.

It will be noted that in some instances the interstate scales are higher, and in some cases lower, than rates for

comparable distances prescribed by this Commission. The rates for the short hauls, up to 50 miles, are substantially higher than the few rates for these distances which have been prescribed by this Commission. This is particularly true as to the Mountain-Pacific scale which the Interstate Commerce Commission fixed for interstate movements in that territory, which includes California.

The amount of refined oil products consumed in the several states embraced within the Southwestern territory is not disclosed in the decisions of the Interstate Commerce Commission involving rates in that territory, (171 I.C.C. 381; 174 I.C.C. 745), but it is apparent that for the years considered in those decisions the volume of petroleum traffic to, from and between points in the entire territory was greatly in excess of the movement in California. However, it is also apparent from the record before us that the movement of petroleum products in California is greatly in excess of the petroleum traffic in the other states comprising the Mountain-Pacific group.

Since the volume and density of traffic is an important consideration in the fixing of reasonable freight rates, we do not believe that we should be guided entirely by the rates fixed by the Interstate Commerce Commission for similar distances in the Mountain-Pacific Cases, and that for intrastate transportation in California, reasonable and sufficient rates, particularly for short hauls in the densely-populated sections, can reasonably be lower than the maximum reasonable rates prescribed by the Interstate Commerce Commission in the Mountain-Pacific Cases. We shall hereinafter prescribe reasonable and sufficient rates for the commodities here at issue, giving due regard to the maintenance of long established groupings of origin points.

TANK TRUCK OPERATIVE COSTS

By way of concluding the twofold problem involved in this case we advert to the question of tank truck costs in order to fix just and reasonable minimum rates for all highway tank truck carriers subject to regulation under Chapter 223, Statutes of 1935, for the transportation of refined petroleum products over the highways within this State.

Five studies or estimates of cost of moving gasoline by motor truck were introduced in evidence.

The witness H. J. Mize, Auditor for Lang Transportation Company, submitted a tabulation (Exhibit No. 1) which consisted of a consolidated statement of the reports of revenue and cost of operation made by fifteen tank truck operators upon a questionnaire blank furnished by the Commission. No attempt was made to analyze the basis for certain arbitrary charges. The returns are incomplete in some instances. However, the presentation is of value in showing a broad picture of the records of what appear to be representative operators. The reports show that the average cost of operation is 24.4 cents per mile and the average revenue 24.5 cents per mile. The total annual profits for the fifteen reporting tank truck operators is \$22,467.16 upon a reported investment of \$1,928,339.87 - a return of 1.17 per cent per annum.

C. G. Anthony presented a study (Exhibit No. 4) showing the records of the cost of operation of 21 gasoline and 19 Diesel truck and trailer units of the Pacific Tank Lines. The results were summarized in a table showing the cost per mile for gasoline and Diesel engine trucks for various miles per day. The cost per mile for the stated average daily mileage (170) was shown to be \$.22229 for Diesel engine trucks and \$.25570 for gasoline powered units. It would appear from this showing that Diesel units cost 13 per cent less per mile to operate than gasoline units. However, Mr. Anthony contended that this differen-

tial will be short-lived. At present Diesel fuel is tax free but, in his opinion, will soon be taxed. Also, because of a limited supply, it is expected that prices at the refinery will soon be increased.⁽¹¹⁾ He also pointed out that in his opinion rates should be predicated upon gasoline equipment rather than upon Diesel as the former predominates. In this study costs per mile for various miles per day were based upon the average of 306.5 working days per year.

The Commission's Engineering Division, through Fred E. Chesnut, Assistant Engineer, presented a cost study (Exhibit Nos. 16 & 16A) which was the result of examination of conditions under which gasoline is transported in trucks in many parts of the state. A large quantity of cost data was collected and analyzed. Over 200 truck units engaged in this type of operation were involved in the study.

This report sets up fixed and variable costs for plant facility as well as contract carrier operations. The various items are each supported by exhaustive data and the conclusions arrived at are the result of careful thought. A summary is appended to these studies showing the estimated cost for valley roads per truck mile, per ton, per 100 pounds and per ton mile for various hauls from 15 to 350 miles in length. The subject of the obstruction to truck operation caused by mountainous roads has been given considerable study. In consequence of this study we recommend certain modifying factors to be applied to valley costs where mountain roads are encountered. A table of specific mountain roads is appended together with the ratios or factors to be used.

The item of depreciation has been given special study, and recognition has been given in the estimates to the fact that the charge per day for depreciation should be increased as the number of miles

(11) Testimony of C. G. Anthony (Tr. P. 187, L. 13, et seq.):

" *** the price of Diesel fuel will rise rapidly because only a very small percentage of the run of a barrel of oil through a refinery produces Diesel fuel, only about 5 per cent is obtained from a barrel of oil in a cracking plant."

run by the truck per year increases. The level of costs set forth purport to be the lowest which will provide a remunerative return.

C. G. Anthony presented another cost study (Exhibit No. 54) in which he set forth additions which, in his opinion, should be made to the estimate prepared by Mr. Chesnut (Exhibits Nos. 16 and 16A). Several recommended additions seem proper and reasonable, such as cost of tax accounting, compensation insurance, additional public liability and property damage insurance, and cost of dead-head mileage. On the other hand recommended increase in drivers' wages from \$.63 per hour to \$.74 per hour is not supported by this record. The addition of \$725 per year to take care of return on capital invested in other than vehicles appears excessive. The last item is particularly out of line as it assumes an investment of \$9,072. per truck and trailer unit in addition to the investment of \$10,375.00 per unit already set up by Mr. Chesnut. Also an addition of \$.0132 per mile is recommended by Anthony to provide a total of \$.0427 per mile for repairs and maintenance. Chesnut's studies show reports from twenty operators running a total of over fifteen million truck miles which demonstrate an expense for this item of only \$.0289 per mile.

At a later date in the proceedings C. G. Anthony submitted still another cost study (Exhibit No. 55). In this study Mr. Anthony set forth an estimate of the cost of transporting gasoline for various lengths of haul and a recommendation of the rate of charge required to return this estimated cost plus a profit. These estimates are based in part upon the data developed in his study of the Pacific Tank Lines, and in part upon factors developed by Mr. Chesnut in his study.

In Exhibit 55 Mr. Anthony assumes a use factor of 277 days in spite of the fact that records covering Pacific Tank Lines, as submitted by him (Exhibit 4) showed an average of 306.5 days. He also changed the basis of the driver's wages from \$.036 per mile to \$.75 per hour

(\$.036 per mile represents about \$.55 per hour). This increase was made upon the expectation that operators would be required to pay the higher rate in the near future. The fixed charges per day were increased by Anthony from \$10.92 to \$13.60 (24.2 per cent increase) by small additions to several items. Finally, a table was compiled by Anthony showing rates necessary to return a profit for various lengths of haul.

The method thus adopted by Anthony of compiling the figures and certain of the assumptions made are subject to the following objections:

(1) By assuming that the item of depreciation is a fixed amount per mile (\$.02817) a serious inconsistency is brought about. For a length of haul of between 0 and 5 miles the effect is to assume that the vehicle will be in service 29.4 years; for hauls between 15 and 20 miles, 16.3 years; and for hauls of 75 to 80 miles, 7.56 years.

(2) The item of profit is calculated by the use of a 90 per cent operating ratio applied to the costs before taxes. This produces an annual profit which increases from \$880.00 for a 0 to 5 mile haul (8.54 per cent on total investment in vehicles) to \$1,440.00 for hauls of from 75 to 80 miles (13.98 per cent return). By this method the rate of return rapidly increases as the length of the haul increases. The rate of return of 13.98 per cent, for example, is subject to criticism for the reason that no allowance has been made for the constantly depreciating value of the equipment. A return of 13.98 per cent upon the full value of the equipment is equal to approximately 28 percent return upon the average value of the vehicle throughout its life. Rates predicated upon such a return would be excessive.

A full consideration of all of these studies on tank truck operative costs justifies and necessitates certain revisions in the conclusions expressed in the studies of Engineer Chesnut. They are:

1. Investment.

Chesnut has shown a return of 8 per cent of 50 per cent of the investment in vehicles, less tires. This is not enough. We have allowed a return of 8 per cent of 50 per cent of the investment in vehicles, including tires, and in addition thereto a return of 8 per cent of 50 per cent of the investment necessary in machinery, tools and equipment. We have also allowed 8 per cent upon the working capital necessary to operate the business. We believe that the factors of hazard, obsolescence, and competition warrant this rate of return, as a minimum.

2. Days in Service per Year

Chesnut has estimated 277 days in service per year. Anthony shows 306.5 days in service per year in his Exhibit No. 4. Based upon data of actual operations reported, the corrected average becomes 298 days in service per year, which we have revised to the figure of 300 days in service per year.

3. Insurance

Additions have been made to Chesnut's estimates for insurance cost in the item of public liability and by the addition of a new item of compensation insurance covering mechanics and clerks.

4. Drivers' Wages

The record shows that \$.75 per hour has become the standard wage for drivers in the San Francisco Bay area, Port of Stockton, and Port of Los Angeles; and that an average of about \$.55 per hour still obtains in certain interior points. We have increased Chesnut's estimate of drivers' wages from \$.63 per hour to \$.67 per hour.

5. Over-head and General

Chesnut's original estimate was \$2,440 per unit per year. Anthony's estimate was \$2,180 per unit per year. Upon detailed examination of all of the figures used in these two estimates we have reduced this estimate of over-head and general expense to \$2,000 per unit per year.

6. Repairs and Maintenance

A study and comparison of Chesnut's estimate of \$.0295 per mile with Anthony's estimate of \$.04277 per mile justifies the conclusion that the average cost of repairs and maintenance should be \$.0325 per mile.

7. Dead-head Miles

The record requires the reasonable addition of 15 miles per day to the estimates of Engineer Chesnut to take care of dead-head miles.

In this case, predicated upon convincing cost data, the Commission has determined rates which will be necessary to return to the highway contract and radial highway common carrier, as defined by the Highway Carriers' Act and engaged in hauling refined petroleum products in tank cars, their full cost on a fair compensatory basis. These rates we shall fix as minimum rates for these tank truck operators,

below which they will not be permitted to go, excepting to meet the rates of the rail carriers which heretofore have been determined in compliance with the legislative measures hereinbefore fully discussed. We believe they should be sufficient under competent and economic management. We do not believe that they are sufficiently high to warrant any speculation or apprehension that plant facility transportation will invade the field.

The rates which we have heretofore determined in this decision for the rails are fully justified and compare favorably with rates approved by this Commission and the Interstate Commerce Commission in previous rate cases. Of course, the rails will be permitted to meet the minimum rates fixed for the tank trucks. It is, therefore, self evident that the going rates for refined petroleum products in California will be the minimum tank truck rates herein established by this order up to about 290 miles. Beyond this distance the going rates will be those herein established for the rails and, of course, the tank truck operators will be permitted to meet these rates.

The rails cannot be heard to object that these rates are too low for throughout this hearing they advocated rates lower. The trucks cannot be heard to object that these rates are too low for they are fixed within reasonable conformity to the testimony offered by the trucks. The shippers cannot be heard to complain that these rates are too high because they are reasonable rates and every shipper unequivocally favored reasonable rates.

The just, reasonable and non-discriminatory minimum rates prescribed for tank truck carriers are set forth in the Appendix A of the order and shall become effective concurrently with the rail rates hereinafter prescribed.

Tables and Chart.

To clarify this opinion, we have appended to this order numerous tables and one chart.

We have heretofore referred to Table I which is a "Statement of Rail Rates on Gasoline Now in Effect, Compared With Rates Previously in Effect, Between a Few Points Illustrating Drastic Reductions." The purpose of Table I was to emphasize the severe and successive drops in many rail rates during the course of the rate war of the last decade. A glance at Table I shows that many of the present rail rates are but a small percentage of what they were before this rate war.

Table II: "Illustrates California Rail Rates on Gasoline Now Effective Compared With Truck Rates Fixed by this Order; Rates Heretofore Approved or Prescribed by the California Railroad Commission; California Rail Rates Before Rate War; and Rail Rates Prescribed by the I.C.C.; Said Comparisons Being for Similar Distances."

The tank truck rates fixed by this order stand out in comparison with rail rates heretofore approved or prescribed by this Commission and the Interstate Commerce Commission as substantially lower in almost every instance. This table also shows that the truck rates fixed by this order are substantially lower than the rail rates before the rate war.

Table III is a "Statement of Typical Rail Rates on Gasoline, Now in Effect, in California, Compared with Typical Rates for Similar Distances, Prescribed by the Interstate Commerce Commission."

It will be observed from Table III that the existing California rail rates are in every instance very much less than

comparably approved Interstate Commerce Commission rates. This table also illustrates the present unreasonably low and depressed status of the rail rates.

Table IV is a "Statement Showing Scale of Maximum Reasonable Rates For The Transportation of Refined Petroleum Prescribed By Interstate Commerce Commission For Application In And To Mountain-Pacific Territory, Except Over The Rio Grande System, in Appendix B To Mountain-Pacific Oil Cases, 192 I.C.C. 599-650 And Decided May 2, 1933."

Tables V and VI represent the revised figures from the studies and testimony of Fred H. Chesnut, Assistant Engineer in the Transportation Division of the Commission, and summarize our conclusions from the record herein on tank truck cost of operation for valley highways.

Table VII consists of two sheets and is a comparative statement of rates prescribed in the Interstate Commerce Commission Mountain-Pacific case (192 I.C.C. 599, May 2, 1933), and Southwestern case (174 I.C.C. 745, June 2, 1931) and rates found not unreasonable by this Commission.

It is to be noted from Table VII that the rates prescribed and found not unreasonable by this Commission are closely in line with those in the Southwestern Interstate Commerce Commission case, and are generally lower than those in the Interstate Commerce Commission Mountain-Pacific case. It will also be noted that the rates herein prescribed for the rails are in almost every instance lower than the illustrative rates set forth in Table VII as having been approved and found not unreasonable by this Commission.

INTERVENTION

There was filed on November 20, 1935, in open hearing at Los Angeles, petition for leave to intervene by Independent Petroleum Association, a non-profit corporation organized and existing under the laws of California. Said petition sought the enlargement of this investigation so as to comprehend and establish rates for certain major California pipe line companies, allegedly operating approximately 5,400 miles of trunk and gathering oil pipe lines within the State. We are of the opinion that the purpose of the instant case is best accomplished without including among the problems presented herein any additional issue. Therefore, the said petition for leave to intervene will be ordered denied.

LONG AND SHORT HAUL RELIEF

To the extent relief from the long and short haul provisions of the Public Utilities Act and Constitution may be desirable or necessary to maintain an equality of transportation rates as between competing carriers or other forms of transportation, applications for such relief should be filed with the Commission forthwith.

FINDINGS

Upon consideration of the evidence herein, the Commission hereby makes the following findings of fact:

(1) That the existing rates charged and collected by common carriers by railroad, respondents herein, and now published and filed by said respondents with this Commission, for the transportation of refined liquid petroleum products, including compounded oils having a petroleum base, as described in Supplement No. 17 to Western Classification No. 65 (Supplement No. 17 to C.R.C. No. 580 of M. A. Cummings, Agent) under the heading "Petroleum or Petroleum Products * * *" (excepting that such rates will not apply on petroleum crude oil, petroleum fuel oil and petroleum gas oil), when moving in tank cars * * *, are unreasonable and insufficient to the extent that they are lower than prescribed in Appendix A of the order, which rates are found to be reasonable and sufficient.

(2) That the said rates referred to in finding No. 1, to the extent that they are therein found to be unreasonable and insufficient, are not justified by the actual competitive transportation rates of competing highway carriers, applicable to said commodities.

(3) That the said rates referred to in finding No. 1 to the extent that they are therein found to be unreasonable and insufficient, are not justified by the costs of other means of transportation applicable to said commodities.

(4) That the said common carriers by railroad for the future will not be justified in reducing their rates upon said commodities described in finding No. 1 below the rates found reasonable and sufficient in finding No. 1 except for the purpose

of meeting the rates set forth in Appendix A of the order and prescribed as the just, reasonable and non-discriminatory minimum rates for the transportation of said commodities by highway carriers.

(5) That the rates set forth and prescribed in Appendix A of the order are justified and should be established as the just, reasonable and non-discriminatory minimum rates for the transportation of said commodities described in finding No. 1 moving in tank trucks, tank trailers or tank semi-trailers or a combination of such highway vehicles by all highway carriers between points in the State of California.

(6) That the said highway carriers will not for the future be justified in charging or collecting rates upon said commodities described in finding No. 1 less than those found to be just, reasonable and non-discriminatory minimum rates for the transportation of said commodities in finding No. 5 except for the purpose of meeting the rates prescribed in Appendix A of the order as reasonable and sufficient rates for the transportation of said commodities by common carriers by railroad.

(7) That the said rates referred to in findings Nos. 1 and 5 will provide an equality of transportation rates for the transportation of said commodities between points in the State of California by all competing agencies of transportation and also the cost of other means of transportation.

(8) That the rates prescribed in Appendix A of the order are predicated upon existing conditions and the rates so prescribed shall not be construed as a finding or determination by the Commission that the rates theretofore charged, collected, published and filed by common carriers by railroad were in the past in excess of reasonable rates.

O R D E R

Public hearings having been held in the above entitled proceeding and based upon the evidence received at the hearings herein held and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the rates set forth in Item No. 1, and the rules and regulations set forth on pages 2, 3 and 4, of Appendix A, attached hereto and made a part hereof be and they are hereby prescribed to become effective December 24, 1936, on not less than 5 days notice to the Commission and to the public as the reasonable and sufficient rates, rules and regulations to be charged, demanded, collected and received by all common carrier railroads as defined in the Public Utilities Act of the State of California, for the transportation, between points in the State of California, of Refined Liquid Petroleum Products including Compound-ed Oils having a Petroleum Base as described in Supplement 17, Western Classification No. 65, (Supplement No. 17 to C.R.C. 580 of M. A. Cummings, Agent,) under the heading "Petroleum or Petroleum Products * * *" except Petroleum Crude Oil, Petroleum Fuel Oil and Petroleum Gas Oil, provided, however, that where the rates approved and established as the just, reasonable and non-discriminatory minimum rates for the transportation by highway carriers of said commodities and shown in Item 2 of Appendix A, attached hereto and made a part hereof, are lower, said common carriers by railroad may apply, demand, collect and receive such lower rates.

IT IS HEREBY FURTHER ORDERED that all common carriers by railroad as defined in the Public Utilities Act of the State of California be and they are hereby ordered to cease and desist on December 24, 1936, and thereafter abstain from applying, demanding, collecting or receiving for the transportation, between points in

California, of Refined Liquid Petroleum Products including Compounded Oils having a Petroleum Base as described in Supplement 17, Western Classification No. 65, (C.R.C. 580 of M.A.Cummings, Agent,) under the heading "Petroleum or Petroleum Products * * *" except Petroleum Crude Oil, Petroleum Fuel Oil and Petroleum Gas Oil, rates less than the rates prescribed in the preceding paragraph of this Order.

IT IS HEREBY FURTHER ORDERED that the rates set forth in Item No. 2, and the rules and regulations set forth on pages 2, 3 and 4, of Appendix A, attached hereto and made a part hereof be and they are hereby approved and established effective December 24, 1936, as the just, reasonable and non-discriminatory minimum rates, rules and regulations to be charged and collected by any and all highway carriers as that term is defined in the Highway Carriers' Act (Chapter 223, Statutes of 1935) for the transportation, between points in the State of California, of Refined Liquid Petroleum Products including Compounded Oils having a Petroleum Base as described in Supplement 17, Western Classification No. 65, (Supplement No. 17 to C.R.C. 580 of M.A.Cummings, Agent,) under the heading "Petroleum or Petroleum Products * * *" except Petroleum Crude Oil, Petroleum Fuel Oil and Petroleum Gas Oil, provided, however, that where rates prescribed as the reasonable and sufficient rates for the transportation by rail carriers of said commodities and shown in Item 1 of Appendix A, attached hereto and made a part hereof, are lower, said highway carriers may apply, demand, collect and receive such lower rates.

IT IS HEREBY FURTHER ORDERED that all highway carriers as that term is defined in the Highway Carriers' Act (Chapter 223, Statutes 1935) be and they are hereby ordered to cease and desist on December 24, 1936, and thereafter abstain from charging and collecting for the transportation, between points in California, of Refined Liquid Petroleum Products including Compounded Oils having

a Petroleum Base as described in Supplement 17, Western Classification No. 65, (Supplement No. 17 to C.R.C. 580 of M. A. Cummings, Agent,) under the heading "Petroleum or Petroleum Products * * *" except Petroleum Crude Oil, Petroleum Fuel Oil and Petroleum Gas Oil, rates less than the minimum rates prescribed in the preceding paragraph of this order.

IT IS HEREBY FURTHER ORDERED that for all other purposes this order shall become effective December 1, 1936.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this _____ day of _____, 1936.

Leon A. Whittell
Matthew W. Warr
Greene R. H. H. H.

APPENDIX "A"

NAMING REASONABLE AND SUFFICIENT RATES FOR
COMMON CARRIERS BY RAILROAD AS DEFINED IN
THE PUBLIC UTILITIES ACT OF THE STATE OF
CALIFORNIA

and

JUST, REASONABLE AND NON-DISCRIMINATORY MINIMUM
RATES FOR HIGHWAY CARRIERS AS DEFINED IN THE
HIGHWAY CARRIERS' ACT

(CHAPTER 223, STATUTES OF 1935)

for the

TRANSPORTATION OF LIQUID PETROLEUM PRODUCTS,
INCLUDING COMPOUNDED OILS HAVING A PETROLEUM
BASE, AS DESCRIBED IN SUPPLEMENT NO. 17 TO
WESTERN CLASSIFICATION NO. 65 (SUPPLEMENT NO.
17 TO C.R.C. NO. 580 OF M. A. CUMMINGS, AGENT)
UNDER THE HEADING OF "PETROLEUM AND PETROLEUM
PRODUCTS ***" (EXCEPTING THAT SUCH RATES WILL
NOT APPLY ON PETROLEUM CRUDE OIL, PETROLEUM
FUEL OIL AND PETROLEUM GAS OIL), WHEN MOVING IN
TANK CARS, TANK TRUCKS, TANK TRAILERS OR TANK
SEMI-TRAILERS OR A COMBINATION OF SUCH HIGHWAY
VEHICLES,

BETWEEN

POINTS IN THE STATE OF CALIFORNIA, TOGETHER
WITH RULES AND REGULATIONS GOVERNING THE SAME.

RULES AND REGULATIONS

Computation of Charges

The weight of the commodities upon which rates are established in this appendix shall be computed upon the weight of 6.6 pounds per gallon.

Minimum Weight and Minimum Charges

(a) The minimum weight for shipments in tank cars shall be computed on the basis provided in Rule 35 of Western Classification No. 65.

(b) The minimum weight for shipments in tank trucks, tank trailers, tank semi-trailers, or in any combination of such vehicles shall be the full legal carrying capacity of the tank or tanks but in no event shall the transportation charges for quantities less than 5800 gallons be less than those applicable on shipments of 5800 gallons.

Stopping in Transit

(Applicable only in connection with rates shown in Item No. 2 hereof.)

Shipments stopped in transit to partially unload will be subject to an additional charge of \$4.50 for each stop, and charges will be collected on the weight of the entire shipment from point of origin to the highest rated point of delivery.

Pumping

The rates shown herein do not include pumping service when rendered with carriers' equipment. When this service is performed by the carrier a charge of $\frac{3}{4}$ of one cent per 100 pounds will be made.

Disposition of Fractions

In computing distances, fractional parts of a mile will be disposed of as follows:

Decimals of .5 or over will be counted as 1 mile.

Decimals of less than .5 will be dropped.

In computing distances made up by the use of two or more factors or in constructively increasing actual distances fractions will be retained until the final result and then be disposed of in accordance with the foregoing.

APPLICATION OF RATES

(a) In applying the rate scales named in Items 1 and 2 the following points will be grouped:

- Group 1. San Francisco
- Group 2. Oakland, Richmond, Rodeo, Oleum, Port Costa, Martinez, Avon.
- Group 3. Coalinga, Le Roy, Ora, Crump.
- Group 4. Bakersfield, Seguro, Maltha, Oil City, Mopoco.
- Group 5. Taft, Maricopa, McKittrick, Conner, Fellows, Hazelton, Midoil, Kerto, Millux, Pentland, Shale.
- Group 6. Signal Hill, Watson, Wilmington, El Segundo, East Long Beach, Los Angeles, Machado, Huntington Beach, Naples, Rioco, Hynes, Bixby, St. Helena Spur, Thenard, Los Nietos, Santa Fe Springs, Vinvale, Vernon, Burnett, Lawn, Wingfoot, Alamitos Heights, Alla, Torrance, Downey, Dominguez Jct., Inglewood, Sherman Jct., Playa del Rey, Hyde Park, Long Beach, San Pedro, Wildasin, Venice.
- Group 7. Chrisman, Wadstrom, Ortonville, Carpinteria, Ventura, Ellwood, Summerland, Camarillo, Buckhorn, Piru, Santa Paula, Fillmore.

(b) Except as otherwise provided the rate scales shown in Items 1 and 2 are subject to the mileages shown on pages 7 to 18 of this appendix.

(c) On shipments originating at or destined to points not shown in the mileage table on pages 7 to 18 of this appendix, but where the route traversed is via the points therein shown, use the mileage shown on pages 7 to 18 from or to the nearest point or points specifically shown and via the route traversed, plus the actual mileage from or to the unnamed point or points, the mileages from or to the unnamed point or points to be constructively increased in accordance with the method announced by the Commission in Decision No. 29253 in Part "N" of Case 4088.

(d) Where the route traversed is not via the points shown on pages 7 to 18, use actual mileage via the shortest available highway route constructively increased in accordance with the method announced by the Commission in Decision No. 29253 in Part "N" of Case 4088. If the mileages so constructed apply from or to any point in groups 1 to 7 inclusive, the following points must be used as basing points for computing the mileages.

	<u>Basing Points</u>
Group 1	San Francisco
Group 2	Pinole
Group 3	Coalinga
Group 4	Bakersfield
Group 5	Taft
Group 6	Compton
Group 7	Ventura

All distances so computed should be based upon the shortest available highway route.

(e) Except as provided in paragraph (b), the rates between points within the same group shall be not less than 4 cents per 100 pounds.

(f) Except as otherwise provided, the minimum rate between points within the switching limits of a single station shall be the switching charge currently maintained by the rail carriers and lawfully on file with the Railroad Commission of the State of California.

ITEM NO. 1

Reasonable and sufficient Rates for the Transportation of Refined Petroleum Products by common carriers by railroad in tank cars.

<u>Mileage</u>				<u>Rates in cents</u> <u>per 100 lbs.</u>
Up to 5 miles				6
10 miles and over			5	7
15	"	"	"	8
20	"	"	"	9
25	"	"	"	10
30	"	"	"	11
35	"	"	"	12
40	"	"	"	13
45	"	"	"	14
50	"	"	"	15
60	"	"	"	16½
70	"	"	"	18
80	"	"	"	19½
90	"	"	"	21
100	"	"	"	22½
120	"	"	"	24
140	"	"	"	26
160	"	"	"	28
180	"	"	"	29
200	"	"	"	30
220	"	"	"	31
240	"	"	"	32
260	"	"	"	33
280	"	"	"	34
300	"	"	"	35
320	"	"	"	36
340	"	"	"	37
360	"	"	"	38
380	"	"	"	39
400	"	"	"	40
420	"	"	"	41
440	"	"	"	42
460	"	"	"	43
480	"	"	"	44
500	"	"	"	45

ITEM NO. 2

Just, reasonable and non-discriminatory Minimum Rates to be Charged, Observed and Collected by all Highway Carriers for the Transportation of Refined Petroleum Products in tank trucks, tank trailers and tank semi-trailers or any combination thereof.

<u>Mileage</u>				<u>Rates in cents</u> <u>per 100 lbs.</u>
5	Miles and under			4
10	"	"	over	4
15	"	"	"	4
20	"	"	"	4½
25	"	"	"	5
30	"	"	"	5½
35	"	"	"	6
40	"	"	"	6½
45	"	"	"	7
50	"	"	"	7½
60	"	"	"	8½
70	"	"	"	9½
80	"	"	"	10½
90	"	"	"	12
100	"	"	"	13
120	"	"	"	15
140	"	"	"	17½
160	"	"	"	20
180	"	"	"	22
200	"	"	"	24
220	"	"	"	26½
240	"	"	"	29
260	"	"	"	31
280	"	"	"	33
300	"	"	"	35½
320	"	"	"	38
340	"	"	"	40
360	"	"	"	42
380	"	"	"	44½
400	"	"	"	47
420	"	"	"	49
440	"	"	"	51
460	"	"	"	53½
480	"	"	"	56
500	"	"	"	58

CONSTRUCTIVE MILEAGE TABLE
TO BE USED IN APPLYING THE RATES SHOWN HEREIN

BETWEEN :	ORIGIN GROUPS						
	Described on page 3 of Appendix "A"						
:AND	1	2	3	4	5	6	7
San Francisco	-	25.1	224.3	313.2	329.1	472.7	395.5
Daly City	5.7	30.8	219.8	308.7	324.6	468.2	391.0
So. San Francisco	9.8	34.9	214.5	303.4	319.3	462.9	385.7
San Bruno	12.6	37.7	213.6	302.5	318.4	462.0	384.8
Burlingame	17.0	42.1	208.3	297.2	313.1	456.7	379.5
Hillsborough	16.2	41.3	209.0	297.9	313.8	457.4	380.2
San Mateo	18.6	43.7	206.7	295.6	311.5	455.1	377.9
Belmont	22.6	47.7	202.7	291.6	307.5	451.1	373.9
San Carlos	23.8	48.9	201.5	290.4	306.3	449.9	372.7
Redwood City	25.9	51.0	199.4	288.3	304.2	447.8	370.6
Atherton	28.4	53.5	197.6	286.5	302.4	446.0	368.8
Menlo Park	29.4	54.5	196.6	285.5	301.4	445.0	367.8
Palo Alto	30.4	55.5	195.6	284.5	300.4	444.0	366.8
Mountain View	37.0	63.2	189.9	278.8	294.7	438.3	361.1
Alviso	41.2	54.5	187.2	276.1	292.0	435.6	358.4
Sunnyvale	38.9	61.7	186.9	275.8	291.7	435.3	358.1
Santa Clara	42.9	60.3	181.4	270.3	286.2	429.0	352.6
San Jose	46.7	57.1	177.6	266.5	282.4	426.0	348.8
Willow Glen	48.2	58.6	179.1	268.0	283.9	427.5	350.3
Los Gatos	50.4	73.2	187.6	277.0	292.4	433.5	358.8
Santa Cruz	82.1	104.9	183.8	279.7	272.3	439.2	338.7
Morgan Hill	66.7	77.1	157.6	246.5	262.4	406.0	328.8
Gilroy	75.9	86.3	148.4	237.3	253.2	396.8	319.6
Watsonville	92.3	102.7	164.8	253.7	246.3	413.2	319.9

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN AND	ORIGIN GROUPS Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
San Juan	87.4	97.8	153.4	242.3	245.5	401.8	311.9
Hollister	90.9	101.3	144.4	233.3	254.5	392.8	320.9
Salinas	103.6	114.0	173.4	238.4	225.5	370.7	291.9
Monterey	122.1	132.5	191.9	256.9	244.0	389.2	310.4
Pacific Grove	125.1	135.5	194.9	259.9	247.0	392.2	313.4
Carmel-by-the Sea	126.1	136.5	195.9	258.9	248.0	393.2	314.4
Soledad	128.2	138.6	172.4	213.8	200.9	346.1	267.3
King City	151.0	161.4	149.6	191.0	178.1	323.3	244.5
Paso Robles	208.0	218.4	92.6	134.0	121.1	266.3	187.5
San Luis Obispo	248.5	258.9	133.1	174.5	159.6	225.8	147.0
Arroyo Grande	265.0	275.4	149.6	191.0	176.1	209.3	130.5
Santa Maria	280.5	290.9	165.1	206.5	191.6	193.8	115.0
Lompoc	312.8	323.2	197.4	228.8	223.9	182.8	104.0
Santa Barbara	367.0	377.4	251.6	175.5	195.0	107.3	28.5
Ventura	395.5	405.9	269.7	157.0	176.5	78.8	-
Ojai	415.0	425.4	289.2	176.5	196.0	98.3	19.5
Oxnard	406.0	416.4	275.2	162.5	182.0	68.3	10.5
Santa Paula	410.5	420.9	254.7	142.0	161.5	90.5	15.0
Fillmore	450.2	444.6	244.7	132.0	151.5	80.5	25.0
San Fernando	439.2	438.6	238.7	126.0	145.5	33.5	59.0
Tujunga	450.2	449.6	249.7	137.0	156.5	33.5	70.0
Burbank	449.7	449.1	249.2	136.5	156.0	23.0	72.5
Glendale	454.7	454.1	254.2	141.5	161.0	18.0	75.5
Los Angeles	461.2	460.1	260.7	148.0	167.5	11.5	73.5

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN AND	ORIGIN GROUPS Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
Beverly Hills	471.7	471.1	271.2	158.5	178.0	22.0	63.0
Santa Monica	478.7	478.1	278.2	165.5	185.0	21.5	56.0
Culver City	471.2	470.6	270.7	158.0	177.5	20.0	64.0
Inglewood	473.2	472.6	272.7	160.0	179.5	11.5	66.0
Hawthorne	461.2	475.6	275.7	163.0	182.5	9.0	68.0
Lawndale	477.7	477.1	277.2	164.5	184.0	7.5	69.5
El Segundo	479.2	478.6	278.7	166.0	185.5	12.5	67.0
Manhattan Beach	480.7	480.1	280.2	167.5	187.0	11.0	68.0
Hermosa Beach	480.7	480.1	280.2	167.5	187.0	11.0	70.0
Redondo Beach	482.2	481.6	281.7	169.0	188.5	12.5	70.5
Gardena	475.2	474.6	274.7	162.0	181.5	5.0	74.0
Torrance	479.3	478.7	278.8	166.1	185.6	9.0	76.0
Vernon	465.2	464.6	264.7	152.0	171.5	8.0	77.5
Huntington Park	467.2	466.6	266.7	154.0	173.5	6.5	79.5
Maywood	469.2	468.6	268.7	156.0	175.5	8.0	81.5
Bell	469.7	469.1	269.2	156.5	176.0	7.5	82.0
Southgate	469.2	468.6	268.7	156.0	175.5	5.0	81.5
Lynwood	471.2	470.6	270.7	158.0	177.5	3.0	83.5
Compton	472.7	472.1	272.2	159.5	179.0	-	78.8
Signal Hill	481.2	480.6	280.7	168.0	187.5	9.0	87.8
Long Beach	481.2	480.6	280.7	168.0	187.5	9.0	87.8
Seal Beach	488.2	487.6	287.7	175.0	194.5	16.0	94.8
Huntington Beach	496.2	495.6	295.7	183.0	202.5	24.0	102.8
Newport Beach	500.2	500.6	300.7	188.0	207.5	29.0	107.8
Laguna Beach	511.7	511.1	311.2	198.5	218.0	39.5	118.3

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN		ORIGIN GROUPS						
		Described on page 3 of Appendix "A"						
AND	1	2	3	4	5	6	7	
San Clemente	524.2	523.6	323.7	211.0	230.5	52.0	130.8	
Oceanside	547.2	546.6	346.7	234.0	253.5	75.0	153.8	
Escondido	583.5	582.9	383.0	270.3	289.8	111.3	190.1	
San Diego	584.2	583.6	383.7	271.0	290.5	112.0	190.8	
La Mesa	596.2	595.6	395.7	283.0	302.5	124.0	202.8	
El Cajon	600.7	600.1	400.2	287.5	307.0	128.5	207.3	
Coronado	586.7	586.1	386.2	273.5	293.0	114.5	193.3	
National City	589.2	588.6	388.7	276.0	295.5	117.0	195.8	
Chula Vista	592.9	592.3	392.4	279.7	299.2	120.7	199.5	
Montebello	470.2	469.6	269.7	157.0	176.5	14.0	82.5	
Whittier	474.7	474.1	274.2	161.5	181.0	14.3	87.0	
La Habra	482.2	481.6	281.7	169.0	188.5	17.6	94.5	
Brea	485.7	485.1	285.2	172.5	192.0	20.8	98.0	
Fullerton	487.2	486.6	286.7	174.0	193.5	18.5	99.5	
Placentia	489.2	491.6	291.7	179.0	198.5	21.5	104.5	
Anaheim	489.7	489.1	289.2	176.5	196.0	19.5	102.0	
Orange	494.7	494.1	294.2	181.5	201.0	24.8	107.0	
Santa Ana	496.7	496.1	296.2	183.5	203.0	26.5	109.0	
Tustin	499.7	499.1	299.2	186.5	206.0	29.5	112.0	
Monterey Park	469.2	468.6	268.7	156.0	175.5	15.0	81.5	
El Monte	475.2	474.6	274.7	162.0	181.5	19.5	87.5	
West Covina	481.7	481.1	281.2	168.5	188.0	26.0	94.0	
Covina	483.7	483.1	283.2	170.5	190.0	28.0	96.0	

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN AND	ORIGIN GROUPS Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
Pomona	490.7	490.1	290.2	177.5	197.0	35.0	103.0
Chino	497.2	496.6	296.7	184.0	203.5	41.5	109.5
Corona	511.2	510.6	310.7	198.0	217.5	43.0	123.5
Elsinore	543.2	542.6	342.7	230.0	249.5	75.0	155.5
Ontario	496.7	496.1	296.2	183.5	203.0	41.0	107.0
Riverside	514.2	513.6	313.7	201.0	220.5	56.5	126.5
Perris	537.7	537.1	337.2	224.5	244.0	80.0	150.0
San Jacinto	558.2	557.6	357.7	245.0	264.5	100.5	170.5
Hemet	562.2	561.6	361.7	249.0	268.5	104.5	174.5
Colton	515.7	515.1	315.2	202.5	222.0	60.0	128.0
Redlands	524.7	524.1	324.2	211.5	231.0	69.0	137.0
Beaumont	544.7	544.1	344.2	231.5	251.0	89.0	157.0
Banning	553.7	553.1	353.2	240.5	260.0	98.0	166.0
Indio	616.2	615.6	415.7	303.0	322.5	160.5	228.0
Blythe	733.2	732.6	532.7	420.0	439.5	277.5	345.5
Calipatria	691.9	691.3	491.4	378.7	398.2	236.2	304.2
Brawley	688.2	687.6	487.7	375.0	394.5	232.5	300.5
Imperial	698.2	697.6	497.7	385.0	404.5	242.5	310.5
El Centro	702.7	702.1	502.2	389.5	409.0	247.0	315.0
Holtville	712.2	711.6	511.7	399.0	418.5	256.5	324.5
Calexico	714.7	714.1	514.2	401.5	421.0	259.0	327.0

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN		ORIGIN GROUPS						
		Described on page 3 of Appendix "A"						
AND	1	2	3	4	5	6	7	
Alhambra	469.2	468.6	268.7	156.0	175.5	19.5	81.5	
San Gabriel	472.2	471.6	271.7	159.0	178.5	22.5	105.0	
South Pasadena	468.7	468.1	268.2	155.5	175.0	19.0	81.0	
Pasadena	470.7	470.1	270.2	157.5	177.0	21.0	83.0	
Sierra Madre	477.7	477.1	277.2	164.5	184.0	28.0	90.0	
San Marino	472.2	471.6	271.7	159.0	178.5	22.5	84.5	
Arcadia	476.2	475.6	275.7	163.0	182.5	26.5	88.5	
Monrovia	478.2	477.6	277.7	165.0	184.5	28.5	90.5	
Azusa	483.2	482.6	282.7	170.0	189.5	33.5	95.5	
La Verne	492.2	491.6	291.7	179.0	198.5	42.5	104.5	
Glendora	485.2	484.6	284.7	172.0	191.5	35.5	97.5	
Claremont	494.2	493.6	293.7	181.0	200.5	39.0	106.5	
Upland	498.7	498.1	298.2	185.5	205.0	43.0	111.0	
Rialto	514.7	514.1	314.2	201.5	221.0	58.0	127.0	
San Bernardino	518.5	517.9	318.0	205.3	224.8	64.0	130.8	
Los Banos	135.5	145.9	88.8	177.7	216.2	337.2	334.7	
Firebaugh	166.1	176.5	58.2	151.7	190.2	311.2	308.7	
San Joaquin	198.5	208.9	51.6	142.1	180.6	301.6	299.1	
Hayward	34.0	30.4	205.5	294.4	310.3	453.9	376.7	
Pleasanton	49.8	51.6	190.4	263.6	309.2	423.1	375.6	
Livermore	53.7	55.2	185.0	258.2	316.7	417.7	382.3	

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN AND	ORIGIN GROUPS						
	Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
Tracy	81.6	83.3	156.1	229.3	267.8	388.8	386.3
Patterson	107.7	109.4	130.0	218.9	257.4	378.4	375.9
Newman	121.9	123.6	115.8	204.7	243.2	364.2	361.7
Gustine	125.9	127.6	111.8	200.7	239.2	360.2	357.7
Manteca	94.7	96.4	155.3	216.2	254.7	375.7	373.2
Oakdale	115.9	117.6	154.3	215.2	253.7	374.7	372.2
Riverbank	115.7	117.4	148.3	209.2	247.7	368.7	366.2
Sonora	178.6	170.3	207.0	267.9	306.4	427.4	424.9
Modesto	111.7	113.4	138.3	199.2	237.7	358.7	356.2
Ceres	115.2	116.9	134.8	195.7	234.2	355.2	352.7
Turlock	123.2	124.9	126.8	187.7	226.2	347.2	344.7
Livingston	134.2	135.9	115.8	176.7	215.2	336.2	333.7
Atwater	141.2	142.9	108.8	169.7	208.2	329.2	326.7
Merced	148.2	149.9	101.8	162.7	201.2	322.2	319.7
Chowchilla	169.5	180.8	100.8	145.7	184.2	305.2	302.7
Madera	183.5	182.9	79.6	129.7	168.2	289.2	286.7
Clovis	209.5	208.9	83.0	118.7	157.2	278.2	275.7
Fresno	205.5	204.9	72.0	107.7	146.2	267.2	264.7
Sanger	220.5	219.9	87.0	101.7	140.2	261.2	258.7
Parlier	224.5	223.9	87.2	95.7	134.2	255.2	252.7
Reedley	228.7	228.1	79.7	88.2	126.7	247.7	245.2

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN AND	ORIGIN GROUPS Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
Dinuba	235.5	234.9	88.6	97.1	135.6	256.6	254.1
Fowler	215.0	214.4	89.7	98.2	136.7	257.7	255.2
Selma	220.6	220.0	84.1	92.6	131.1	252.1	249.6
Kingsburg	225.5	224.9	79.2	87.7	126.2	247.2	244.7
Visalia	246.8	246.2	70.3	74.7	113.2	234.2	229.7
Exeter	257.8	257.2	81.3	76.1	114.6	235.6	233.1
Lindsay	264.2	263.6	87.7	67.1	105.6	226.6	224.1
Porterville	277.2	276.6	100.7	55.6	94.1	215.1	212.6
Hanford	245.8	245.2	50.5	86.2	124.7	245.7	243.2
Lemoore	237.4	236.8	40.1	96.6	116.6	256.1	253.6
Coalinga	224.3	234.7	-	106.1	93.2	272.2	269.7
Tulare	249.7	249.1	73.2	63.5	102.0	223.0	220.5
Corcoran	268.1	267.5	72.4	64.9	103.4	224.4	221.9
Delano	280.7	280.1	97.6	32.5	71.0	192.0	189.5
Bakersfield	313.2	312.6	106.1	-	38.5	159.5	157.0
Taft	319.1	339.5	93.2	38.5	-	179.0	176.5
Maricopa	327.6	348.0	101.7	47.0	8.5	170.5	168.0
Tehachapi	376.7	376.1	169.6	63.5	102.0	163.2	172.0
Mojave	404.7	404.1	197.6	91.5	130.0	135.2	144.0
Barstow	472.2	471.6	265.1	159.0	197.5	152.7	211.5
Bishop	621.2	618.6	412.1	306.0	344.5	350.7	359.5
Needles	660.7	660.1	453.6	347.5	396.0	341.2	400.3
Bridgeport	760.2	757.6	551.1	445.0	483.5	489.7	498.5
Stockton	100.4	70.8	167.3	228.8	267.3	388.3	385.8
Jackson	161.5	131.5	228.0	289.5	328.0	449.0	446.5

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN AND	ORIGIN GROUPS Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
Angels	171.5	141.5	238.0	299.5	338.0	459.0	456.5
Lodi	114.4	84.4	180.9	242.4	280.9	401.9	399.4
Walnut Creek	50.7	25.6	213.8	287.0	331.8	446.5	398.2
Concord	44.4	19.3	222.3	295.5	340.3	455.0	406.7
Martinez	37.6	12.5	226.9	300.1	344.9	459.6	411.3
Pittsburg	52.8	27.7	210.4	271.9	310.4	431.4	416.9
Antioch	57.4	32.3	205.8	267.3	305.8	426.8	424.3
San Leandro	16.9	25.0	209.7	298.6	314.5	458.1	380.9
Alameda	11.9	20.0	217.1	306.0	321.9	465.5	388.3
Oakland	8.5	16.6	218.1	307.0	322.9	466.5	389.3
Emeryville	10.4	14.7	220.0	308.9	324.8	468.4	391.2
Piedmont	11.0	14.1	220.6	309.5	325.4	469.0	391.8
Berkeley	13.5	11.6	223.1	312.0	327.9	471.5	394.3
Albany	14.5	10.6	224.1	313.0	328.9	472.5	395.3
El Cerrito	16.0	9.1	225.6	314.5	330.4	474.0	396.8
Richmond	18.9	6.2	228.5	317.4	333.3	476.9	399.7
Pinole	25.1	-	234.7	312.6	339.5	472.1	405.9
Hercules	25.6	0.5	235.2	312.1	340.0	471.6	406.4
Napa	49.9	23.9	253.2	314.7	353.2	474.2	429.8
St. Helena	68.2	42.2	271.5	333.0	371.5	492.5	448.1
Calistoga	76.7	50.7	280.0	341.5	380.0	501.0	456.6
Vallejo	34.6	9.5	239.2	312.4	349.0	471.9	415.4
Fairfield	55.8	30.7	234.8	296.3	334.8	455.8	453.3

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN: :AND	ORIGIN GROUPS Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
Suisun	56.5	31.4	234.1	295.6	334.1	455.1	452.6
Rio Vista	75.1	50.0	212.3	273.8	312.3	433.3	430.8
Isleton	78.9	53.8	206.9	268.4	306.9	427.9	425.4
Vacaville	65.2	40.1	244.2	305.7	344.2	465.2	452.7
Winters	78.2	53.1	243.2	304.7	343.2	464.2	461.7
Dixon	76.9	51.8	241.1	302.6	341.1	462.1	459.6
Davis	88.3	63.2	229.7	291.2	329.7	450.7	448.2
Woodland	95.7	70.6	240.5	302.0	340.5	461.5	459.0
Williams	136.4	111.3	281.2	342.7	381.2	502.2	499.7
Colusa	145.9	120.8	290.7	352.2	390.7	511.7	509.2
Willows	162.6	137.5	307.4	358.9	407.4	528.4	515.9
Orland	178.4	153.3	323.2	384.7	423.2	544.2	541.7
Corning	191.9	166.8	336.7	398.2	436.7	557.7	555.2
Tehama	201.1	176.0	345.9	407.4	445.9	566.9	564.4
Red Bluff	210.0	184.9	354.8	416.3	454.8	585.8	573.3
Susanville	365.2	340.1	510.0	571.5	610.0	731.0	728.5
Sacramento	102.4	77.3	215.6	277.1	315.6	436.6	434.1
Plymouth	173.8	126.8	240.3	301.8	340.3	461.3	458.8
Amador City	164.4	129.4	230.9	292.4	330.9	451.9	449.4
Sutter Creek	161.2	131.2	227.7	289.2	327.7	448.7	446.2
Placerville	205.3	133.4	271.8	333.3	371.8	492.8	490.3
No. Sacramento	105.7	80.6	218.9	280.4	318.9	439.9	437.4
Roseville	120.6	95.5	233.8	295.3	333.8	454.8	452.3
Lincoln	131.0	105.9	244.2	305.7	344.2	465.2	462.7
Wheatland	138.8	113.7	252.0	313.5	352.0	473.0	470.5

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN AND	ORIGIN GROUPS Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
Rocklin	124.5	99.4	237.7	299.2	337.7	458.7	456.2
Auburn	141.4	116.3	254.6	316.1	354.6	475.6	473.1
Grass Valley	174.9	149.8	288.1	349.6	388.1	509.1	506.6
Nevada City	181.3	156.2	294.5	356.0	394.5	515.5	513.0
Colfax	166.3	141.2	279.5	341.0	379.5	500.5	498.0
Truckee	247.9	222.8	361.1	422.6	461.1	584.1	579.8
Loyalton	297.0	281.9	420.2	481.7	520.2	641.2	638.7
Yuba City	134.2	109.1	266.1	327.6	366.1	487.1	484.6
Marysville	135.3	110.2	265.0	326.5	365.0	486.0	483.5
Oroville	162.7	137.6	292.4	353.9	392.4	513.4	510.9
Gridley	151.1	126.0	283.0	344.5	383.0	504.0	501.5
Biggs	155.9	130.8	287.8	349.3	387.8	508.8	506.3
Chico	180.9	155.8	312.8	374.3	412.8	533.8	531.3
Redding	241.7	216.6	386.5	448.0	486.5	617.5	605.0
Alturas	463.2	438.1	608.0	669.5	708.0	839.0	826.5
Kennet	264.7	239.6	409.5	471.0	509.5	640.3	628.0
Dunsmuir	328.3	303.2	473.1	534.6	573.1	704.1	691.6
Mt. Shasta	342.3	317.2	497.1	548.6	597.1	718.1	705.6
Dorris	443.8	418.7	588.6	650.1	688.6	820.6	807.1
Yreka	399.4	374.3	544.2	605.7	644.2	775.2	762.7
Ft. Jones	421.4	396.3	566.2	627.7	666.2	797.2	784.7
Etna	439.7	414.6	584.5	646.0	684.5	815.5	803.0
Montague	396.4	371.3	551.2	602.7	651.2	772.2	759.7
Sausalito	5.9	24.7	230.2	319.1	335.0	478.6	401.4
Mill Valley	11.6	22.3	235.9	324.8	340.7	484.3	407.1

CONSTRUCTIVE MILEAGE TABLE (Cont'd)

BETWEEN: :AND	ORIGIN GROUPS Described on page 3 of Appendix "A"						
	1	2	3	4	5	6	7
Belvedere	14.4	24.2	238.7	327.6	343.5	487.1	409.9
Corte Madera	12.8	19.4	237.1	326.0	341.9	485.5	408.3
Larkspur	13.7	20.3	238.0	326.9	342.8	486.4	409.2
Ross	16.1	20.1	240.4	329.3	345.2	488.8	411.6
San Anselmo	17.2	19.4	241.5	330.4	346.3	489.9	412.7
Fairfax	18.8	21.0	243.1	332.0	347.9	491.5	414.3
San Rafael	15.8	17.2	240.1	329.0	344.9	488.5	411.3
Sonoma	42.0	39.1	268.4	329.9	371.1	489.4	437.5
Petaluma	36.8	38.2	278.7	340.2	365.9	499.7	432.3
Sebastopol	53.8	55.2	295.7	357.2	382.9	516.7	439.3
Pt. Arena	175.9	177.3	418.8	480.3	505.0	639.8	571.4
Santa Rosa	52.8	54.2	289.4	350.9	381.9	510.4	438.3
Healdsburg	68.1	69.5	304.7	366.2	397.2	525.7	463.6
Cloverdale	85.0	88.7	318.0	379.5	414.1	539.0	480.5
Ft. Bragg	199.8	203.5	432.8	494.3	528.9	653.8	595.3
Lakeport	127.0	130.7	360.0	421.5	456.1	581.0	522.5
Ukiah	113.7	117.4	346.7	408.2	442.8	567.7	509.2
Willits	146.0	149.7	379.0	440.5	475.1	600.0	541.5
Fortuna	311.4	315.1	544.4	605.9	640.5	765.4	706.9
Ferndale	319.7	323.4	552.7	614.2	648.8	773.7	715.2
Eureka	330.4	334.1	563.4	624.9	659.5	784.4	725.9
Arcata	338.4	342.1	571.4	632.9	667.5	792.4	733.5
Blue Lake	352.8	356.5	585.8	647.3	681.9	806.8	748.3
Trinidad	360.4	364.1	593.4	664.9	689.5	814.4	755.9
Crescent City	454.4	458.1	687.4	748.9	783.5	908.4	849.9

TABLE I.

STATEMENT OF RAIL RATES ON GASOLINE NOW IN EFFECT, COMPARED WITH
RATES PREVIOUSLY IN EFFECT, BETWEEN A FEW POINTS,
ILLUSTRATING DRASTIC REDUCTIONS.

From	To	Route	Miles	Rates(1)	Ratio(2)	Effective Dates
Sacramento	Colusa	Sac.No.Ry.	68	21.5		Mar. 21, 1923
				18		Mar. 10, 1928
				9		July 20, 1931
				7	33-1/3%	Dec. 16, 1933
Monterey	King City	S.P.Co.	69	27		May 1, 1924
				7		July 20, 1931
				5	18%	Dec. 16, 1933
Coalinga	Dinuba	S.P.Co.	96	37.5		July 1, 1922
				27.5		Nov. 11, 1922
				15		Nov. 10, 1926
				14		Feb. 5, 1928
				8		July 20, 1931
				6.5	17%	Dec. 16, 1933
Los Angeles Harbor	Imperial	S.P.Co.	232	59		July 1, 1922
				56		Nov. 19, 1923
				45		Aug. 20, 1927(3)
				32.5		Sept. 1, 1929
				16	27%	Dec. 16, 1933
Taft	Hanford	S.P.Co.	131	34		July 1, 1922
				29.5		May 15, 1924(4)
				21		Nov. 10, 1926
				19		Feb. 5, 1928
				11		July 20, 1931
				9	26%	Dec. 16, 1933
Bakersfield	Fresno	S.P.Co.	107	29		July 1, 1922(5)
				19		Nov. 10, 1926
				15		Feb. 5, 1929
				10		July 20, 1931
				8.5	29%	Dec. 16, 1933
Bakersfield	Tulare	S.P.Co.	63	21.5		July 1, 1922
				18.5		May 15, 1924(6)
				11		Nov. 10, 1926
				9		Feb. 5, 1928
				6		July 20, 1931
				5	23%	Dec. 18, 1933
Los Angeles	Hemet	AT&SF Ry.	99	32		May 30, 1923
				19		Nov. 10, 1926
				13.5		Sept. 1, 1929
				10		June 15, 1931
				7	19%	Dec. 16, 1933
Los Angeles	San Juan Capistrano	AT&SF Ry.	56	21.5		May 30, 1923
				13		Nov. 10, 1926
				9		Sept. 1, 1929
				5	19%	Dec. 16, 1933

(1) Rates are in cents per hundred pounds.

(2) Percentage of present rail rate of first rate given.

(3) Bird vs. S.P.Co., 33 C.R.C. 259. 45¢ found reasonable. Present rate 35% thereof.

(4) Richfield vs. Sunset Ry 24 C.R.C. 736. 29.5¢ found reasonable. Present rate 30% thereof.

(5) 24 C.R.C. 736, supra. Commission found 29¢ rate "not unreasonable." Present rate 29% thereof.

(6) 24 C.R.C. 736, supra. Commission found 18.5¢ rate reasonable. Present rate 27% thereof.

TABLE II.

ILLUSTRATES CALIFORNIA RAIL RATES ON GASOLINE NOW EFFECTIVE COMPARED WITH TRUCK RATES FIXED BY THIS ORDER; RATES HERETOFORE APPROVED OR PRESCRIBED BY THE CALIFORNIA RAILROAD COMMISSION; CALIFORNIA RAIL RATES BEFORE RATE WAR; AND RAIL RATES PRESCRIBED BY THE I.C.C.; SAID COMPARISONS BEING FOR SIMILAR DISTANCES.

ALL RATES ARE IN CENTS PER 100 POUNDS

						Rail Rates	Rail Rates	RATES PRESCRIBED BY I.O.C.				
						heretofore	before	Mountain-	SOUTHWESTERN SCALE			
						Truck	approved or	Rate War	Pacific	REOPENED 174 I.O.C. 745-756		
						Rates	prescribed	for	Pre-	Pre-		
FROM	TO	Miles	Miles	Pre-	Fixed	by O.R.O.	comparable	scribed	scribed			
		by	by	sent	by	for com-	dis-	in 192	in 171	Proposed	Prescribed	
		Rail	High-	Rail	this	parable	tances	I.O.C.	I.O.C.	by	by	
			way	Rates	Order	distances		599-650	381-480	Carriers	I.O.C.	
Sacramento	Marysville	62	49.4	7	7.5	7	12	20	16	14	14	
Sacramento	Willows	88	91.8	8	13	24.5	26.5	26	19	17	17	
Sacramento	Woodland	23	24.9	4	5	5	9	15	13	11	11	
Stockton	Modesto	30	29.6	4	6	-	10	15	13	11	11	
Stockton	Merced	67	66.1	5.5	9.5	9	15	23	17	15	15	
Richmond	Sacramento	74	83.5	10	12	-	22	24	18	16	16	
Richmond	Chico	151	180.7	15	24	33	33.5	33	23	23	23	
Martinez	Red Bluff	167	187.7	17	24	38.5	44.5	34	24	23	24	
Richmond	Lodi	100	93.7	7	13	-	31	27	20	18	18	
Richmond	Modesto	98	94.3	6.5	13	13	18.5	27	20	18	18	
Martinez	San Jose	63	54.5	5	8.5	9	10.5	22	17	15	15	
Avon	Watsonville	111	103.7	8	15	-	25	29	21	19	20	
Oleum	King City	173	165.9	12	22	-	41	35	24	23	24	
Bakersfield	Tulare	78	63.5	5	9.5	18.5	21.5	24	18	16	16	
Bakersfield	Hanford	80	86.2	7	12	24.5	24.5	24	18	16	16	
Monterey	Santa Cruz	45	47.4	4	7.5	-	15	18	15	13	13	
Monterey	Hollister	54	47.5	4	7.5	7	20	20	16	14	14	
Monterey	Salinas	23	18.5	4	4.5	5	14	15	13	11	11	
Monterey	Paso Robles	121	133.4	9.5	17.5	-	43	30	22	21	21	
El Segundo	Pomona	51	48.5	4	7.5	-	10.5	20	16	14	14	
El Segundo	Riverside	74	72.0	6	10.5	-	21.5	24	18	16	16	
El Segundo	Santa Ana	47	47.5	4	7.5	-	16	19	15	13	13	
El Segundo	Oceanside	98	85.5	7	12	13	25	27	20	18	18	
Watson	Saugus	49	54.0	4	8.5	-	15	19	15	13	13	
Watson	Fillmore	74	77.0	5.5	10.5	-	22	24	18	16	16	
Watson	Santa Paula	83	85.5	5.5	12	24.5	13.5	25	19	17	17	
Watson	San Luis Obispo	239	216.0	17	26.5	45	60.5	40	27	27	27	
Watson	Banning	104	104.5	7.5	15	-	33.5	28	21	19	19	
Santa Paula	San Fernando	45	45.0	4	7.5	-	15	18	15	13	13	

TABLE III

STATEMENT OF TYPICAL RAIL RATES ON GASOLINE, NOW IN EFFECT, IN CALIFORNIA, COMPARED WITH
TYPICAL RATES FOR SIMILAR DISTANCES, PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION (1)

From	To	Miles	Rate	Remarks	Route
Jacksonville, Fla.	Douglas, Ga.	117	25	Prescribed in 169 ICC 686-12/ 5/30	Atlantic, B&O RR Co. et al
Sacramento, Calif.	Corning, Calif.	116	10		S.P. Co.
Jacksonville, Fla.	White Springs, Fla.	161	33	Prescribed in 169 ICC 695-12/4/30	Ca. So. & Fla. R. Co.
Richmond, Calif.	King City, Calif.	165	12		Santa Fe
Jacksonville, Fla.	Jasper, Fla.	144	31	Prescribed in 169 ICC 695-12/4/30	S.P. Co. and Santa Fe
Los Angeles Harbor, Cal.	Indio, Calif.	146	11		S.P. Co.
Leach, Ky.	St. Paul, Va.	168	30	Prescribed in 163 ICC 565-5/15/30	Al. Great So. Ry. Co., et al
Bakersfield, Calif.	Los Angeles, Calif.	169	14		S.P. Co. and Santa Fe
Leach, Ky.	Gate City, Va.	214	33	Prescribed in 163 ICC 565- 5/15/30	Al. Great So. Ry. Co., et al
Los Angeles, Calif.	Imperial, Calif.	214	16		S.P. Co.
Leach, Ky.	Athens, Tenn.	362	41	Prescribed in 163 ICC 565- 5/15/30	Al. Great So. Ry. Co., et al
Taft, Calif.	Marysville, Calif.	368	29		Sunset-S.P. Co.
Mobile, Ala.	McLain, Miss.	62	23	Approved in 194 ICC 79- 5/ 8/33	Gulf, Mobile & Northern
Bakersfield, Calif.	Tulare, Calif.	63	5		Sunset - S.P. Co.
New Orleans, La.	Magnolia, La.	99	24	Approved in 194 ICC 79- 5/ 8/33	Illinois Central
Chrisman, Calif.	Whittier, Calif.	99	7		S.P. Co.
Marcus Hook, Pa.	Beacon Hill, Md.	32	15	Prescribed in 139 ICC 95- 1/26/22	Penn. Ry. et al
Stockton, Calif.	Oakdale, Calif.	32	4		S.P. Co.
Gates, Texas	Homer, La.	258	30	Prescribed in 136 ICC 482-12/31/27	Texas & Pacific
Bakersfield, Calif.	San Jose, Calif.	290	23		S.P. Co.
Lawrenceville, Ill.	Indianapolis, Ind.	154	19.5	Approved in 132 ICC 553-11/ 5/27	Cleveland, Cincinnati Chicago & St. Louis Ry. Co.
Martinez, Calif.	Yuba City, Calif.	157	12		S.P. Co.
North Baton Rouge, La.	Birmingham, Ala.	113	41.5	Approved in 66 ICC 509- 2/18/22	N.O. & Northeastern Ry. Co., et al
Bakersfield, Calif.	Santa Rosa, Calif.	350	28		S.P. Co.
Kansas City, Kas.	Yankton, S. Dak.	336	34	Approved in 183 ICC 483- 4/19/32	Annapee & Western Ry. Co., et al
Taft, Calif.	Richmond, Calif.	368	25		Sunset-S.P. Co.

(1) Data contained in Table III has been abstracted from
Exhibit 13 offered by Tank Truck Operators' Association.

(2) Rates are in cents per 100 lbs.

TABLE IV

STATEMENT SHOWING BASIC SCALE OF RATES FOR THE TRANSPORTATION
OF REFINED PETROLEUM PRESCRIBED BY THE INTERSTATE COMMERCE
COMMISSION FOR APPLICATION IN MID-CONTINENT TERRITORY ON
REFINED PETROLEUM PRODUCTS IN THE SOUTHWEST, 174 I.C.C. 745-756,
AND DECIDED JUNE 2, 1931, IN APPENDIX II THEREOF, COMPARED
WITH SCALE OF RATES PROPOSED BY THE CARRIERS AND SCALE
PREVIOUSLY PRESCRIBED BY THE COMMISSION IN 171 I.C.C. 381-480,
AND DECIDED JANUARY 5, 1931, APPENDIX K

Distance	: 171 I.C.C.: 174 I.C.C. ::		Distance	: Prescribed : 174 I.C.C.	
	: 381-480	: 745-756		: 745-756	
	: Appendix	: Respond-		: Rates	
	: K scale	: ents'		: 6/2/1931	
	: rates	: Proposed			
	: 1/5/1931	: scale rates			
		: 6/2/1931			
	: Cents	: Cents		: Cents	
10 miles and under	: 11	: 9	10 miles and under	: 9	
20 miles and over 10	: 12	: 10	20 miles and over 10	: 10	
30 miles and over 20	: 13	: 11	30 miles and over 20	: 11	
40 miles and over 30	: 14	: 12	40 miles and over 30	: 12	
50 miles and over 40	: 15	: 13	50 miles and over 40	: 13	
60 miles and over 50	: 16	: 14	60 miles and over 50	: 14	
70 miles and over 60	: 17	: 15	70 miles and over 60	: 15	
80 miles and over 70	: 18	: 16	80 miles and over 70	: 16	
90 miles and over 80	: 19	: 17	90 miles and over 80	: 17	
100 miles and over 90	: 20	: 18	100 miles and over 90	: 18	
120 miles and over 100	: 21	: 19	110 miles and over 100	: 19	
140 miles and over 120	: 22	: 21	120 miles and over 110	: 20	
160 miles and over 140	: 23	: 22	130 miles and over 120	: 21	
180 miles and over 160	: 24	: 23	140 miles and over 130	: 22	
200 miles and over 180	: 25	: 25	160 miles and over 140	: 23	
220 miles and over 200	: 26	: 26	180 miles and over 160	: 24	
240 miles and over 220	: 27	: 27	200 miles and over 180	: 25	
260 miles and over 240	: 28	: 28	220 miles and over 200	: 26	
280 miles and over 260	: 29	: 29	240 miles and over 220	: 27	
300 miles and over 280	: 30	: 30	260 miles and over 240	: 28	
320 miles and over 300	: 31	: 31	280 miles and over 260	: 29	
340 miles and over 320	: 32	: 32	300 miles and over 280	: 30	
360 miles and over 340	: 33	: 33	320 miles and over 300	: 31	
380 miles and over 360	: 34	: 34	340 miles and over 320	: 32	
400 miles and over 380	: 35	: 35	360 miles and over 340	: 33	
420 miles and over 400	: 36	: 36	380 miles and over 360	: 34	
440 miles and over 420	: 37	: 37	400 miles and over 380	: 35	
460 miles and over 440	: 38	: 38	425 miles and over 400	: 36	
480 miles and over 460	: 39	: 38	450 miles and over 425	: 37	
500 miles and over 480	: 40	: 39	475 miles and over 450	: 38	
	:	:	500 miles and over 475	: 39	

TABLE V.
TANK TRUCK HAULERS
ESTIMATED COST OF OPERATION
6,000 GALLON CAPACITY
TRUCK AND TRAILER UNIT.

Investment:

Vehicles, less tires	\$8,675.	
Tires	<u>1,700.</u>	
Total		\$10,375.
Machinery, tools and equipment		<u>300.</u>
Total		\$10,675.
Working Capital		<u>740.</u>
Total		\$11,415.

Days in Service per Year - 300

Fixed Charges per Year:

Taxes and Licenses		\$ 580.
Insurance		625.
Driver's Wages, incl. Comp. Ins.		
3,750 hrs at \$.67 per hr.	\$2,512.	
Comp. Ins. at 7.72 per cent	<u>194.</u>	\$ 2,706.
Overhead and General		\$ 2,000.
Return on Investment:		
Vehicles, machinery, tools, etc. 8% of 50%	\$ 427.	
Working Capital 8% of 100%	<u>59.</u>	\$ 486.
Total per year		\$ 6,397.

Average Fixed Charges per Day \$ 21.32

Operation Charges per Mile:

	<u>Valley</u>	<u>Mountain</u>
Tires, Tubes and Tire Repairs	\$.0206	\$.0278
Fuel	.0424	.0688
Lubricants	.0035	.0060
Repairs	<u>.0325</u>	<u>.0488</u>
Total	\$.0990	\$.1514

Depreciation - Vehicles - See Exhibit No. 16-A, Appendix "H"

TABLE VI

TANK TRUCK HAULERS
ESTIMATED COST PER TON AND PER 100 POUNDS
VALLEY HIGHWAYS - 12-1/2 HOUR DAY

	15	20	30	40	50	100	300
1. Length of Haul - Miles							
2. Round Trip Time - Minutes:							
3. Loading and Unloading	150	150	150	150	150	150	150
4. Delays, meals, etc.	50	50	55	60	65	95	215
5. Running at 19.9 m.p.h.	150(a)	200(a)	240(b)	267(c)	302	604	1,810
6. Total Round Trip Time	350	400	445	477	517	849	2,175
7. Round Trips per Day	2,140	1,875	1,685	1,572	1,451	,883	,345
8. Truck Miles per Day	79,200	90,000	116,124	140,792	160,070	191,680	221,940
9. Tons Hauled per Day (d)	42,800	37,500	33,708	31,448	29,014	17,668	6,898
10. Fixed Charges per Day	\$ 21.32	\$ 21.32	\$ 21.32	\$ 21.32	\$ 21.32	\$ 21.32	\$ 21.32
11. Mileage Charges per Day	7.84	8.91	11.50	13.94	15.85	18.98	21.97
12. Depreciation per Day	3.75	3.82	4.00	4.20	4.36	4.65	4.97
13. Total Charges per Day	\$ 32.91	\$ 34.05	\$ 36.82	\$ 39.46	\$ 41.53	\$ 44.95	\$ 48.26
14. Expanded Total per Day (3.25%)	\$ 34,016	\$ 35,194	\$ 38,057	\$ 40,786	\$ 42,925	\$ 46,460	\$ 49,881
15. Aver. Cost per Ton	\$.795	\$.939	\$ 1.129	\$ 1.297	\$ 1.479	\$ 2.630	\$ 7.231
16. Aver. Cost per 100 Pounds	\$.0398	\$.0470	\$.0565	\$.0649	\$.0740	\$.1315	\$.3616

(a) Speed 12 m.p.h.

(b) " 15 "

(c) " 18 "

(d) 20 Tons per Round Trip

NOTE:

The increment in cost per ton per mile between a 50-mile haul and a 100-mile haul is the same as between a 100-mile haul and a 300-mile haul: - viz., \$.0230, hence the cost per ton and per 100 pounds may be readily calculated for any length of haul greater than 50 miles.

TABLE VII

COMPARATIVE RATES IN CENTS PER 100 POUNDS

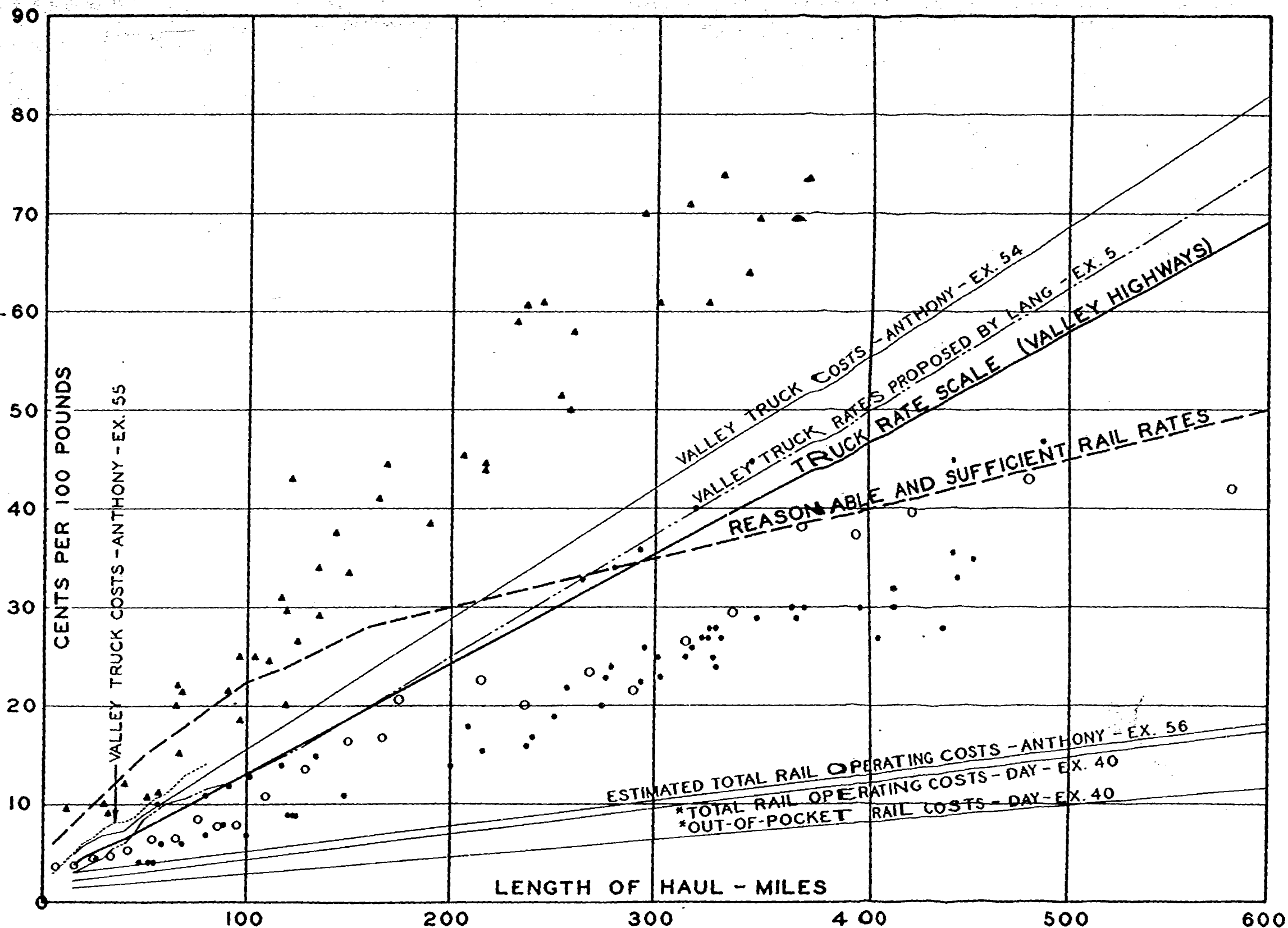
				Mountain-Pacific Scale 192 I.O.O.599 Decided May 2, 1933	Southwestern Scale Plus 20%, 174 I.O.O.745 Decided June 2, 1931	Rates for Similar Distances Prescribed or Found Not Unreasonable by C.R.C.	
Distances							
5 Miles and under				12	11		
10 " " over 5				12	11		
15 " " " 10				13	12		
20 " " " 15				14	12		
25 " " " 20				15	13		
30 " " " 25				15	13		
35 " " " 30				16	14 $\frac{1}{2}$		
40 " " " 35				17	14 $\frac{1}{2}$	13 Kerto to Bakersfield	24 CRC 744
45 " " " 40				18	15 $\frac{1}{2}$		
50 " " " 45				19	15 $\frac{1}{2}$	16 Taft to Bakersfield	24 CRC 744
55 " " " 50				20	17	13 Fillmore to Los Angeles	17 CRC 328-plus wartime advances
60 " " " 55				21	17		
65 " " " 60				22	18	18 $\frac{1}{2}$ Bakersfield to Tulare	24 CRC 736
70 " " " 65				23	18	15 Fillmore to Palms	34 CRC 561
75 " " " 70				24	19		
80 " " " 75				24	19		
85 " " " 80				25	20 $\frac{1}{2}$		
90 " " " 85				26	20 $\frac{1}{2}$	24 $\frac{1}{2}$ Bakersfield to Hanford	24 CRC 736
95 " " " 90				27	21 $\frac{1}{2}$		
100 " " " 95				27	21 $\frac{1}{2}$		
110 " " " 100				28	23	29 Bakersfield to Fresno	24 CRC 736
120 " " " 110				29	24		
130 " " " 120				30	25		
140 " " " 130				31	26 $\frac{1}{2}$		
150 " " " 140				32	27 $\frac{1}{2}$		
160 " " " 150				33	27 $\frac{1}{2}$	27 $\frac{1}{2}$ Martinez to Yuba City	26 CRC 334*
170 " " " 160				34	29	38 $\frac{1}{2}$ Bakersfield to L.A.	24 CRC 729
180 " " " 170				35	29		

TABLE VII.

COMPARATIVE RATES IN CENTS PER 100 POUNDS

Distances	Mountain Pacific		Southwestern Scale		Rates for Similar Distances	
	Scale 192 I.C.C. 599		Plus 20%, 174 I.C.C. 745		Prescribed or Found	
	Decided May 2, 1933		Decided June 2, 1931		Not Unreasonable by C. R. O.	
190 Miles and over 180		36		30	41½ Coslinga to Aurora	30 CRC 226
200 " " " 190		37		30	40 Bakersfield to Modesto	24 CRC 736
220 " " " 200		39		31	(39 Taft to Merced	24 CRC 736
					(41½ Taft to L.A.	24 CRC 729
240 " " " 220		40		32½	45 L.A. Basin to Imperial	33 CRC 259
260 " " " 240		41		33½		
280 " " " 260		42		35		
300 " " " 280		45		36		
320 " " " 300		45		37		
340 " " " 320		46		38½		
360 " " " 340		47		39½	(55½ Taft to Woodland	- 24 CRC 736
380 " " " 360		48		41	(56½ " " Richmond	- 26 CRC 900
400 " " " 380		49		42		
420 " " " 400		51		43		
440 " " " 420		52		44½		
460 " " " 440		53		45½		
480 " " " 460		54		46½		
500 " " " 480		55		47		

* Rate for long-line mileage, via Stockton 156 miles; short-line mileage, via Southern Pacific 92 miles.



LEGEND:

- ▲ RAIL RATES BEFORE THE RATE WAR.
- AVERAGE EARNINGS OF RAIL CARRIERS DURING YEAR ENDING AUG. 31, 1934.
- RAIL RATES EFFECTIVE 12-16-33.

*RAIL COSTS ARE BASED ON SYSTEM AVERAGES AND EXCLUDE INTEREST, DIVIDENDS, TAXES ETC.

CHART A

SHOWING COMPARISON OF TRUCK RATES PROPOSED BY LANG, CURRENT RAIL RATES AND 1934 EARNINGS, RAIL RATES BEFORE THE RATE WAR, ESTIMATED TRUCK AND RAIL COSTS AND COMMISSION'S CONCLUSIONS ON TRUCK RATES.

- CASE 4079 -

PREPARED BY C.R.C. TRANSPORTATION DEPARTMENT,
ENGINEERING DIVISION

I dissent from the order.

Heavy increases in all known rates for the transportation of gasoline are made. Believing that transportation rates should not be increased by public authority except for clear and impelling reasons and that such reasons are not here present, it is appropriate that I state briefly my views.

Interests Involved.

Four interests are involved:

First. The well organized tank truck operators engaged in a highly specialized business urge the Commission (a) to fix minimum rates for the haulage of gasoline by tank truck which will insure them better earnings and (b) to protect them in higher earnings by forbidding their rail competitors to charge rates lower than the minimums fixed for the trucks, except where for long hauls maximum reasonable rail rates are below the truck minimums. If this occurs they desire authority to go below the minimums to meet the rates of their competitors.

Second. The railroads, which are now charging rates less than maximum reasonable rates but of sufficient volume to cover out-of-pocket costs and to contribute something towards general expense and return, resist any increase in their rates. They make a subsidiary contention that if their rates be increased they should be permitted to charge a lesser rate than their truck competitors, which they urge is necessary to secure for them a reasonable share of the gasoline traffic.

Third. The oil companies which control and allocate the gasoline traffic between truck and rail and which pay initially the

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transportation costs. Speaking through their several traffic officers, they say they desire both truck and rail transportation, are willing to pay reasonable rates but are not willing to pay a higher rate for one form of transportation than another. (1)

Fourth. The gasoline using public which in the end bears the costs of transportation. (2)

The order grants the request of the tank truck operators almost in toto. (3)

Importance and Effect of Order.

The order is an important one. Its precise effect and consequences may not be stated with that precision and definiteness which its sweeping character would seem to demand. On objection by the tank truck operators evidence of existing truck rates was excluded. (4)
Rail rates, of course, are known. Certain things are clear.

First. The existing rail scale, an important factor in determining rates and rate relationships, is discarded for an entirely new scale constructed upon the theory and basis that truck rates should in the main fix the scale. The extent of the changes are illustrated in Table II attached

(1) Of the gasoline traffic moved by rail and truck they now allocate approximately 21% to the rails and 79% to the trucks. Of this traffic some moves to bulk stations having no rail facilities and hence is not competitive between truck and rail. Of the traffic enjoyed by the trucks, 36% is non-competitive and 64% competitive. Of the competitive business the rails enjoy 30% and the trucks 70%.

(2) An offer of proof that prices of gasoline are fixed on the basis of refinery tank wagon price plus rail rate to destination was rejected.

(3) Minimum rates for short hauls are higher than those sought. For longer hauls they are lower.

(4) It would be unfair to criticise the presiding Commissioner for this ruling. In fact, the ruling was by him called to the attention of the Commission. If the ruling was erroneous the error is imputable to the Commission. There was one item of direct evidence that crept into the record and some indirect evidence that point to the relationships between rail and truck rates. This is referred to subsequently.

to the opinion, where in one column is set forth typical rail rates and in another column minimum truck rates fixed by the order. The percentage relationship between the corresponding rates in the two columns indicate (a) the extent to which existing rate relationships are changed and (b) the extent to which rail rates at least are increased.⁽⁵⁾ It will be observed that the new scale departs from the old by percentages varying from 7% to as high as 118%.

Second. The effect of the order upon the gasoline consuming public, which ultimately bears transportation costs, may be spelled out in part. The majority opinion suggests one-third of a cent per gallon of gasoline as the measure or equivalent of increases ordered.⁽⁶⁾ Perhaps a better measure of the extent of the increase is to say that known rates are apparently increased at least 50%.⁽⁷⁾ Exhibit 18 summarizes a partial report from oil companies of rail tonnage. Applying one-third of a cent a gallon to even this partial movement equals \$400,000. In view of the representations of the tank truck operators,⁽⁸⁾ the

(5) The percentage increases for the varying movements specified run as follows: 7.1%, 62.5%, 25.0%, 50.0%, 72.7%, 20.0%, 60.0%, 41.2%, 85.7%, 100.0%, 70.0%, 87.5%, 83.3%, 90.0%, 71.4%, 87.5%, 87.5%, 12.5%, 84.2%, 87.5%, 75.0%, 87.5%, 71.4%, 112.5%, 90.9%, 118.2%, 55.9%, 100.0%, 87.5%, 68.45%.

(6) The language used is as follows: "The average intrastate rail haul is 85.25 miles. Hereafter, we have increased the current rates for this length of haul approximately 5 cents per 100 pounds. Equated to gallons this amounts to one-third cent per gallon."

(7) The mathematical average of the percent increases shown in Table II is 68.45%. It must of course be recognized that if this increase could be weighted another figure might result. There is no evidence upon which weighting may be attempted.

(8) In the brief of the Tank Truck Operators' Association after referring to one operator who declined to meet the rail rates and ceased haulage, it is said: "The remainder of the tank truck industry was not in so fortunate a position, and was compelled to meet these rates with the operating results shown in Mizes' Exhibit 1." (Reference to this exhibit is made subsequently.)

testimony of one major oil company traffic officer that rail and truck rates were the same and the general testimony of other oil company traffic officers that they would not pay more for one form of transportation than another, it would seem to be not an unreasonable assumption that at least as to the 64% of the truck movement which is competitive with the rails the truck rates closely approximate the rail rates. If this is a fair assumption it follows that increases in truck rates for this competitive business on the one-third cent a gallon measure would amount to something like \$970,000 on the partial movement shown in Exhibit 18.

Allowing for the infirmities in the measures referred to, the conclusion is inescapable that heavy increases are ordered in transportation costs for the competitive gasoline movement, which represents about 70% of the combined rail and truck movement. (Reference is made subsequently to a possible claim of offsetting reductions in rates based upon the assumption that the oil companies are paying the trucks some rates which are relatively much higher than the known rail rates and higher than the minimums prescribed.)

Grounds for Order.

What are the grounds of justification for this important order?

First. Much emphasis and weight seems to be attached to the argument that the railroads will by low rates drive the tank trucks out of business as to the competitive gasoline traffic and that upon this objective being gained they will demand and be accorded higher rates and the public will be gouged. This is a pure bogey man and entitled to

no serious consideration. Under existing rail rates trucks are now hauling 70% of the competitive business. Should rail rates become burdensome, highway carriers will be on hand. Proprietary truck haulage is always available as a check on high rates.⁽⁹⁾ The feared result might have been possible years ago. Today there is not the slightest chance of its coming to pass.

Second. There is the idea that the railroads need more money and that their rates should be sharply increased in the hope of accomplishing this end. The railroads here oppose any increase in their rates.

Third. This case, in substance and effect, is an application by the tank truck operators for an increase in rates. Does their financial position as here disclosed call for the granting of their request?

As the railroads in their quest for gasoline traffic have made successive reductions in their rates, the truck operators have persistently and vigorously asserted that they were being ruined. It is doubtless true that every Commissioner at the time re Gasoline Rates, 39 C.R.C. 37, 153, was decided, thought the tank truck operators would be in an unhappy financial condition. What the truckers now claim that condition to have been under the lowered rail rates is depicted in their Exhibit No. 1, which is a summarization separately and collectively of the revenue and

(9) In Re Cement Rates, 39 C.R.C. 523, the Commission upon a full record concluded the cement companies by proprietary trucks could haul cement 53 to 56 miles for 4 cents per 100 pounds from the inner mills to Los Angeles, and from the outer mills, 98 and 115 miles, for about 6 cents, rates lower than existing rail rates on gasoline and very much less than the minimum truck rates prescribed. One of the outer mills, it appeared, was actually using proprietary trucks and claimed its costs were less than 6 cents.

expenses of 15 operators and which is declared to be a representative cross section of the entire industry. Reduced to an annual basis, the collective or combined showing is:

Revenue	\$2,300,000.
Costs	2,280,000.
Net for Return	20,000.
"Estimated Value of Plant and Equipment"	1,928,000.
Rate of Return	1%
Percent increase in revenue to yield 8%	5.86%

Included in the claimed value of \$1,928,000 is an item of equipment of \$472,500, the depreciated book cost of which is \$22,607. The equipment thus valued is depreciated at the rate of \$118,125 per annum. The annual depreciation actually charged was \$12,921. These items pertain to one operator. (10) If the property base be adjusted only to reflect the book depreciated cost of this one item and the cost figure be adjusted to reflect the depreciation actually charged the return becomes about 8%. It may safely be asserted that never in the long history of the Commission has a utility been permitted to increase its rates on such a weak and inconclusive showing of earning as here made. With private truck operators under new legislation seeking aid from public authority analogous to that long accorded in proper cases to public utilities, they should be held to the full and convincing showing of need demanded of public utilities when seeking rate increases.

(10) Reference to the appendix to Exhibit 16 indicates that at least one other operator has included in value an amount in excess of the depreciated book cost of equipment and in costs depreciation in excess of that charged.

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Fourth. A defense or appraisal of the order not expressed

in the long opinion may be advanced by its sponsors based upon assumptions not only in striking contrast to the picture painted in the opinion respecting the need or lack of need for a differential between rail and truck rates, ⁽¹¹⁾ but inconsistent with some of the representations made and testimony given.

This in substance is that the truck rates prescribed really will increase the revenue of the truck operators only about 4%; that the oil companies not only allocate to the tank trucks the preponderance of the gasoline movement but pay the trucks for transportation substantially more than the corresponding rail scale; that this may take the form of higher than rail rates for the competitive business but more likely takes the form of relatively higher rates where the movement is to non-competitive points; that the minimum rates for the trucks where lower than the rates now received will be voluntarily observed by the trucks as going rates; and that hence increases in rates may be offset by such voluntary decreases, with the net effect that as to the operators mentioned in Exhibit No. 1 their reported gross revenue of \$2,300,000 will be increased by only about \$90,000 and that incidentally discrimination in rates (which may well be under such assumptions) will be corrected.

(11) In Re Gasoline Rates, 39 C.R.C. 37, both the majority and the minority of the Commission were in agreement that, as expressed by the then minority, "the record is clear that upon an equality of rates the rails cannot hope to seriously compete with the trucks." In the majority opinion here it is said "that if in the previous Case 3537 the Commission had enjoyed the benefit of the testimony of these representatives of the major oil companies, supplemented by the exhaustive investigation of the Commission's staff, our conclusion as to the necessity of a differential would have been contrary to the views expressed therein."

Indeed, this theory is the only alternative to the conclusion that the order grants the truck operators increases in rates far in excess of anything warranted by even their maximum claims as to deficient earnings.

Acceptance of the assumption or inference that the oil companies are paying the trucks rates higher over-all than the rail scale of course (a) destroys the factual picture upon which is based conclusions upon the issue of differentials and (b) is irreconcilable with (1) the representations of the truck operators,⁽¹²⁾ (2) the testimony of one major oil company traffic officer that truck and rail rates were the same, and (3) the testimony of all the oil company traffic officers that, as stated in the opinion, "factors of minimum weights, speed in transit, flexibility of service, loading and unloading, credit arrangements, and settlement of claims, as they are related to the rails on the one hand, and the trucks on the other, justify no monetary differential in rate."⁽¹³⁾

Referring back to the interests involved in this case:-

The railroads do not seek but oppose a change in rates. The gasoline using public is not interested in bearing increased transportation costs. The tank truck operators constitute the only interest desiring the higher rates here ordered. Their maximum claim respecting earnings calls for rates which will increase their revenue by only 6%. Analysis of their claims leave grave doubts as to whether they need any increase.

The case might well be dismissed for want of showing of any

(12) See footnote 8.

(13) The opinion also refers to the refusal of these officers "to concede that the service of either form of carrier * * was a more valuable service than the other." See also footnote 11.

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need for relief. Should the Commission, however, feel the trucks are entitled to increases in rates to give them 3% or 4% more revenue, it should find out what rates the trucks are now getting and extend them such relief in a form which works the least change in existing rates and rate relationships. It would certainly be a most anomalous situation where it is necessary to increase rail rates some 50% in order to give the trucks an over-all increase of 3% or 4%.

- J. J. Carr
Commissioner.

I concur in the majority opinion and order. The mandate of the Legislature expressed in the Highway Carriers' Act and the 1935 amendments to the Public Utilities Act compels such concurrence.

The dissenting opinion expresses considerable alarm because rail rates are being increased. However, even though increases are made in rail rates ranging from 7 to 118 per cent, which on the surface may appear drastic, these increases must be viewed in the light of the historical background of the rate structure to obtain the proper perspective to see if these increases are justified and reasonable. It must be borne in mind that the present rail rates are not upon a reasonable basis but are an outgrowth of a bitter rate war which has been waged for years between the railroads and the trucks for the gasoline traffic, an uneconomic rate war which would never have been permitted by this Commission if the present statutes were then in effect. One illustration may be made. This Commission in Bird v. Southern Pacific Company, 33 C.R.C. 259 (1927) found as reasonable for the transportation of refined oil products from the Los Angeles Basin to Imperial, a rate of 45 cents per 100 pounds. By successive reductions, because of the rate war, this rate is now 16 cents. Under the order proposed by the majority, the 16 cent rate will be increased to 32 cents, the latter rate being only 71 per cent of the rate found reasonable in 1927. In the Bird case, the railroads defended as a reasonable rate, 56 cents per 100 pounds which is 57 per cent of the rate prescribed. The record contains many other illustrations of the same nature.

Whatever temporary advantage the public may obtain in lower transportation charges during rate wars is more than offset by the economic disturbances created. In the final analysis, the true test of regulation lies in preventing that which is not in the public interest. When sound thinking points to a course which compels a

reasonable increase in rates, (1) we should not falter because the shippers will pay increased transportation charges. (2) In compelling the rails to place their rates on a reasonable level, we are achieving stabilization in transportation and giving to the public the assurance that both the trucks and the rails will flourish in full vigor and thus provide an adequate service by both agencies of transportation which this record shows the public needs and should have.

It should be emphasized that the truck rates here prescribed are not based upon the cost figures submitted by the tank truck operators. As previously stated, they are based upon the cost study submitted in this proceeding by Mr. Fred Chesnut of the Commission's staff. The record shows that this cost study, as modified, is comprehensive, fair and impartial. The study thus developed represents the costs, including a reasonable rate of return, of hauling refined oils by the tank truck industry as a whole. Hence, it is unnecessary to indulge in the assumptions set forth in the dissenting opinion to determine whether or not the rates prescribed will yield an unreasonable rate of return. We have the definite answer in the record.

(1) The rail rates found reasonable and sufficient are fair and conservative. They are on a somewhat lower level than rates heretofore found reasonable by this Commission, and by the Interstate Commerce Commission in this territory, but for the most part slightly higher than the rates found reasonable by the Interstate Commerce Commission in the southwest territory (Refined Petroleum Products in the Southwest, 171 I.C.C. 381, 174 I.C.C. 745).

The truck rates are based upon the cost figures presented by Mr. Fred Chesnut, Assistant Engineer of the Commission. The rates prescribed will result in an overall increase in truck revenue of about 3.86%.

(2) The transportation charges are paid by the Oil Companies. Their representatives appearing in this proceeding uniformly stated they were willing to pay reasonable rates. Considering the small increase per gallon, it is not illogical to assume that the Oil Companies will absorb the increase and not pass it on to the public. But whether they do or do not it cannot be said fairly that the public is being burdened with unreasonable rates.

I cannot agree with the thought expressed in the dissenting opinion that if the rails were successful in obtaining one hundred per cent of the traffic at the competitive points and by so doing drove the tank truck operators from this business that, in the future, there would not be an attempt made to increase the rail rates. The railroads admit that present rates are lower than maximum reasonable rates. Our past decisions show them to be such. The record discloses that they now pay something slightly in excess of out-of-pocket costs. They should pay full costs and more according to the standard of reasonableness used by this Commission and the Interstate Commerce Commission, and the standard of reasonableness so vigorously defended in the past by the railroads before this Commission and the Interstate Commerce Commission. With truck competition removed, it would logically follow that the rails would ask for increased rates and they would have no trouble justifying higher rates unless we discarded our past conception of what constitutes reasonable rates for the transportation of gasoline. In arriving at this conclusion, I am not unmindful of the threat of proprietary truck competition. But certainly a glance at the chart appended to the decision shows that the rails could make substantial increases in their existing rates before they reached the point where it would be profitable for the oil companies to operate their own trucks.

The majority opinion does nothing but carry out the mandate of the legislature. It establishes just, reasonable and non-discriminatory rates for the trucks and reasonable and sufficient rates for the rails. The record amply supports the findings made. What other course could be followed under the present laws?

M B Harris
Commissioner