

ORIGINAL

Decision No. 31469

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) Case No. 4249
transportation of petroleum and petro-)
leum products within this State.)

Appearances

SANBORN, ROEHL & MacLEOD, by H. H. SANBORN,
for Tank Truck Operators Association.

WALLACE L. WARE, for Tank Truck Operators
Association, Inc.

DON PETTY, for Oil Haulers Association.

C. G. ANTHONY, for Pacific Tank Lines.

J. E. LYONS and BURTON MASON, for Southern
Pacific Company, San Diego & Arizona East-
ern Railroad Company, Northwestern Pacific
Railroad Company, Visalia Electric Railway
Company, and Petaluma & Santa Rosa Railroad
Company.

L. N. BRADSHAW and J. L. AMOS, JR., for The
Western Pacific Railroad Company, Sacramento
Northern Railway, Tidewater Southern Railway
Company and Delta Finance Company, Ltd.

G. E. DUFFY and GEORGE HURST, for The Atchison,
Topeka and Santa Fe Railway Company, Modesto
& Empire Traction Railroad, Sunset Railway
Company, Central California Traction Company.

EDWARD C. RENWICK, for Union Pacific Railroad
Company.

WADE H. LOVE, for Union Pacific System.

E. L. H. BISSINGER and F. F. WILLEY, for
Pacific Electric Railroad Company.

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

C. E. DONALDSON, for Shell Oil Company.

J. D. REARDEN, for Union Oil Company of
California.

L. R. McNAMARA and G. J. WARSCO, for the
Texas Company.

PAUL H. MOORE, for Gilmore Oil Company.

ROBERT HUTCHERSON, for Tidewater Associated Oil Company.

C. E. ZIEGLER, for General Petroleum Corporation of California.

W. O. NABBY and A. E. PATTON, for Richfield Oil Corporation.

JOHN W. CHARTRAND, for Petrol Corporation.

L. A. STROUSE and ROBERT C. NEILL, for California Fruit Growers Exchange and Fruit Growers Supply Company.

C. E. BOYER, for Southwestern Portland Cement Company.

BY THE COMMISSION:

O P I N I O N

This proceeding involves rates for the transportation of petroleum and petroleum products in tank cars and tank truck equipment between points within this state, and for accessorial services incident to such transportation, by all common carriers, highway carriers and city carriers. Public hearings were had before Examiner Hunter at Los Angeles, an examiner's proposed report was issued and interested parties filed their exceptions thereto, after which the matter was reopened for further hearing which was had at Los Angeles on September 20, 1938.¹ The matter was submitted at that time and is now ready for decision.

While the scope of the proceeding is sufficiently broad to embrace all petroleum and petroleum products, the evidence was limited and this decision will be confined to transportation of the so-called "unrefined petroleum

1 The proceeding was reopened upon petition of Oil Haulers Association, principally for the purpose of receiving additional evidence pertaining to short-haul transportation in the vicinity of Signal Hill.

products" or "black oils," including petroleum crude oil, petroleum fuel oil, petroleum gas oil and asphalt.²

TRUCK COST STUDIES

A Senior Engineer in the Commission's Transportation Department presented a study of the cost of transporting "black oils" over "valley" highways in tank vehicles of various capacities. This study indicates that for all practical purposes the cost of transporting most grades of fuel oil is the same, from a weight standpoint, as the cost of transporting gasoline³; and that the cost of transporting road oil, liquid asphalt and certain of the heavier grades of fuel oil is somewhat higher, due to the necessity of insulating the tanks for the purpose of keeping the liquid at a high temperature to facilitate unloading. While the heating is performed by the shipper, the insulation requirement has the effect of increasing the carrier's investment and reducing the pay load which may be carried in the vehicle. The costs of transporting "black oils," as developed by the Commission witness in the instant proceeding are compared in the following tabulation with those developed for the transportation of gasoline by the same witness in Cases Nos. 4079 and 4191, supra:

2 By Decision No. 29267 of November 9, 1936, in Case No. 4079 (herein referred to as the Gasoline Case), the Commission prescribed minimum rates for the transportation of refined liquid petroleum products in tank cars and tank truck equipment by rail or highway carriers. By Decision No. 30085 of August 28, 1937, in Cases Nos. 4079 and 4191, interim minimum rates were established for the transportation of petroleum fuel oil by highway carriers. By a decision in Case No. 4250, issued concurrently with the decision herein, minimum rates are established for the transportation of refined petroleum products in tank trucks between points within incorporated cities, by carriers as defined in the City Carriers' Act.

3 Transportation rates on fuel oil are generally assessed upon an estimated weight of 7.75 pounds per gallon, whereas, rates on refined products, including gasoline, are assessed upon an estimated weight of 6.6 pounds per gallon.

COSTS IN CENTS PER 100 POUNDS

Cases 4079 and 4191:

		<u>Length of Haul</u>		
		<u>50</u>	<u>100</u>	<u>400</u>
Revised Estimated Costs				
Gasoline Exhibit 16-A				
Case 4079	6,000 gallons	7.40	13.15	47.68
Estimated Costs	6,000 gallons	7.50	13.17	47.70
Gasoline Exhibit 1,	(20 tons)			
Case 4191	4,500 gallons	8.10	13.90	49.74
	(15 tons)			
	3,000 gallons	8.97	15.60	55.64
	(10 tons)			

Case 4249:

Estimated Costs Road Oil	18 tons	9.91	17.21	61.00
or Liquid Asphalt	8.5 tons	10.95	19.50	71.00
Exhibit 1	4.0 "	17.05	31.05	115.00

A witness for the Tank Truck Operators Association, Inc., introduced a study of the cost of transporting liquid petroleum products in tank truck equipment for distances of 30 miles and less. He did not submit cost figures for greater distances, but testified that in his opinion none of the "black oils" can be transported by motor vehicle on a weight basis at a lesser cost than gasoline for any length of haul. The final results of his study, for the three lengths of haul specifically computed, are as follows:

COST IN CENTS PER 100 POUNDS

	<u>4 Miles</u>	<u>15 Miles</u>	<u>30 Miles</u>
8 Hour Day Operation	2.30	3.86	5.94
12 Hour Day Operation	2.01	3.44	5.36
20 Hour Day Operation	1.78	3.13	4.92

A witness for the Oil Haulers Association introduced a study purporting to show the cost of transporting crude oil by motor truck in and around the Signal Hill area. The total

costs developed by the study are as follows:

	<u>5 Miles</u>	<u>10 Miles</u>	<u>20 Miles</u>	<u>30 Miles</u>
Costs in Cents per Barrel	4.42	5.57	8.65	11.55
*Costs in Cents per 100 Pounds	1.36	1.71	2.66	3.55

(*Converted on basis indicated in footnote 8.)

HISTORY OF RAIL RATES

Witnesses for the rail lines testified that for many years rail rates on the "black oils" were generally maintained at a lower level than those applying to the refined products. These lower rates, they stated, were necessary to permit the commodities to move freely by rail to consuming markets, or to maintain relationships between various refineries and storage points. However, they pointed out that by reason of adjustments made through the long established practice of the rail lines in holding the refined oil rates as maximum on the unrefined or "black oils," many of the present "black oil" rates reflect reductions below the normal level of rates that would otherwise have been maintained on those commodities. With the first general reduction in the gasoline rates to meet motor truck competition, effective July 20, 1931, many of the "black oil" rates were reduced where such rates were higher than the gasoline rates established on that date. Subsequently further major reductions in the rates on gasoline were made on December 27, 1931, and December 27, 1933. These reductions served to level out the rates on the refined and unrefined oils. Upon the fixation of rates on gasoline and refined products at the higher level, as prescribed in the Gasoline Case, the rate parity between the refined and unrefined products which had developed through the series of

reductions in the refined oil rates and the concurrent reduction of the "black oil" rates, no longer prevailed, as the lower rates on the "black oils" forced down by the prior gasoline reductions were not concurrently increased.⁴

The present rail rates on "black oils" were classified by rail witnesses into the following groups:

- (a) Rates which grew up with the oil industry and served generally to maintain a relationship between various refineries and storage points, which were described as the so-called normal "black oil" rates.
- (b) Rates which were established to meet actual, potential, or threatened competition, such as that of natural gas; the transmission of petroleum and petroleum products by pipe lines; and water competition on the Pacific Ocean and the inland navigable water ways of California.
- (c) Rates which have been reduced to meet motor truck competition, or by reason of the long established practice of rail lines of holding the refined oil rates as maximum on the "black oils."

RAIL PROPOSALS

Southern Pacific Company and The Western Pacific Railroad Company proposed that rail rates on "black oils" be fixed at the level of the then existing rail rates on such commodities, subject to certain important exceptions.⁵ These carriers asserted that the rates sought would be reasonable rates for rail transportation of "black oils" in tank cars; that the increases

4. The history of the reductions made in the rail rates on gasoline and other refined petroleum products is fully analyzed and discussed in Decision No. 29267 in the Gasoline Case, supra.

5 The exceptions were:

- (a) That where rates on crude oil, fuel oil, gas oil and asphalt (including road oil), referred to in the record as "black oils," were reduced subsequent to July 19, 1931, solely because of reductions made in rail rates on gasoline and other refined petroleum products taking the same rates, to meet tank-truck competition, that carload rates on "black oils" be restored to the basis of rates applicable upon those commodities on July 19,

recommended would have the effect of generally restoring rail rates to the normal basis in effect prior to such rates being forced down by the refined oil reductions to meet motor truck competition, but that such rates would not be higher than those prescribed by the Commission as reasonable and sufficient for rail transportation of refined petroleum products by Decision No. 30085, supra; and that rates lower than those proposed are not justified.

The Atchison, Topeka and Santa Fe Railway Company advocated generally that rail "black oil" rates which had been reduced solely because of reductions in the rates on refined petroleum products be restored to the level in effect on December 15, 1933, said to be the date just prior to the last general reduction in gasoline rates. The Santa Fe witness expressed the opinion that increases in fuel oil rates to the so-called "normal" level of July 19, 1931, as recommended by Southern Pacific and Western Pacific would result in a reduction in the volume of the rail tonnage. Moreover, he pointed out that rail carriers had

5 (Continued)

1931, holding as maximum the rail rates on gasoline and other refined petroleum products taking the same rates, which became effective on December 6, 1937. (This latter date is the date the rates prescribed by Decision No. 30085, dated August 29, 1937, in Cases Nos. 4079 and 4191, became effective).

- (b) That rates be fixed on fuel oil at $7\frac{1}{2}$ cents per 100 pounds from Retreat to Santa Cruz, and $6\frac{1}{2}$ cents per 100 pounds from Retreat to Logan. (It was explained that the former rate was proposed for the purpose of observing the same differential under the refined oil rate that existed on July 19, 1931, and that the latter rate was merely an increase from $6\frac{1}{4}$ cents to dispose of the odd fraction).
- (c) That where existing rates subject to the exceptions set forth exceed the applicable class rates, such class rates be held as maximum.
- (d) That where existing rates subject to the exceptions set forth exceed the minimum rates established for highway carriers, such highway carrier rates be held as maximum.

filed with the Interstate Commerce Commission and this Commission applications requesting authority to make a horizontal increase of 15 per cent in all rates, including rates on the commodities here involved. He was fearful that should the proposed increases be found justified and the rates proposed by Southern Pacific and Western Pacific be subjected to such increases, a material reduction in the volume of rail movement on all "black oils" might likely result.⁶

The Union Pacific Railroad Company recommended that rail rates on "black oils" be fixed at the level of the then existing rates without exception. This carrier asserted that a large percentage of the "black oils" transported by it between points in California is used for orchard heating purposes, and that any increase in the existing rates would tend to encourage the movement of this product by proprietary trucks.

Rail witnesses joined in recommending that minimum rates be fixed for highway carriers which, on this record, would be reasonable and non-discriminatory in the absence of rail competition, and that these highway carrier rates be permitted to alternate with the rail rates or with combinations of rail rates and highway carrier rates, provided an additional charge of 2 cents per 100 pounds be made when such alternative application was employed. These witnesses urged that the proposed differential of 2 cents per 100 pounds between rail and highway rates was necessary to provide an equality of competitive opportunity by compensating for (a) superior truck service resulting from differences in minimum weights, speed in transit, flexibility of service and credit arrangements, and (b) the amount of investment by the shippers in rail spur track facilities, and the cost of rail tank car rental or maintenance.

6 Since the original hearings and the issuance of the examiner's proposed report in this proceeding, rail rates on the commodities here involved were increased by 10 per cent under authority of the Interstate Commerce Commission and of this Commission. (Decision No. 30784 of this Commission, dated April 11, 1938, in Application No. 20603).

HIGHWAY CARRIER PROPOSALS

The Tank Truck Operators Association, Inc., proposed that minimum rates for the transportation of "black oils" by highway carriers be fixed on the basis of trucking costs, but in no case to exceed the minimum rates for the same transportation of refined petroleum products, established in the Gasoline Case, supra. This association argued that although the cost of transporting "black oils" may in some instances exceed the cost of transporting refined products, nevertheless the inability of the former commodities to move freely at higher rates in competition with natural gas, electricity and pipe lines dictates that the refined rates be not exceeded.⁷ It urged, also, that the minimum highway carrier rate scale be permitted to alternate with the rail rates. It opposed the establishment of a differential between truck and rail rates, contending that none of the factors urged by the rail lines in support of a differential justify a monetary difference in rates.

The Oil Haulers Association, representing highway carriers operating principally within a radius of 30 miles of Signal Hill, asked that the Commission recognize certain local competitive conditions in establishing minimum truck rates for the transportation of crude oil in that area. Carrier and shipper witnesses appearing for this association testified that there are approximately 15 or 20 independent refineries in and around Signal Hill which purchase their crude oil from nearby wells; that within the area there are numerous interconnecting pipe lines; that the "going" truck rates for transportation of crude oil range from 3½ cents

7 The Commission's cost witness testified that, as of October 1, 1937, the tank-car selling prices of the "black oils" ranged from 25% to 70% of the price of gasoline.

to 8 cents per barrel (approximately one cent to $2\frac{1}{2}$ cents per 100 pounds); ⁸ and that a substantial increase in these rates for short distances would cause a diversion of the traffic to pipe lines or plant-operated trucks.

The Oil Haulers Association made no recommendations and introduced no testimony as to rates for distances in excess of 30 miles or for territories other than the Signal Hill area.

POSITION OF THE MAJOR OIL COMPANIES

The major oil companies supported the position of the Tank Truck Operators Association in so far as it related to the establishment of highway rates on the commodities involved at a level no higher than the rates established on gasoline and other refined products taking same rates, except that they advocated that charges on "black oils" should in no case exceed those which apply for like transportation of the same gallonage (not weight) of gasoline. Certain of these producers indicated that they favored the proposal of the Santa Fe with respect to the rail rates, except that, as in the case of highway rates, they requested that charges concurrently applicable for a like gallonage of gasoline be held as maximum on both the fuel oil and asphalt. They joined with the Tank Truck Operators Association in opposing any differential in rates between highway and rail carriers, and offered testimony in support of their position that neither of these forms of transportation afforded any additional or accessorial service not afforded by the other, that could be translated into monetary value. One of the producers objected to the proposal of the rail carriers that highway rates alternate with rail rates only between points served by rail facilities. This pro-

⁸ Crude oil is sold in terms of "barrels," consisting of 42 gallons. Upon the estimated weight of 7.75 pounds per gallon, the barrel of crude oil weighs approximately 325 pounds.

ducer stated that his company maintained bulk distributing stations within the incorporated limits of cities served by rail carriers, but which were not directly served by railroad spur tracks, and that the rail proposal would discriminate against these stations by causing a higher charge to be assessed from and to said stations than applied to and from facilities maintained by its competitors in the same city served by rail spur tracks.

One of the producer oil companies maintaining a refinery and oil distributing facilities at Stockton requested that the Commission prescribe rail rates from Stockton to various rail stations in California on the same basis and competitively related to the rail rates contemporaneously applying on the same commodities from competing refinery points. It contended that the failure of the rail lines to maintain rates from Stockton, which, mile for mile, were no higher than those from competing refining points, has subjected it to unreasonable disadvantage.

DESCRIPTION OF "BLACK OILS"

Considerable discussion was devoted to the determination of a proper description of the commodities involved. The record shows that subsequent to the first hearing in this proceeding, counsel for the Southern Pacific Company addressed a communication to the various producer oil companies outlining a suggested description of the so-called "black oils," including crude oil, fuel oil, untreated petroleum distillates (gas oil) and asphalt, which

was said to be substantially that now provided in the rail tariffs,⁹ and invited criticism and suggestions as to the proposed description. One of the major oil companies replied offering a substitute description for fuel oil. This company also suggested the elimination of the term "liquid" shown in connection with the asphalt description, contending that no one had been able to satisfactorily explain the difference in liquid or solid asphalt when moving in tank cars.¹⁰ A witness for Southern Pacific Company proposed that the description outlined in Southern Pacific Company's letter, revised to conform to the suggested changes, be adopted. He stated that he believed the term "asphalt" should be qualified in accordance with the physical specifications of this commodity to prevent the same character of oil being classified in one instance as fuel oil and in another as asphalt.¹¹ He did not, however, attempt to prescribe a technical definition of the various "black oil" products, and

9 Southern Pacific Company's Tariff 333-G, C.R.C. No. 2496, naming rates on petroleum and petroleum products between points in California, provides different descriptions of petroleum and petroleum products on interstate traffic than on intrastate traffic. The proposed description is substantially that provided on interstate traffic. The description "untreated petroleum distillate (gas oil)***" as proposed, provides a reference to an interstate circular not on file with this Commission for the distillation method to be used in applying this term. The intrastate description described this oil as "petroleum gas oil" subject to a note reading - "Will not apply on Petroleum Refined Oil (Illuminating or burning) Engine (Naphtha) Distillate, Gasoline, Benzine or Naphtha."

10 The letters were offered in evidence by reference.

11 Present rail rates on asphalt are in some instances higher and in some instances lower than those on fuel oil, and are subject to actual weight instead of the estimated weight of 7.75 pounds per gallon applying on fuel oil. Fuel oil is rated 5th-class and asphalt Class D in the Western Classification.

expressed the opinion that the complications involved in determining a proper technical description of the various "black oils" were such as to warrant a separate investigation by the Commission dealing exclusively with this question.

Representatives of the major oil companies asserted that in many instances fuel oil and asphalt have the same physical properties and, although at times put to different uses, are not distinguishable. For this reason they contended it was not practicable to establish different definitions based on the physical properties of those oils. They urged that considerable confusion would be avoided by establishing one rate for all "black oils" when moving by rail and highway carriers. They signified their willingness to accept a rate equality as to rail carriers by the adoption of either the fuel oil rates or the asphalt rates for all "black oils," or any other plan the Commission might deem proper and agreed to such increases as might be brought about in establishing this parity.

The major oil companies generally requested that one estimated weight be adopted for all "black oils" for similar reasons to those they advanced in justification of one rate level for all such commodities. One of the larger oil companies, however, did not agree with the proposal of the majority. It took the position that actual weight should be used on asphalt, contending that asphalt is generally sold on the basis of actual weight and that it is desirable that freight charges be assessed on this basis in order that the invoice and freight bill will agree on the weight feature.

Rail witnesses opposed both the plan to establish one rate on all "black oils," and the plan to base rates upon one estimated weight on such oils, as proposed by the majority of the major oil

companies. With respect to the plan of establishing one rate to apply on all "black oils," these witnesses stated that competitive and other factors frequently require different rates on fuel oil than on asphalt and pointed out that under such a plan it would be necessary to reduce the rates on asphalt where competition required only the reduction of rates on fuel oil to meet natural gas competition, and as a result of such an unjustified reduction in asphalt rates, the carriers' revenues would be adversely affected. With reference to the plan of establishing one estimated weight on all "black oils," it was alleged that this would disrupt the present practice of the rail carriers in assessing transportation charges on asphalt on the basis of actual weight rather than on an estimated weight.

RAIL RATES

The record shows that the majority of the reductions in the rail rates on "black oils" in recent years were made to adhere to a long established rail practice of maintaining rates on "black oils" at a level no higher than the rates concurrently applicable on refined oils, and without particular consideration being given to whether such reductions were necessary or desirable for other reasons. Although the rail carriers were not in accord as to the proper level of rail rates, they all contended that their rates were unnecessarily low as a general proposition. Inasmuch as the rates on refined petroleum products have been restored to a normal level pursuant to the decision of this Commission in the Gasoline Case, there appears to be no need for further continuing the depressed rates on "black oils." However, it should be pointed out that while

the record shows the rail "black oil" rates to be generally depressed, it does not show conclusively that they are unreasonably low or otherwise unlawful, nor that they unduly prejudice the Stockton refinery as alleged by the shipper located at that point.¹² This record does not justify the prescription of just and reasonable rail rates for application throughout the state; however, to the extent the "black oil" rates have been reduced solely for the purpose of maintaining rates no higher than on refined petroleum products, the rail carriers may be authorized to restore the "black oil" rates to the level in effect prior to such reductions, subject to the refined products rates as maximum. If the rails believe other adjustments in their rate structure to be necessary or desirable, they should undertake to make them voluntarily, applying to the Commission for proper authority where such is required.

RATES OF HIGHWAY CARRIERS AND CITY CARRIERS

In his proposed report, the examiner recommended that rates of highway carriers and city carriers for the transportation of "black oils" be established at a level generally no higher than the rates fixed by the Commission for an equal volume (gallage) of gasoline. Among the reasons given for this recommendation were the low value of the "black oils" compared

12 In their joint exceptions to the examiner's proposed report, the rail carriers said, "It is true that the rail rates are less than maximum reasonable rates and are unnecessarily low as a general proposition; also, that we are agreeable to an increase thereof on receiving appropriate authority from the Commission, although these respondents are not in complete accord as to the proper level of the rates. Nevertheless, there is not a shred of evidence on which to predicate a finding that the present rates are unreasonably low or insufficient."

to gasoline, the various competitive factors, and the importance to the petroleum industry of disposing of residual products obtained from the distillation of gasoline. In order to accomplish this rate parity as to gallonage, the examiner proposed "black oil" rates in cents per 100 pounds, constructed on the basis of 85 per cent of the gasoline rates.¹³ The resulting scale was identical to that now in effect for the transportation of fuel oil under the interim order in Decision No. 30085, supra.

In their exceptions to the examiner's proposal, the rail carriers objected to these rates as being below full cost and consequently below minimum reasonable rates. On the other hand, the Tank Truck Operators Association and several shippers assailed the same rates as being too high, at least for the shorter distances. Upon consideration of the examiner's proposal, the various exceptions filed thereto, and a review of the evidence, our conclusion is substantially the same as that of the examiner, that, as a general basis, the highway carrier "black oil" rates should be 85 per cent of the minimum gasoline rates. It is apparent that many factors other than cost must be considered in developing a reasonable rate structure on "black oils."¹⁴ Particular consideration must be given to the

13 Assuming the weight of gasoline at 6.6 pounds per gallon, and the weight of "black oils" at 7.75 pounds per gallon, the 85 per cent basis results in practical equality in transportation charges per gallon.

14 Section 10 of the Highway Carriers' Act enumerates some of the factors which must be taken into account and given "due and reasonable" consideration. They are: "****the cost of all of the transportation services performed, including length of haul, any additional transportation service performed, or to be performed, to, from, or beyond the regularly established termini of common carriers or of any accessorial service and the value of the commodity transported and the value of the facility reasonably necessary to perform such transportation

(Continued next page)

comparatively low value of these commodities, the active competition of petroleum fuel oil with natural gas in many of the larger consuming points in California, and the requirement of low rates to successfully market these commodities. Evidence of record shows that the average selling price of "black oils" is 47 per cent of the price of gasoline. Other evidence indicates that relatively low transportation rates are required to permit these commodities to move freely. In this respect the problem before the Commission in this proceeding is somewhat different from that in the Gasoline Case. In fixing the rates on gasoline, the Commission said:

"The record is clear that the needs of commerce, that is, requirements for the successful marketing of refined petroleum products, do not require the publication and 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 of freedom."

Giving due weight to the various factors mentioned in the foregoing paragraph, it is believed that the rates established by the interim order and suggested in the examiner's proposed report are as high as can be maintained and yet enable the traffic to move freely and prevent its diversion to proprietary trucks. It is also worthy of note that rates of this volume have been in apparently successful operation for the transportation of fuel oil for approximately a year, under the interim order in

14 (Cont'd)

service." It should be noted that this Section does not provide that the other factors ordinarily entering into rate making should not be given appropriate weight; it merely emphasizes certain factors which must be considered.

Decision No. 30085, supra.

It is apparent, however, that certain changes must be made in the rates proposed for distances of 30 miles or less, in order to relate the "black oil" rates to those established in a decision of this date in Case No. 4079 for the transportation of refined petroleum products, particularly in view of evidence introduced at the concluding hearing by highway carrier associations and by shippers, with respect to the necessity for relatively low rates for short distances. With these modifications, the rates proposed by the examiner will be adopted. Certain changes in the proposed rules and regulations will be made responsive to meritorious suggestions in the several exceptions, or for the purpose of obtaining uniformity with rules governing the application of minimum rates on refined petroleum products or other commodities. The rates established for highway carriers and city carriers will be permitted to alternate with the competitive rates of rail carriers when lower charges result thereunder.

The rail lines, on exception, urged that the rules relating to diversion and returned shipments should be changed to make such rules consistent with those in the rail tariffs. The restrictions which would be brought about by the adoption of the suggested changes and the higher charges resulting thereunder have not been shown on this record to be proper for application by highway and city carriers.

The matter of establishing a differential as between rail and highway rates due to the factors urged by the rail carriers in justification of such a differential was exhaustively treated in the Gasoline Case and the conclusion reached that none of these

factors justified any monetary differential in rates as between the two forms of transportation. A like conclusion is reached from this record in considering these factors as they affect the commodities here involved.

While it was advocated by the rail carriers that reasonable minimum charges be established for the service of "spreading" of road oil or asphalt when performed by highway carriers, such charges cannot be established on this record. Should it be shown at some later date that the charges made by highway carriers for this service are less than reasonable, and therefore have the effect of lowering the rates provided herein for the transportation of the commodities involved, the matter will receive the further attention of the Commission.

DESCRIPTION OF COMMODITIES

There is little evidence in this record to justify the proposal of the major oil companies that rail carriers be required to provide one rate for "black oils." It appears that there may be need for a revision of certain of the rail commodity descriptions to enable the "black oils" to be classified according to their physical properties rather than according to the use to which they are put, but the record here discloses no satisfactory basis for such revision and therefore no change in the rail descriptions will be required at this time.

Likewise, this record affords no satisfactory basis upon which to provide complete technical commodity descriptions for application of the rates of highway carriers and city carriers. For this reason, and in order that all petroleum and petroleum products moving in tank vehicles may be subject to regulation, either under this order or under orders in the Gasoline Case, supra, the commodities for which rates are established here will be described in general rather than limited terms.

FINDINGS

Upon consideration of all of the facts of record we are of the opinion and find:

1. That the rates, rules and regulations provided in Appendix "A" of the order herein are just, reasonable and non-discriminatory minimum rates, rules and regulations for transportation by radial highway common carriers, highway contract carriers and city carriers of shipments of petroleum and petroleum products for which rates are provided in said Appendix "A";

2. That the rates, rules and regulations provided in said Appendix "A" should be established as the just, reasonable and non-discriminatory minimum rates to be charged, collected or observed by all radial highway common, highway contract and city carriers for transportation for which rates are therein provided;

3. That the existing rates, rules and regulations charged, collected and observed by highway common carriers for the transportation of said commodities, to the extent they are lower in volume or effect than those provided in said Appendix "A" for the same transportation or the same accessorial service, are unreasonable and insufficient;

4. That reasonable and sufficient rates, rules and regulations for transportation by highway common carriers of shipments of petroleum and petroleum products for which rates are provided in said Appendix "A" are no lower than the rates, rules and regulations therein provided as minimum for radial highway common, highway contract and city carriers;

5. That highway common carriers should be required to establish rates, rules and regulations no lower in volume and effect than those provided in said Appendix "A" as the just, reasonable and non-discriminatory rates for radial highway common, highway contract and city carriers;

6. That the existing rates, rules and regulations of common carriers by railroad for the transportation by tank car of petroleum and petroleum products for which rates are provided in said Appendix "A", to the extent they have been reduced solely for the purpose of maintaining rates no higher than those on refined petroleum products, are less than maximum reasonable rates; and that said common carriers by railroad will be justified in restoring said rates to the level in effect prior to such reductions, but not to exceed the existing rates for the transportation of refined petroleum products by tank car.

7. That every radial highway common carrier, highway contract carrier, and city carrier should be required to issue for each shipment received for transportation a freight bill in substantially the form set forth in Appendix "C" hereof, and retain and preserve a copy thereof for reference for a period of not less than three (3) years from the date of its issuance.

O R D E R

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

IT IS HEREBY ORDERED that the rates, rules and regulations set forth in Appendix "A" attached hereto and hereby made a part hereof be and they are hereby established and approved effective December 7, 1938, as the just, reasonable and non-discriminatory minimum rates, rules and regulations to be charged, collected and observed by any and all radial highway common carriers and highway contract carriers, as defined in the Highway Carriers' Act, and carriers as defined in the City Carriers' Act, for the transportation of the commodities between points in California for which rates are provided in said Appendix "A".

IT IS HEREBY FURTHER ORDERED that all highway common carriers, as defined in the Public Utilities Act, to the extent they are engaged in the transportation of petroleum products by tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles, be and they are hereby ordered and directed to establish on or before December 7, 1938, on not less than five (5) days' notice to the Commission and to the public, rates, rules and regulations no lower in volume or effect than those provided as minimum for radial highway common carriers, highway contract carriers and city carriers, in said Appendix "A."

IT IS HEREBY FURTHER ORDERED that all radial highway common carriers and highway contract carriers, as defined in the Highway Carriers' Act; carriers as defined in the City Carriers' Act; and highway common carriers as defined in the Public Utilities Act; be and they are hereby ordered to cease and desist on December 7, 1938, and thereafter abstain from charging, collecting or observing rates, rules and regulations lower in volume or effect than those established or prescribed herein.

IT IS HEREBY FURTHER ORDERED that the rates, rules and regulations herein established supersede those established or prescribed in and by Decision No. 30085 of August 28, 1937, as amended, in Cases Nos. 4079 and 4191, for the transportation of petroleum fuel oil, and those established or prescribed in other proceedings, for the same transportation.

IT IS HEREBY FURTHER ORDERED that every common carrier by railroad be and it is hereby authorized to make such increases in its charges as may be necessary to restore to their former level any rates, rules or regulations for the transportation by tank car of the petroleum and petroleum products for which rates are provided in Appendix "A" hereof which are the result of reductions made solely for the purpose of maintaining charges on such commodities no higher than those on refined petroleum products; provided, however, that such increases shall not result in charges higher than those currently applicable for the transportation of refined petroleum products by tank car; and provided, further, that unless it be cancelled, changed or extended, this authority shall expire ninety (90) days from the date hereof.

IT IS HEREBY FURTHER ORDERED that every radial highway common carrier, highway contract carrier and city carrier shall issue to the shipper, for each shipment received for transportation, a freight bill in substantially the form set forth in Appendix "B" hereof, but may include in said freight bill, in addition to the provisions appearing in said form, such other reasonable and lawful provisions as may be deemed proper, and shall retain and preserve for reference, subject to the inspection of the Commission, a copy of said freight bill for a period of not less than three (3) years from the date of its issuance.

IT IS HEREBY FURTHER ORDERED that the Commission shall have and it does hereby retain jurisdiction of these proceedings for the purpose of establishing or approving the just, reasonable and non-discriminatory maximum or minimum or maximum and minimum rates, charges, classifications, rules and regulations to be charged, collected and observed by radial highway common carriers, contract carriers, and city carriers both for transportation service hereinabove described and for such other transportation

and accessorial service as may from time to time appear proper in the light of other or further evidence received herein, and for the purpose of establishing and prescribing such rates as will provide an equality of transportation rates for the transportation of the articles and commodities here involved between all competing agencies of transportation.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 10th day of November, 1938.

Robert W. [unclear]
Leon A. [unclear]
Frank [unclear]
Ray & [unclear]
[unclear]
(Commissioners)

' APPENDIX "A"

NAMING

JUST, REASONABLE AND NON-DISCRIMINATORY
MINIMUM RATES FOR RADIAL HIGHWAY COMMON
CARRIERS, HIGHWAY CONTRACT CARRIERS AND
CITY CARRIERS

FOR THE

' TRANSPORTATION OF PETROLEUM AND PETROLEUM
PRODUCTS AS DESCRIBED HEREIN WHEN MOVING
IN 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

ITEM NO. 10 - EXPLANATION OF TECHNICAL TERMS

1. POINT OF ORIGIN means the precise location at which property is physically delivered into the custody of the carrier for transportation.
2. POINT OF DESTINATION means the precise location at which property is physically delivered into the custody of the consignee or his agent.
3. SHIPMENT means a quantity of freight tendered by one shipper on one shipping document at one point of origin at one time for one consignee at one destination. (See Item No. 60 for exception.)
4. RAILHEAD means a point at which property is usually and ordinarily loaded into or unloaded from rail cars. It also includes truck loading facilities of plants or industries located at such rail loading or unloading point.
5. TEAM TRACK means a point at which property may be loaded into or unloaded from rail cars by the public generally.
6. RAILROAD RATE means any intrastate rate or rates of any common carrier railroad corporation or corporations as defined in the Public Utilities Act, lawfully in effect at time of shipment.
7. SAME TRANSPORTATION means transportation of the same kind and quantity of property from the same point of origin to the same point of destination and subject to the same limitations, conditions and privileges, although not necessarily in an identical type of equipment.
8. CARRIER'S EQUIPMENT means any tank motor truck, tank trailer or tank semi-trailer, or any combination of such highway vehicles operated by the carrier.

ITEM NO. 20 - APPLICATION OF RATES - GENERAL

Rates provided in this appendix apply for the transportation of petroleum and petroleum products as described in Item No. 30, in tank motor trucks, tank trailers or tank semi-trailers, or a combination of such highway vehicles, between points in the State of California by radial highway common carriers and highway contract carriers as defined in the Highway Carriers' Act, and by carriers as defined in the City Carriers' Act. Rates include connecting and disconnecting piping and other services incidental to loading and unloading, subject to Note 1.

Note I: When pumping is performed with carrier's equipment, or shipments are stopped in transit to partially unload, additional charges shall be assessed as provided in Items Nos. 60 and 70.

ITEM NO. 30 - APPLICATION OF RATES - COMMODITIES

Rates provided in this appendix apply for transportation of petroleum and petroleum products as follows:

PETROLEUM CRUDE OIL
PETROLEUM FUEL OIL
PETROLEUM GAS OIL
PETROLEUM ROAD OIL
ASPHALT

Note: This appendix does not apply upon 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 * * * ", for which rates are provided in Decision No. 30085 of August 28, 1937, as amended, in Cases Nos. 4079 and 4191.

ITEM NO. 40 - COMPUTATION OF CHARGES

The weight of the commodities upon which rates are established in this appendix shall be computed upon the basis of 7.75 pounds per gallon.

ITEM NO. 50 - MINIMUM WEIGHT AND MINIMUM CHARGES

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 3,000 gallons be less than those applicable on shipments of 3,000 gallons.

ITEM NO. 60 - STOPPING IN TRANSIT

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

ITEM NO. 70 - PUMPING

Rates provided herein do not include pumping service when rendered with carrier's equipment. When this service is performed by the carrier a charge of 3/4 of one cent per 100 pounds will be made.

ITEM NO. 80 - APPLICATION OF RATES - GROUP POINTS

(a) In applying the rates named in this appendix the following points will be grouped:

Group 1. San Francisco.

Group 2. Pinole, Oakland, Richmond, Rodeo, Oleum, Port Costa, Martinez, Avon and Port Chicago.

Group 3. Coalinga, LeRoy, Ora and Crump.

Group 4. Bakersfield, Seguro, Maltha, Oil City, Mopeco, Oildale and Oil Center.

Group 5. Taft, Maricopa, McKittrick, Conner, Fellows, Hazelton, Midoil, Kerto, Millux, Pentland, Shale, Lokern, Buttonwillow, Bowerbank and Rio Bravo and Olig.

Group 6. Compton, Signal Hill, Watson, Wilmington, El Segundo, East Long Beach, Los Angeles, Machado, Huntington Beach, Naples, Rioco, Hunes, Bixby, St. Helena Spur, Thenard, Los Nietos, Santa Fe Springs, Vinvale, Vernon, Burnett, Lawn, Wingfoot, Alamitos Heights, Alla, Torrance, Downey, Domingues Junction, Inglewood, Sherman Junction, Playa del Rey, Hyde Park, Long Beach, San Pedro, Wildasin, Venice, Crutcher, Montebello, Pico and Whittier.

Group 7. Carpinteria, Naples, Elwood, Goleta, Santa Barbara, Summerland, Rincon Oil Fields, Sea Cliff, Dulah, Ventura Avenue, Ventura, Chrisman, Wadstrom and Ortonville.

Group 8. Fillmore, Montalvo, Saticoy, Santa Paula, Sespe, Bardsdale, Buckhorn, Piru, Camarillo and Moorpark.

Group 9. Avenal, Kettleman City, Kettleman Hills, Los Nietos (King County) and Superior Oil Company's Kettleman Hills Plant.

Group 10. Los Hills, Blackwell's Corner, Belridge, North Belridge and South North Belridge.

Group 11. Weed Patch, Edison, Arvin, Mountain View (Kern County), Giffen and Vaccaro and Harpertown.

Group 12. Poso Creek, Mount Poso and Kern Front.

Group 13. Brea, LaHabra, Olinda, East Coyote, West Coyote, Fullerton, Loftus, Oleo, Yorba, Yorba Linda, Placentia, Atwood, Peralta and Richfield.

(b) The groups described in paragraph (a) of this item shall also include points situated on the shortest highway route or shortest rail route between any two named points in the same group, except that if either the highway or the rail route exceeds the other by more than 100 per cent, points situated on such circuitous route shall not be included.

(c) The rates named in this appendix are subject to the shortest resulting mileage via any public highway route computed in accordance with the constructive mileage plan provided in Decision No. 30000 of August 9, 1937, in Case No. 4088 Part "N", as amended, except that:

1. Mileage from or to group points (but not between points situated in the same group) shall be the mileage from or to the basing point of the group as named below, computed in accordance with the constructive mileage plan provided in Decision No. 30000, as amended.

<u>Group</u>	<u>Basing Point</u>
1	San Francisco
2	Pinole
3	Coalinga
4	Bakersfield
5	Taft
6	Compton
7	Carpinteria
8	Fillmore
9	Avenal
10	Lost Hills
11	Weed Patch
12	Poso Creek
13	Brea

2. Between points situated in the same group the minimum rate shall be 2-1/2 cents per 100 pounds. (See Exception)

EXCEPTION: Between points situated within Group 6 the minimum rate shall be 2-1/2 cents per 100 pounds except that between points situated within the City of Los Angeles northerly of the following line, on the one hand, and points situated within the City of Los Angeles lying southerly of said line and all other points in Group 6 on the other hand, the minimum rate shall be that provided for the distance from point of origin to point of destination or 3-1/2 cents per 100 pounds, whichever is the lower.

'Beginning at the intersection of Sunset Boulevard and U.S. Highway No. 101-A; thence northeasterly along Sunset Boulevard to Fairfax Avenue; northerly along Fairfax Avenue to Hollywood Boulevard; easterly along Hollywood Boulevard to Sierra Bonita Avenue; northerly along Sierra Bonita Avenue to Franklin Avenue; easterly along Franklin Avenue to Vermont Avenue; southerly along Vermont Avenue to Hollywood Boulevard; southeasterly along Hollywood Boulevard and Sunset Boulevard to Lilac Terrace; easterly along Lilac Terrace to Bernard Street; easterly along Bernard Street to North Broadway; northerly and easterly along North Broadway to Mission Road; northeasterly along Mission Road to Huntington Drive; northeasterly along Huntington Drive to its intersection with the Los Angeles-Alhambra corporate boundary.'

(d) The minimum charge 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. 90 - ALTERNATIVE APPLICATION OF RAIL RATES

When the transportation is between railheads, rates in this appendix shall alternate with the lowest rail rate for transportation in tank cars between the same points.

ITEM NO. 100 - ALTERNATIVE APPLICATION OF COMBINATIONS WITH RAIL RATES

Rates in this appendix may be used in combination with rates of common carriers by railroad lawfully on file with the Commission and in effect on date of movement as follows: (See Note)

(a) When point of origin is located beyond railhead, add to the railroad rate applicable from any rail team track to point of destination the rate provided in this appendix for the distance from point of origin to said rail team track.

(b) When point of destination is located beyond railhead, add to the railroad rate applicable from point of origin to any rail team track the rate provided in this appendix for the distance from said rail team track to point of destination.

(c) When both point of origin and point of destination are located beyond railheads, add to the rail rate applicable between any two rail team tracks the rates provided in this appendix for the distance from point of origin to said origin team track and the rate provided in the same item for the distance from the destination team track to point of destination.

NOTE:- If the route from point of origin to the team track or from the team track to point of destination is within the corporate limits of a single incorporated city, the distance to or from such team track will be considered as not to exceed 5 miles.

ITEM NO. 110 - DIVERTED SHIPMENTS AND RETURNED SHIPMENTS

(a) Charges upon shipments diverted at request of consignor or consignee shall be assessed upon the basis of the charge established for mileage applicable via the point or points where diversion occurs, except that

(b) If point of diversion is situated on direct rail route between point of origin and point of destination, charges shall be assessed upon the basis of the charge established for direct movement from point of origin to point of destination.

(c) Charges upon shipments returned to point of origin, or to a point situated on the shortest resulting highway route or on a direct rail route between point of origin and original destination (or point of diversion) shall be assessed for the entire trip upon the basis of 150 per cent of the charge established for the outbound movement, or upon the basis established in paragraph (a) of this item, whichever is lower.

ITEM NO. 120

RATES IN THIS ITEM APPLY FOR THE TRANSPORTATION
OF PETROLEUM OR PETROLEUM PRODUCTS AS DESCRIBED
IN ITEM NO. 30.

<u>MILES</u>		<u>RATES IN CENTS PER 100 POUNDS</u>
Over	But not over	(See Notes 1 and 2)
0	5	2½
5	10	2½
10	15	3
15	20	3½
20	25	4
25	30	4½
30	35	5
35	40	5½
40	45	6
45	50	6½
50	60	7
60	70	8
70	80	9
80	90	10
90	100	11
100	120	13
120	140	15
140	160	17
160	180	18½
180	200	20½
200	220	22½
220	240	24½
240	260	26½
260	280	28
280	300	30
300	320	32½
320	340	34
340	360	35½
360	380	38
380	400	40
400	420	41½
420	440	43½
440	460	45½
460	480	47½
480	500	49½
Over 500 miles		(49½ Plus 2½ cents (for each 25 miles (or fraction there- (of over 500 miles

NOTE 1. - For the transportation of crude oil within the city of Signal Hill, or for transportation from or to Signal Hill when actual shortest highway distance between point of origin and point of destination does not exceed five (5) miles, the rate shall be 2 cents per 100 pounds.

NOTE 2. - The rate for transportation between points within incorporated cities by carriers as defined in the City Carriers' Act shall be 2½ cents per 100 pounds, except as otherwise provided in Item No. 80, paragraph (c) 2, or in Note 1 above.

(End of Appendix "A")

