

Decision No. 31469.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
C.E.SPURLIN for relief under Sec-  
tion 11 of the Highway Contract  
Carriers' Act, California Statutes  
1935, as amended.

}  
} Application No. 22439  
}

James G. Scarborough and Don Petty, by Don Petty, for  
applicant.

Wallace L. Ware, for Tank Truck Operators Association,  
Inc., protestants.

Hal Cousins, for Service Truck Lines, protestant.

Paul H. Moore, for Gilmore Oil Company, protestant.

A.E. Patton, for Richfield Oil Corporation, protestant.

W.E. Paul, for Union Oil Company of California,  
interested party.

E.V. Macon, for The Texas Company, interested party.

BY THE COMMISSION:

O P I N I O N

By this application C.E. Spurlin, an individual operating as a city carrier and a radial highway common carrier, seeks authority under Section 10 of the City Carriers' Act and Section 11 of the Highway Carriers' Act, to transport petroleum crude oil in tank truck equipment between points in the Los Angeles basin, and particularly in and around the City of Signal Hill, at rates less than those recently established as minimum for such transportation by this Commission.<sup>1</sup>

A public hearing was held before Examiner Bryant at Los Angeles on January 13, 1939.

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The minimum rates were established, effective December 7, 1938, by Decision No. 31469 of November 10, 1938, as amended, in Case No. 4249, 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.

From applicant's testimony, it appears that he has been engaged since 1931 in the transportation of petroleum crude oil by tank truck from wells to refineries within the Los Angeles basin. He operates four truck-and-trailer units, all manufactured prior to 1930 with the exception of one new trailer. For the past six years his principal shipper has been one Jack Turner, a broker who purchases crude oil at the wells and sells it delivered to the refineries, and who also owns nine wells from which he draws oil for sale to the refineries. Applicant does all of Turner's hauling, and it is only in connection with transportation performed for Turner that reduced rates are sought.

The refineries to which the oil is sold are all situated in or adjacent to the city of Signal Hill. Several of the origin wells are located in Inglewood, Atwood, Euntington Beach and Santa Fe Springs, but more than 75 per cent of the traffic moves only within the Signal Hill area, for distances of less than five miles. Spurlin seeks reduced rates for all of the hauls, but he explained that it is the rate for distances under five miles within the Signal Hill area with which he is particularly concerned. The established minimum rate for this short-haul transportation is 1.5 cents per 100 pounds;<sup>2</sup> the rate sought is 1.08 cents per 100 pounds. Applicant also seeks a reduction in the established charge for pumping service performed with carrier's equipment from 75/100 cents per 100 pounds to one cent per barrel of 42 gallons, or approximately 31/100 cents per 100 pounds. He testified that substantially all of the crude oil which he transports is pumped into

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This rate applies for transportation where consignee's facilities permit delivery over a 24-hour period each day. (Decision No. 31521 of December 6, 1938, in Case No. 4249.)

his vehicles with his own equipment; unloading, however, is performed by the refineries.

It appears that shortly after the minimum rates became effective, Turner advised applicant that the margin of profit in buying and selling crude oil would not permit the continued use of his services at those rates. Preliminary negotiations were entered into looking toward the purchase by Turner of Spurlin's trucking equipment, but no agreement was reached and Spurlin continued to perform Turner's transportation at the established minimum rates. Applicant testified that he did not know what conclusion Turner may since have reached with reference to proprietary operation, but expressed the opinion that unless he (Turner) purchased trucks or resorted to the use of pipe lines he would find it necessary to reduce his purchase price or raise his selling price of the crude oil.

Spurlin introduced as an exhibit in this proceeding certain condensed operating statements for the months from January to November, inclusive, 1938, together with a balance sheet showing his assets and liabilities as of November 30, 1938. The operating statements show a total revenue of \$40,606 and a total operating expense of \$30,501, thus indicating that applicant made a profit of more than \$10,000 during the eleven months' period. He testified that the rates assessed during this period were no higher than those now proposed for the future. However, he was admittedly unfamiliar with the details of either the operating statements or the balance sheet, explaining that the records had been kept and the statements prepared by his bookkeeper. He was unable to explain how an amount in excess of \$4,500 accrued to depreciation during the eleven months, while the total fixed assets as shown on the balance sheet were only \$9,525. He was uncertain as to the meaning of an

item of \$6,033 shown as a liability of the business to C. E. Spurlin, but said he assumed that this represented profits which he had drawn for his personal use. He explained that he drew no salary as manager of the business. Wages of drivers and helpers as shown in the operating statement accrued at rates of 60 and 65 cents per hour, but applicant stated that due to a recent labor agreement the wages would have to be computed at 75 cents per hour in order to reflect present and future costs.

Applicant did not introduce a cost study nor offer any estimate of his costs per mile, per barrel, per gallon or per 100 pounds. He testified that during the eleven months from January to November, 1938, his vehicles traveled a total distance of approximately 19,000 miles; that all of the points of origin and destination served are open to his vehicles 24 hours a day; that he had found his "use factor" to be approximately 11 hours a day; that an average complete round trip, where the distance traveled was less than five miles, consumed from 75 to 90 minutes; and that he believed his principal hauls to be shorter than those of other carriers, thus permitting the successful use of older equipment. He was unable to say what part of his total mileage may have accrued on short hauls or otherwise. He had no idea of the number of round trips performed, and was uncertain as to the amount of crude oil transported, either for particular hauls or for his entire operation.

Tank Truck Operators Association, Inc., Service Truck Lines, Gilmore Oil Company and Richfield Oil Corporation protested the granting of this application. Protestants urged that the proposed rates would unduly prefer Turner to the prejudice of other shippers with whom he is in direct competition, would result in discrimination between applicant and competing highway carriers, and

would tend to disrupt the established minimum rate structure. They also argued that Spurlin had not shown his transportation to be unusually economical, or otherwise different from that for which the established rates were designed, and that for this and other reasons the application should be denied.

It will be seen that although applicant offered a considerable amount of information about the conduct of his operations, he did not introduce evidence from which the Commission might determine whether each of the proposed rates may reasonably be expected to return the cost of performing the transportation for which it is intended to apply. It is true that applicant's operating statements, considered alone, invite little doubt that on the whole the rates assessed in the past have been profitable. However, when it is considered that the record is entirely devoid of information as to the sources of operating revenue; that it contains only a condensed outline of the operating expenses; that applicant's labor costs have increased approximately 20 per cent over those shown in the operating statements; and that the witness was obviously and admittedly unfamiliar with the details of either the operating statements or the balance sheet, it must be observed that the record does not convincingly demonstrate each of the proposed rates to be compensatory.

Moreover, as pointed out by protestants, the record fails to disclose any material difference between the operations of applicant and those of other carriers. Spurlin stated that he believed his hauls to be generally shorter than the average, but no peculiar or distinctive economies were shown to exist in his operations, and, as a matter of fact, he conceded that his over-all costs should be about the same as those of other carriers performing similar transportation. Section 10 of the City Carriers' Act and Section 11 of

the Highway Carriers' Act afford an avenue of relief to carriers whose operations are inherently different from those for which the rates were primarily prescribed, but where the established rates are considered improper for the ordinary carrier, the appropriate avenue is through modification of the order establishing them rather than through application for relief under these sections. (See Decision No. 28697 of April 6, 1936, in Application No. 20447, In the Matter of the Application of Beaman Brothers, et al., 39 C.R.C. 673.)

Upon consideration of all of the facts of record the Commission is of the opinion that the operations of applicant have not been shown to be materially different from those of other carriers similarly engaged, and that the proposed rates have not been shown to be compensatory or necessary to prevent diversion of the traffic from for-hire carriers. The Commission is of the opinion and finds, therefore, that the proposed rates have not been shown to be reasonable. The application will be denied.

O R D E R

This application having been duly heard and submitted, full consideration of the matters and things involved having been had, and the Commission now being fully advised,

IT IS HEREBY ORDERED that Application No. 22439 be and it is hereby denied.

Dated at San Francisco, California, this 6<sup>th</sup> day of March, 1939.

Robert W. [unclear]  
Frank [unclear]  
Carl [unclear]  
[unclear]  
Justus J. Craven  
Commissioners.