

Decision No. 510336.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of maximum or minimum, or maximum and minimum rates, rules and regulations of all common carriers as defined in the Public Utilities Act of the State of California, as amended, and all highway carriers as defined in Chapter 223, Statutes of 1935, as amended, for the transportation, for compensation or hire, of any and all commodities.

ORIGINAL

Case No. 4246

In the Matter of the Establishment of maximum or minimum, or maximum and minimum rates, rules and regulations of all carriers as defined in the City Carriers' Act of the State of California (Statutes 1935, Chapter 312, as amended) for the transportation over the public highways within any city or city and county in the State of California, for compensation or hire, of any and all commodities.

Case No. 4434

Additional Appearances

- Reginald L. Vaughan, for Loomis and Hulsman, doing business as Loomis-Hulsman Truck Line,
- Arlo D. Poe, for Compartment Delivery, Inc.
- H.L. Gunnison, for Standard Oil Company of California
- Don H. Moore, for Asbury Transportation Company
- M.E. Boyd, for Western Pacific Railroad Company, Sacramento Northern Railway and Tidewater Southern Railroad.

BY THE COMMISSION:

SUPPLEMENTAL OPINION AND ORDER

The above entitled proceedings embrace, collectively, rates, rules and regulations for the transportation of property throughout the state by common, radial highway common, highway contract and city carriers, and for accessorial services performed incidental thereto. This opinion deals with a proposed modification of the rule heretofore established governing mixed shipments of general commodities, particularly as it affects shipments consisting partly of petroleum or petroleum products in bulk in tank truck equipment, and partly of petroleum products in packages.

The mixed-shipment rule here under consideration is published as Item No. 90 series of Highway Carriers' Tariff No. 2.¹ This rule provides, among other things, that in the transportation of shipments consisting partly of commodities for which rates are provided in that tariff, and partly of commodities for which rates are provided in other effective tariffs of the Commission, the rate or rates for the entire shipment may be determined as though all of the commodities were subject to the provisions of Highway Carriers' Tariff No. 2. Minimum rates for the transportation of petroleum and petroleum products in bulk in tank truck equipment were originally published in a decision appendix rather than in a tariff, and thus were not governed by this rule. On January 14, 1940, however, these rates were re-established in tariff form,² and thereupon the provisions of the rule became applicable to shipments consisting partly of petroleum or petroleum products transported in bulk. This inadvertence came to the Commission's attention, and was corrected effective May 3, 1940, by amendment to Item No. 90 series.³

¹ Highway Carriers' Tariff No. 2 is Appendix "D" to Decision No. 31606, as amended, in Case No. 4246.

² City Carriers' Tariff No. 5 and Highway Carriers' Tariff No. 6, which is Appendix "C" to Decision No. 32608 in these proceedings.

³ Decision No. 33023 of April 23, 1940, in Case No. 4246. In that decision the Commission explained its action in the following language:

"The minimum rates established for bulk shipments of petroleum and petroleum products were based upon a specific record which did not indicate a need for a rule authorizing mixed shipments of bulk and packaged goods. Moreover, the rates applicable to mixed shipments under the present rule are generally lower than those found reasonable for straight shipments of bulk petroleum products. Under these circumstances, it appears that Highway Carriers' Tariff No. 2 should be amended to provide that the mixed shipment rule therein contained will not apply to shipments containing petroleum or petroleum products in bulk in tank truck equipment."

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Thereafter, Richfield Oil Corporation and two highway contract carriers⁴ engaged in the transportation of Richfield products, urged that the rule be again modified in such a manner as to permit packaged petroleum products, when transported in mixed shipments with bulk petroleum products, to receive the benefit of the weight of the total shipment in the computation of transportation charges. Evidence relative to the proposed modification was received at adjourned hearings held before Examiner Bryant in Los Angeles, briefs have been filed, and the matter is now ready for decision.

The assistant traffic manager of the Richfield company testified that prior to the restriction of the rule made on May 3, 1940, his company had commenced the practice of making mixed shipments to some of its smaller distributing branches, employing three contract carriers for that purpose. These shipments consisted generally of two or more grades of bulk petroleum products transported in a compartment tank truck, and a quantity of packaged products carried on a flat-bed trailer attached to the truck. In order to fulfill the minimum charge requirements of the bulk tariff,⁵ charges on the bulk portion of the shipment were based upon the full legal carrying capacity of the tank or tanks, but in no case less than 3,000 gallons. The witness explained that it was his interpretation and understanding of the bulk tariff that it permitted the shipping of refined petroleum products and so-called "black oils" in a single shipment (through the use of a compartment vehicle or the combination of two vehicles) for the purpose of meeting the minimum weight or

⁴ Loomis-Hulsman Truck Line and Compartment Delivery, Inc.

⁵ City Carriers' Tariff No. 5 and Highway Carriers' Tariff No. 6, supra, will be sometimes referred to herein for convenience as "the bulk tariff".

gallonage requirements of the tariff. He proposed no amendment in this regard, but directed his proposal to a modification designed to permit petroleum products in packages to move in mixed shipments with petroleum products in bulk.⁶ According to this witness it was not and had not been in the past the intention of his company to use the mixed-shipment rule in such a manner as to "break down" the minimum rates established for the transportation of petroleum products in bulk. He said that the intention had been and was still merely to obtain the benefit of the total weight of the bulk and packaged products in rating the latter.

This witness stated that the requirements of some of his company's branches were insufficient to permit shipping either packaged goods or bulk products in truckload quantities, and the proposed mixed shipment provision was therefore necessary if his company was to receive the benefit of truckload rates to these branches. He declared that for this reason the type of service represented by mixing bulk and packaged products was of vital importance to his company, and if it were not permitted to continue at mixed shipment rates the same service would be performed under a proprietary operation. He added, however, that it was not the desire of his company to engage in trucking except where absolutely necessary.

Loomis-Hulsman Truck Line and Compartment Delivery, Inc., two highway contract carriers engaged in the transportation of Richfield products by use of compartment trucks and flat-bed trailers, offered no testimony of their own but approved in principle the modification advocated by the witness for Richfield Oil Corporation.

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The proposed amendment permits mixing of bulk products with any commodities, but the witness explained that what his company was primarily interested in was the mixture of bulk and packaged petroleum products. He said that any amendment to the mixed-shipment rule which would accomplish this purpose would be satisfactory to his company.

No other witness testified in support of the proposed change.

The suggested modification was opposed by Tank Truck Operators Association, Asbury Transportation Company, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, Western Pacific Railroad Company, Union Pacific Railroad Company, Pacific Electric Railway Company, and by traffic representatives of Standard Oil Company of California, Shell Oil Company and Tidewater Associated Oil Company.⁷

A rate and cost expert, testifying on behalf of the Tank Truck Operators Association, explained that one of the objections of his Association to the proposed mixed-shipment rule was that under such a rule it would be difficult, if not impossible, for shippers to know what freight rates their competitors were paying. He believed that the rule contained some elements of undue preference and prejudice, inasmuch as some shippers could take advantage of the combination of packaged goods with bulk products, while other shippers would be incapable of doing so. As another serious objection this witness pointed to the reduction in revenue which would result to the highway carriers.⁸ In this connection he stated that the present California minimum class rates were predicated in part upon a definite percentage of freight moving in each class, and asserted

⁷ The traffic representatives of the Standard, Shell and Associated companies were called as witnesses for Southern Pacific Company.

⁸ The witness pointed out that 3,000 gallons of refined petroleum products (the bulk minimum) would weigh, at 6.6 pounds per gallon, 19,800 pounds, and that only 200 pounds of packaged products would be necessary to reach the minimum weight of 20,000 pounds fixed for truckload rates on the latter. Under the proposed mixed shipment rule, therefore, a 200 pound lot of third class packaged petroleum products accompanying a bulk load would move at the rate of 5 cents per 100 pounds for a three-mile haul rather than the any-quantity rate of 32 cents per 100 pounds established for that distance. Using certain data introduced by the Richfield witness, he estimated that the reduction in rates on packaged petroleum products which would result from the proposed mixture rule (as compared with rates otherwise applicable upon separate shipments of packaged products) would be in excess of 44 per cent.

that any material change in this mixture would require a change in the rates themselves. He thought that the proposed modification would seriously affect the percentage of mixture between classes, and expressed the opinion that the result of this would be to ultimately require an increase in the established minimum class rates.

The Association witness testified further that the movement of packaged petroleum products in small quantities constitutes a substantial portion of the less carload and less truckload traffic transported by the average common carrier in this state. He said that if the mixed-shipment rule were amended as proposed there would be a strong monetary incentive for the shippers to give all of this traffic to the highway carriers in connection with the movement of bulk petroleum, inasmuch as the rails would find it physically impossible to transport mixed shipments of this type. This witness declared that under the proposed rule there could be no equality of opportunity between rail and truck, and reasoned that an unfair advantage given to highway carriers over the rail lines would have a tendency to break down the entire California rate structure for the transportation of petroleum and petroleum products. He saw no way in which the rails could adjust themselves to compete with highway carriers under the proposed mixed shipment provisions.

Referring to the cost element, the Association witness stated that the bulk petroleum rates were predicated upon the assumption that 3,000 gallons or more would be picked up at one point; and similarly, that the rates for the transportation of shipments of 20,000 or 30,000 pounds of packaged petroleum products were based upon the cost of picking up the entire shipment at one spot. He said that if the commodities were picked up at two or more different points, whether ten or 100 feet apart, as apparently would be

necessary in the mixture of bulk and packaged goods, there would necessarily be an added cost which should be reflected in the rates. This witness testified further that while the difference in the volume of minimum class rates in Highway Carriers' Tariff No. 2 for the different weight brackets reflected an actual difference in the cost per 100 pounds of performing the transportation service, there was no similar reduction in cost resulting from the proposed mixture of bulk petroleum products with petroleum products in packages. He said that the only saving to the carrier in combining these two classes of freight would be in the cost of billing and collecting, which would amount to only about 7 cents per shipment.

This witness stated that he had been following the movement of petroleum products generally in the State of California since 1929, and in all of that time knew of no general practice of moving packaged petroleum products in quantities of less than 20,000 pounds in mixed shipments with bulk petroleum products. He thought that the proposal here made would, if adopted, institute a practice that had not in the past been generally followed by shippers or highway carriers in this state. He declared that if the proposed mixed-shipment rule were adopted it would require that present truck fleets be revamped by providing a flat-rack trailer as well as a tank trailer for each tank truck. In the opinion of this witness all petroleum shippers would have to adjust themselves to this type of shipment in order to remain competitive, and all highway carriers engaged in the transportation of petroleum products would have to adjust themselves to this type of competition. He thought that all members of the Tank Truck Operators Association would have to make substantial changes in their vehicle equipment in order to remain competitive under the proposed rule, and this would bring about an entirely new situation in the transportation of petroleum products,

would reduce the load and use factor of the vehicles, and would in general inevitably induce drastic changes in the rate structure. The witness said that one result of this practice would be to reduce the back haul, inasmuch as it would be impossible to transport dry freight on the returning tank vehicle; and that it would reduce the use factor of the vehicles, inasmuch as the tank trailer would necessarily be out of service while the flat-bed trailer was carrying packaged petroleum products. He stated that the present minimum of 3,000 gallons fixed in connection with the transportation of petroleum products was based upon evidence which showed that shipments in such limited quantities moved generally for distances of not to exceed 50 miles, and he reasoned that the proposed mixed-shipment rule would have the effect of extending the field of economic utility of the 3,000 gallon tank trucks and that this would automatically cut down the hours of use of the larger vehicles, both of the tank and flat-bed type. This witness thought that the proposal to mix bulk and packaged petroleum products, and to charge for each at the reduced rate applicable to the weight of the mixture, would be an extremely unsound rate making practice unless the revenue that would be diverted by this practice were restored to the rate structure in some other form.

A transportation analyst of Standard Oil Company of California testified that his company had not engaged in the practice of transporting bulk petroleum products in compartment trucks in mixed shipments with packaged products on flat bed trailers, and did not favor the adoption of the mixed shipment rule proposed by the witness for Richfield Oil Corporation. This witness thought that if the mixture rule were adopted his company would probably be forced by competition to take advantage of it to some extent. He stated that the rule would permit his company to make deliveries of mixed shipments

directly to many of its larger retail service stations at truckload rates. He said that highway carriers had offered to perform this class of service for his company, and there was no question of the ability of his company to engage in the practice if the proposed rule were approved. If this practice were adopted he knew of no way by which the railroads could possibly meet the competition. In his opinion the effect would be that the rails would be deprived of a very substantial portion of the petroleum traffic, both in tank cars and in packages. He felt also that if the rule was adopted the increased costs encountered by the highway carriers in performing this extra service would inevitably require increased rates in the future. This witness testified that his company was a carload distributor, and that it was entirely satisfied to pay reasonable less-carload rates for transportation of petroleum products both in bulk and in packages in cases where it could not make straight truckload or carload shipments of each. He said that his company had put a very considerable investment into plants to take advantage of carload deliveries, and could not subscribe to any tariff arrangement which would give a less-carload shipper the benefit of the same carload rates. The witness added that as a general proposition his company was opposed to the mixed shipment rule in its entirety.

The assistant traffic manager of Shell Oil Company testified that his company was opposed to the adoption of the proposed mixed shipment rule. This witness stated that the Shell Company had no objection to paying reasonable less truckload or less carload rates on bulk petroleum or petroleum in packages when circumstances did not permit of the shipment of straight truckloads or carloads of each. He said that while his company was not in favor of the proposed mixture, it would probably be compelled to place itself in a competitive position if the practice were adopted by other shippers.

A representative of Tide Water Associated Oil Company stated that his company was in general satisfied with the present rates for the transportation of petroleum products and was opposed to the proposed mixture rule. If the proposal were adopted he thought his company would be forced eventually to engage in the practice of mixing bulk and packaged goods in order to remain competitive. He said that this type of transportation service was available to his company in some parts of California, and that it would be possible under the proposed rule for his company to make mixed shipments in many cases direct from the refineries to retail service stations without utilizing intermediate bulk distributing stations as at present. In his opinion adoption of the proposed rule would have the effect of breaking down the present rates for the transportation of packaged goods. This witness did not believe it to be sound practice to accord the shipper of 3,000 gallons of bulk petroleum products the advantage of the rates established for shipments of 20,000 or 30,000 of packaged petroleum products. He stated that his company's refinery in Southern California was located at Watson, while its package petroleum plants were located at San Pedro and Vernon; and that his company could therefore not take advantage of the proposed rule in Southern California without first constructing a package plant adjacent to its bulk plant.

The traffic manager for Asbury Transportation Company, a highway carrier operating some 56 units of tank trucks and tank trailers, testified that his company was not in favor of the proposed mixed shipment rule and would object to its being put into practice.⁹ This witness said that general adoption of the practice of mixing bulk petroleum products and packaged petroleum products would necessitate a large investment by his company in new and rebuilt vehicles

⁹ Asbury Transportation Company is not a member of the Tank Truck Operators Association.

in order to meet the competitive situation. He said that the tank trucks now operated by his company had capacities ranging from 2,500 to 2,600 gallons, and pointed out that in order to take full advantage of the proposed rule it would be necessary to substitute semi-trailers with a capacity of 3,000 gallons or more. He stated that the purchase of new tractors and semi-trailers, costing approximately \$11,000 for each combination, would probably necessitate the discarding of a large part of the company's present fleet. It was his belief that availability of the proposed rule to the shipping public in California would have the effect of making 50 per cent or more of the present tank truck equipment obsolete and cause it to be scrapped. He said that the discarding of 50 per cent of the tank trailers in use in California would, of course, be offset by an increase in tank semi-trailers, but declared that this change could only be accomplished at a very great expense to the operators. This witness testified that he did not know of any general use in California of a combination of vehicles consisting of a tractor, semi-trailer and 4-wheel trailer, as would apparently be required to take full advantage of the proposed mixture and explained that in his opinion this combination had not been generally adopted because it could not be safely operated on the highways.

This witness explained also that his company paid different wage scales to its drivers, depending upon whether they were engaged in driving tank vehicles or flat bed vehicles, and said that adoption of the mixture practice would require payment of the higher wage scale in every case. He pointed out that the present rates for either bulk or packaged petroleum were based in a general way on the wages encountered in connection with each type of transportation. In his opinion the proposed mixture provision would result in discrimination against a number of shippers who would be unable to take

advantage of it because of the fact that their refineries and package plants were not located at the same point. He thought also that the proposed rule would complicate the process of determining minimum rates.

The assistant to the freight traffic manager of Southern Pacific Company testified that in his opinion the rule would place the railroads in a non-competitive position with respect to petroleum traffic. He said that so far as he knew it had never been the practice of railroads in any part of the United States to make mixed carload rates on bulk and packaged goods, nor did he know of any such practice by highway carriers other than the three contract carriers who had performed the service for Richfield Oil Corporation. He stated that the rail lines had no equipment designed to meet such competition. This witness argued that the rails were already under some disadvantage in that the tank car equipment generally in use in California had a capacity of 6,500 gallons or more, while the truckload minimum weight was only 3,000 gallons. It was stipulated that representatives of each of the other rail protestants were present at the hearing and would, if called, testify to the same effect.

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When minimum rates have been established on various commodities based largely upon the cost of transporting such commodities separately, it is readily apparent that commodities of the different classes should not be transported in mixed shipments at the lower rates applicable to the combined weight unless it is demonstrated that the net cost per unit of transporting the mixed commodities as a single shipment would be sufficiently less than the net cost per unit of transporting the commodities separately to make transportation at the lower rates compensatory. It does not appear from the present record that the mixing of bulk petroleum products in tank

equipment with packaged petroleum products on flat-bed equipment would permit of any material saving in transportation expense to the carriers performing such services over the cost of handling the bulk and packaged goods separately. The proposed mixture appears to be an artificial one made primarily for the purpose of reducing a shipper's transportation charges under a particular tariff rule, rather than a natural mixture of commodities tendered and transported together as a convenience to the shipper or as a saving to the carrier. In any event, the conclusion is unavoidable that if the carriers were required to transport the two classes of commodities together at the minimum rates established for the same weight of either class separately, the reduction in revenue sustained from such transportation would have to be offset by a compensating increase in the minimum rate structure.

Moreover, the testimony is persuasive that the suggested mixture provision would have a dangerous and far-reaching effect on the business of both carriers and shippers interested in the transportation of petroleum products between points in this state. The record leaves little room for questioning that the disadvantages flowing from these unpredictable changes would far outweigh in importance whatever temporary advantages might accrue to individual shippers or individual highway contract carriers from the use of the mixture. While the testimony offered in support of the suggested tariff revision indicates that it would be of some immediate economic value to Richfield Oil Corporation and perhaps to other shippers similarly situated, it is not convincing that the liberalized rule would be reasonable and non-discriminatory or otherwise desirable when viewed from the standpoint of the welfare of shippers and carriers generally, or of the general public interest. The proposal to change Item No. 90 series of Highway Carriers' Tariff No. 2 will be rejected, and the formal petition to this effect filed by Compartment

Delivery, Inc. will be denied.

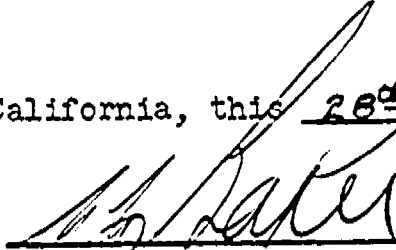
The assumption by the Richfield witness that the minimum gallonage requirements of the bulk tariff may be met by shipping refined oils and "black oils" in a compartment tank-truck unit so long as the tanks are filled to legal carrying capacity and the combined load totals at least 3,000 gallons was challenged by the rail lines, and the latter on brief urged that the Commission find that no authority exists for shipping less than 3,000 gallons of refined oils or less than 3,000 gallons of "black oils" at the rates provided for 3,000 gallons of each class. However, no modification was proposed by any of the parties in the rules or regulations of the bulk tariff, and the question of mixing refined and "black oils" under that tariff was not directly in issue in the record here being considered. If the rail lines or other interested parties believe the provision of the bulk tariff to be ambiguous or otherwise in need of clarification or revision, an appropriate petition should be filed.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that the petition of Compartment Delivery, Inc. referred to in the foregoing opinion, be and it is hereby denied.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 28th day of January, 1941.



Richfield
Company
Justus P. Caswell
Frank L. Havens
Commissioners