

ORIGINAL

Decision No. 35505

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application)
of J. O. KINNEY, for authority)
to charge less than minimum rates)
for the transportation of hot oil,)
in the vicinity of Santa Barbara,)
County of Santa Barbara, State of)
California.)

Application No. 24886

BY THE COMMISSION:

Appearances

J. O. Kinney, in propria persona.
R. F. Slusser, for Apex Petroleum Corporation. .

O P I N I O N

By this application J. O. Kinney, an individual holding a permit to operate as a radial highway common carrier, seeks authority to deviate from minimum rates established by this Commission for transportation of crude oil in bulk in tank truck equipment.¹ A public hearing was had at Santa Maria before Examiner Mulgrew.

The transportation in issue is confined to three specified movements in the vicinity of Santa Maria. The same minimum

¹ The commodity involved, described in the application as "hot oil," is crude oil heated so that it will flow into and out of tank equipment. The minimum rates were established in and by Decision No. 32608 of December 5, 1939, as amended, in Cases Nos. 4246 and 4434, in re Rates of Common, Highway and City Carriers.

rate, $2\frac{1}{2}$ cents per 100 pounds, applies to each of the three movements; the rate proposed therefor is $1\frac{3}{4}$ cents. Under the established rates, charges are determined on the basis of an estimated weight of 7.75 pounds per gallon and the minimum charge is computed on the full legal carrying capacity of the tank or tanks, but not less than 3,000 gallons. Under the proposed rates, the minimum charge would be that based on a minimum weight of 30,000 pounds. For standing time at loading or unloading points no charge has been proscribed. Applicant proposes to assess \$2.50 per hour for standing time in excess of 20 minutes.

In justification of the proposed basis Kinney pointed out that the established minimum rate of $2\frac{1}{2}$ cents per 100 pounds applies for distances as great as 35 miles, whereas the maximum distance involved in the application is about $4\frac{1}{2}$ miles.² Applicant pointed out also that while the $2\frac{1}{2}$ -cent rate is generally applicable to the transportation of crude oil between points located within other territorial groups throughout the state, exceptions have been made in the Los Angeles basin, as a result of which rates as low as and in some instances lower than the one here proposed are applicable for distances comparable to those involved in this application.³

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The established rate of $2\frac{1}{2}$ cents per 100 pounds is applicable to transportation between points within any single territorial group, subject to exceptions in the Los Angeles basin. Territorial Group No. 14, within which the transportation here involved is performed, is described in Item No. 45-A of City Carriers' Tariff No. 5-Highway Carriers' Tariff No. 6, in which the established minimum rates have been incorporated.

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See Items Nos. 210 and 220 of City Carriers' Tariff No. 5-Highway Carriers' Tariff No. 6.

Kinney estimated that the time necessary to make each trip would vary from 45 minutes to one hour, allowing 25 minutes for loading and unloading, and from 20 to 35 minutes for running time between the points of origin and destination. He asserted that the minimum revenue under the proposed rate, \$5.25 per shipment, would exceed that produced by a rate of \$5.00 per hour established by the Commission as minimum for transportation of oil well supplies under certain circumstances and that it was his experience that the transportation of crude oil was less costly than that of oil well supplies. The witness declared also that the interested shippers would build feeder pipe lines or move the oil in their own tank truck equipment rather than pay rates higher than that proposed.

Apex Petroleum Corporation, one of the interested shippers, supported the granting of the application. Its representative claimed that the established rate was excessive for the short distances involved, and stated that unless the sought rate were authorized arrangements would be made for other means of transportation or the movement would be discontinued. No one opposed the granting of the application.

Applicant made no attempt to develop the actual or estimated cost of performing the transportation in question, or the revenue which might be anticipated therefrom for any specified period of time. He did not show the original or depreciated value of his equipment, the use factors which might be expected, or other factors requisite to a determination of whether the proposed rate would in fact be compensatory.

The rate comparisons which applicant offered for the purpose of showing that the proposed rate would be compensatory are of little value for that purpose. The relatively low minimum rates applicable within the Los Angeles basin were established upon a convincing showing that exceptional transportation conditions existed in that area,⁴ and these rates are offset by considerably higher rates for longer distances within the same Territorial Group. There is no showing that the transportation conditions involved in this application are comparable. Kinney's reference to hourly rates established for the movement of oil well supplies in other types of vehicles is too remote to be of value in testing the reasonableness of a proposed rate per 100 pounds for the movement of crude oil in tank vehicles; and in addition to this objection,⁵ he applied the hourly rate improperly in making his comparisons.

Where authority is sought to charge less than the established minimum rates it is incumbent upon the one seeking such authority to justify the granting of the request (Decision No. 31325, in Application No. 22242 of C. W. Carlstrom, 41 C.R.C. 589). The fragmentary evidence produced in this proceeding cannot be considered as being reasonably sufficient within the meaning of Section 11 of the Highway Carriers' Act to justify a lower rate than the established minimum rate. The application will be denied.

4. See Decision No. 31531 of December 5, 1938, in Case No. 4249, unreported.

5. The oil well supply rate referred to is set forth in Item No. 720-B of Highway Carriers' Tariff No. 2 (Appendix "D" of Decision No. 31606, as amended, in Case No. 4246), for trucks of 6-ton carrying capacity and 4-wheel trailers. Under this rate the driving time must be doubled in connection with the determination of charges, but applicant failed to do so. Upon doubling the driving time, but using applicant's time estimates otherwise, the charges for transportation of oil well supplies would range from \$5.42 to \$7.94 per hour.

ORDER

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 the above entitled application be and it is hereby denied.

Dated at San Francisco, California, this 7th day of July, 1942.

Ray & Riley

Francis R. Havenner

Richard Locke

Commissioners