

Decision No. 36682

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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.

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

BY THE COMMISSION:

Appearances

- John W. Preston, Oliver O. Clark, and T. A. Twitchell, for Petitioners.
- John W. Chartrand, for Bell Oil and Refining Company and for Five C Refining Company.
- A. E. Patton, for Richfield Oil Corporation.
- W. E. Paul, for Union Oil Company of California.
- C. W. Chamberlain, for Seaside Oil Company.

SUPPLEMENTAL OPINION

By Decision No. 32608, as amended, in these proceedings, minimum rates have been established for the transportation of petroleum and petroleum products in bulk in tank truck equipment. By petition, four highway carriers seek reduction in the rates applicable within a described area in the vicinity of Santa Maria, Santa Barbara County.

Public hearing was had before Examiner Bryant in Los Angeles, and the matter is ready for decision.

The area described in the petition, as amended at the hearing, lies entirely within Group 14, and will be hereinafter referred to as the subgroup.¹ It is of irregular shape, with a maximum diameter of approximately 8 or 9 miles. The maximum diameter of Group 14 is about 30 miles. The established minimum rate for transportation of "black oils" between any two points within Group 14 is 2½ cents per 100 pounds. Petitioners seek a rate of 1.523 cents per 100 pounds, retroactive to December 7, 1940.² Petitioners allege that the established minimum rate is excessive when applied to the relatively short distances within the subgroup, and that the proposed rate would be sufficient to return the cost of operation, plus a reasonable profit.

Testimony in support of the proposed reduction was offered by W. R. Gerard, general partner of one of the petitioning carriers. This witness stated that the subgroup lies in an area that is generally level and served with a good system of surfaced roads; that there are a number of producing wells and several refineries within the area, as well as elsewhere in Group 14; and that the area is largely dependent upon truck transportation, although there are some pipe lines.

The witness stated that in his opinion the proposed rate would be sufficient to produce a reasonable profit for the carriers, and that continuance of the higher minimum rate would encourage a

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The established minimum rates, rules and regulations are set forth in City Carriers' Tariff No. 5, Highway Carriers' Tariff No. 6, which is Appendix "C" to Decision No. 32603, as amended, in these proceedings. The territorial groups are described in Item No. 40 series of that tariff.

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The proposed rate is designed to approximate 5 cents per "barrel" (42 gallons). Petitioners originally requested a reduced rate on refined petroleum products as well as on black oils, but refined products were eliminated and the retroactive feature introduced by an amended petition filed subsequent to the hearing.

diversion of the traffic to pipe lines and proprietary vehicles. Cost evidence submitted in support of the proposed reduction was in the form of a statement of receipts and expenses of one carrier for the period from September, 1941, to June, 1942.³ According to this statement, the carrier transported 164,675 barrels of black oil at 5 cents per barrel, and 141,155 at 3 cents per barrel, receiving a total revenue of \$12,405.48; incurred expenses of \$8,113.93; and earned a net income of \$4,291.55. In explaining this statement, the witness declared that earnings during the period were sufficient, after taking depreciation and making repairs, to "pay for the truck."⁴

The other petitioners did not offer evidence nor appear personally at the hearing. Two oil companies with refineries in the subgroup voiced approval of the petition. Another opposed the reduction, declaring that the proposal would result in serious discrimination to producers of crude oil whose wells were located outside of the area.

The net income shown on the revenue statement would indicate that the proposed rate, approximating 5 cents per barrel, would be at least sufficiently high. Unfortunately, however, the cost evidence offered in support of the proposed reduction is of little probative value. It was based entirely upon experience with one truck-and-trailer unit moving between points situated wholly in the western portion of the proposed zone, where the maximum length of haul was only three miles. The witness had no experience in transportation between other points within the subzone or elsewhere. Many of the expenses were not related to either time or mileage, but were merely listed for the month in which the actual expenditure

³ The petition was filed on February 24, 1943.

⁴ The cost evidence dealt only with black oils, and did not embrace gasoline or other refined products.

was made. Thus, for several of the months no cost whatever was charged to tires or vehicle maintenance and repairs. No allowance was made for managerial or dispatching expenses. The period of the study ended in June, 1942. The witness stated that little transportation had been performed by his company since that date, and he was unable to give any estimate of the income, expenses, or relation between the two for any later period. He had no idea of the extent to which the other petitioners were engaged in transportation of the traffic here involved.⁵ It is an incontrovertible fact that the unit cost of performing a transportation service cannot be determined in disregard of the number of units to be transported during the period.

Where carriers petition for revision of established minimum rates, just as in any other form of application, the burden of showing that the change sought is justified must be borne by those seeking it. Clearly petitioners here have not shown that the proposed subzone is necessary or desirable, or that the requested rate would be reasonable.

Petitioners' request that the reduced rate be made retroactive in effect was not supported by citation of any provision of law by which this action could be taken. This is immaterial in view of the failure to justify the reduced rate, but the attention of petitioners is here directed to the fact that the Commission has upon several occasions declined for lack of statutory authority to establish retroactive rates under the Highway Carriers' Act.⁶

⁵ Other than an unsupported statement by counsel, no indication was given of the cost experience of other carriers.

⁶ See Application of J. A. Clark Draving Co. (Decision No. 29105 in Application No. 20629); Application of Triangle Transfer & Storage Company (Decision No. 29974 in Application No. 21275); and Applications of C. & R. Transfer Company (Decision No. 29992 in Applications Nos. 21309 and 21310).

The petition will be dismissed.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the petition filed in these proceedings by Breneiser Well No. 2, Ltd., Bradley Truck Company, R. B. Snow, and J. O. Kinney on February 24, 1943, as amended on September 20, 1943, be and it is hereby dismissed.

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

Dated at San Francisco, California, this 26th day of October, 1943.

Frank A. Havenner
J. J. Ball
Justin D. Cracker
Richard W. Backus
Frank W. Clark
Commissioners

CORRECTION

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