

ORIGINAL

Decision No. 39373

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of PRESIDENT TANK LINES, INC., )  
for relief under Section Eleven of )  
the Highway Carriers' Act and for )  
authority to charge less than mini- )  
mum rates for the transportation of )  
gasoline within the State of Cali- )  
fornia. )

Application No. 27712

Appearances

- George V. Helms, President, and Bertin A. Weyl, counsel for applicant;
- Berol & Handler, by Edward M. Berol, for Tank Truck Operators Association, protestant;
- Don H. Moore, for Asbury Transportation Company, protestant;
- Lloyd R. Guerra, for Cantlay & Tanzola, Inc., protestant;
- Thomas W. Mayo, for Pacific Tank Lines, protestant;
- F. F. Willey, for Pacific Electric Railway Company, as its interests may appear;
- A. B. Amos and J. D. Rearden, for Union Oil Company of California, as its interests may appear.

O P I N I O N

By this application President Tank Lines, Inc., a radial highway common, highway contract, and city carrier, seeks authority to charge less than the established minimum rate for certain transportation of gasoline in bulk in tank-truck equipment.

Public hearing was had before Examiner Bryant at Los Angeles on August 5, 1946, when the matter was submitted for decision.

Evidence in support of the application was introduced through the testimony of applicant's president. The application was opposed by the Tank Truck Operators Association and by three of its member carriers, specifically. Protestants introduced evidence through the testimony of officers of Cantlay & Tanzola, Inc. and Asbury Transportation Company, two tank-truck motor carriers.

The service involved in this proceeding is the transportation of gasoline in bulk in tank-truck equipment from a refinery of The Texas Company, located in the Wilmington District of the City of Los Angeles, to a point of destination located within the City of El Centro. The constructive distance, figured from the basing point of Compton, is 225.5 miles. The rate fixed by this Commission in 1936 as the just, reasonable and non-discriminatory minimum rate for such transportation was 29 cents per 100 pounds (Decision No. 29267, 40 C.R.C. No. 221). The present minimum rate is 28 cents per 100 pounds, the reduction having been made in December, 1937, to permit highway carriers to meet a combination of rail rates applicable via San Diego and the Republic of Mexico (Decision No. 30358, November 22, 1937, unreported).

The rate now proposed by applicant is 25 cents per 100 pounds. Applicant's president testified that his company had transported gasoline between the points in question for The Texas Company for many years at the 28-cent rate; that this transportation represented about 37 per cent of his company's gross income; and that on or about July 15, 1946, the movement had terminated. He was informed at that time by representatives of the shipper that the movement had been diverted to a combination barge-truck route resulting in a lower transportation charge, and would not be returned to his line because of the difference in cost. The 25-cent rate herein sought is proposed for the purpose of meeting the competitive condition. The witness declared that a representative of The Texas Company had assured him that he could regain the business at the 25-cent rate. He declined to identify the representative.

The competitive barge line which necessitates the proposed reduction, according to applicant's information and belief, is Star & Crescent Boat Company, a subsidiary or affiliate of Star & Crescent Oil Company. According to the testimony of applicant's

president, the bulk gasoline is now being transported by barge, under contract, from Los Angeles Harbor to San Diego, at the rate of \$.0035 per gallon. He said that this rate approximates 5 cents per 100 pounds. The combination of this rate with a rate of 20 cents per 100 pounds established by this Commission as minimum for truck transportation from San Diego to El Centro produces the through transportation charge of approximately 25 cents which applicant seeks to meet. He was not familiar with the conditions under which the transfer from barge to truck was effected at San Diego, and did not know whether or not The Texas Company incurred any additional expense at that point.

The witness explained that, according to his information, the barge line is not subject to jurisdiction of this Commission. He pointed out that his company is entitled to meet the rates of common carriers by land as a matter of right,<sup>1</sup> but is precluded from meeting the contract barge competition unless first authorized by the Commission to do so.

Applicant's president was of the opinion that at the 25-cent rate his company would earn the cost of the service and some profit. He had not made a study of the cost of this particular movement, but said that the El Centro haul was generally considered by tank-truck operators to be a relatively desirable one. He declared that his company's average cost per truck-and-trailer mile was about 22 cents; that the round-trip distance from the refinery to El Centro and return was 450 or 460 miles; and that his truck-and-trailer units carried an average load of about 50,000 pounds, returning empty. On these bases applicant's cost per 100

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<sup>1</sup> Section 10 of the Highway Carriers' Act provides that minimum rates established by the Commission for transportation services by highway carriers shall not exceed the current rates of common carriers by land subject to the provisions of the Public Utilities Act for the transportation of the same kind of property between the same points.

pounds would range from 19.8 cents to 20.2 cents. However, these cost estimates were exclusive of "overhead" expenses, which the witness was not prepared to approximate, and did not give recognition to recent increases in drivers' wages and in the price of motor fuel.

Protestants declared that they were not concerned with the particular traffic which applicant was seeking to recover, but were opposed to the granting of this application because of the effect which a rate reduction might have upon their rate structure as a whole. They argued that substantial increases in operating costs had occurred since the minimum rates were established, and that as a result the rates as a whole were now insufficient. They stated that the tank-truck operators were about to seek necessary increases in the minimum rates through appropriate proceedings before the Commission, and that applicant's move toward reducing rates might have a harmful effect upon their cause.

Testifying on protestants' behalf, the general traffic manager of Cantlay & Tanzola, Inc. asserted that in the transportation of bulk petroleum products during the year 1945 his company experienced an average full cost per truck-and-trailer mile of 28.04 cents, of which .0265 cents represented administrative and general expenses. He conceded that he knew nothing directly about the cost experience of President Tank Lines, Inc., but cited examples of similarities in the two operations. He declared also that recent advances in wage rates and in fuel prices would increase the cost per mile by about .84 cents, making a revised full cost of 28.88 cents per mile. On the basis of 50,000 pounds per load, and a round-trip distance of 450 miles between Wilmington and El Centro, the cost of 28.88 cents per mile may be converted to a cost of 25.99 cents per 100 pounds.

The general traffic manager of Asbury Transportation Com-

pany testified that his company had, until recently, participated in the transportation of gasoline for The Texas Company from its Wilmington refinery to El Centro at a rate of 28 cents per 100 pounds. He said that the movement had been diverted to the combination of barge and truck haul, except for premium gasoline which was still moving at the 28-cent rate. This witness declared that his company had no intention of seeking authority to reduce its rate to 25 cents, for the reasons that such rate would (a) be below the average operating cost, and would (b) be discriminatory against other petroleum shippers for which his company was transporting gasoline from the Los Angeles harbor area to El Centro at 28 cents per 100 pounds. He named six refiners, in addition to The Texas Company, which he knew to be shipping gasoline by motor truck between the same points, and said that there were several others also.

Applicant argued that it should be "protected" in the right to meet a form of direct competition which had deprived it of a substantial share of its total business; that this proceeding should concern only applicant and The Texas Company, since the carrier was not seeking new business but was endeavoring only to recover traffic which it had enjoyed for many years; that any question whether applicant would be able to recapture the tonnage from the barge-truck route if the proposed rates were authorized was of no importance to the protestant truck carriers inasmuch as they would not transport it in either case.<sup>2</sup>

The authority requested in this proceeding is sought under Section 11 of the Highway Carriers' Act, which provides that the Commission may authorize a highway carrier to perform a transportation service at less than the established minimum rates "upon

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<sup>2</sup> None of the witnesses had solicited The Texas Company for the truck haul from San Diego to El Centro.

finding that the proposed rate is reasonable." A principal measure of the reasonableness of a minimum rate is the cost of performing the service. The present record contains no information concerning the specific cost of performing the particular transportation service herein involved. Moreover, although the inadequate cost information does not permit a definite determination, such information as is at hand indicates that the sought rate may be below the present cost of performing the service. On a statewide record developed in 1936 the Commission found the reasonable minimum truck rate for a distance such as the one here involved, based upon average conditions, to be 29 cents per 100 pounds (Decision No. 29267, supra). Based upon the experience of Cantlay & Tanzola Inc., a substantial truck operator, it appears that the average current cost for the distance would exceed the proposed rate of 25 cents per 100 pounds. Applicant's own estimated cost of about 20 cents per 100 pounds was based upon more or less "rule of thumb" average figures and did not include "overhead" expenses or recent increases in wages and in fuel prices.

Quite aside from the question of applicant's cost of rendering the service it might be fairly questioned whether the sought rate of 25 cents per 100 pounds may not be either too high or too low for the purposes intended. In the first place, the barge rate of \$.0035 per gallon, if converted upon the prescribed basis of 6.6 pounds per gallon, represents a rate of 5.3 cents per 100 pounds rather than the 5 cents used by applicant as a round figure. In the second place, there is no information whether, or to what extent, The Texas Company may incur expenses at San Diego for wharfage, for pumping the gasoline from the barge, for use of storage tanks, or for pumping from storage tanks into the trucks. Any such additional costs would further raise the level of a rate necessary to equalize the barge-truck competition.

On the other hand, it has not been definitely shown that the traffic would be restored to applicant's line if the sought rate were authorized. Applicant's president testified that he had some definite assurance that the tonnage could be had at the 25-cent rate but commented also "what assurance does anyone have?" The Texas Company received notice of the hearing in this application but no representative of that company entered an appearance or participated in the proceeding or otherwise indicated to the Commission an interest in applicant's rate proposal. Furthermore, even though applicant were authorized to charge the 25-cent rate and succeeded in regaining the traffic, there is no assurance that the unregulated barge line might not at any time make whatever reduction in its contract charges might be necessary to recapture it.

In a proceeding such as this one, where the question to be determined is whether or not a proposed reduced rate is reasonable, the Commission may not wholly ignore the possible effect of such rate upon an established rate structure. If President Tank Lines were authorized to transport gasoline for The Texas Company from the Los Angeles harbor area to El Centro at a reduced rate of 25 cents per 100 pounds, the several other refiners of petroleum products might be expected, in the protection of their self-interest, to exert strong pressure upon the carriers transporting their products between the same points to accord them the same rate. Whether such reductions, if brought about, would necessitate further rate adjustments from other origins or to other destinations may not be safely predicted, but it would not be unreasonable to anticipate that the final effect upon the established rate structure might be considerable. The Interstate Commerce Commission in considering proposed rate adjustments has held that "To upset or seriously to menace a general structure lawfully established suffices to make proposed rates calculated to effect

such a disruption unreasonable and unlawful." (Trunk-Line and Ex-Lake Iron Ore Rates, 69, I.C.C. 589, 611.)

Upon careful consideration of all of the facts and circumstances of record the Commission is of the opinion and finds as a fact that the proposed reduced rate sought by the applicant in this proceeding has not been shown to be reasonable within the meaning of Section 11 of the Highway Carriers' Act. The application will therefore be denied.

#### 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 above entitled application be and it is hereby denied.

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

Dated at San Francisco, California, this 32 day of September, 1946.

James H. Kula

Justus F. Calver

Francis J. Davis

W. F. Lawrence

A. F. Dunning

Commissioners