

ORIGINAL

Decision No. 42621

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ASBURY TRANSPORTATION COMPANY, a corporation, for authority to charge less than minimum rates.	}	Application No. 30590
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Appearances

Bart F. Wade, A. J. Eyraud and Don H. Moore,
for applicant.

Phil Jacobson, for La Salle Trucking Company,
protestant.

W. O. Moore, Donald C. Jobb, and Lloyd R. Guerra, for
various highway carriers, interested parties.

W. H. Morely, W. H. Adams, W. O. Narry, John L. Nice,
P. H. Robertson, C. W. Chamberlain, Robert Hutcherson,
W. Eousfield, J. D. Rearden, C. P. Stevenson, M. S.
Housner, and G. R. Groth, for various shippers of
petroleum products, interested parties.

O P I N I O N

Asbury Transportation Company is a corporation engaged,
among other things, in the transportation of gasoline and other
petroleum products in bulk by means of tank vehicles. For a number
of years past it has operated under permits as a radial highway
common, highway contract, and city carrier. Recently it was issued
a certificate of public convenience and necessity to operate as a
highway common carrier between various points in California, includ-
ing those involved in this proceeding.¹

¹ Tariff rates inaugurating the highway common carrier service became effective on November 14, 1949, subsequent to the date of hearing in the instant application. The certificate was issued by Decision No. 42623, dated March 15, 1949, in Application No. 29693.

The Commission has heretofore established minimum rates to be charged by highway carriers for the transportation of petroleum products between points in this State.² By the present application Asbury Transportation Company seeks authority to reduce its rates below the existing minima in connection with the movement of gasoline from San Diego to El Centro and other destinations in the Imperial Valley, to Occanside, Fallbrook and Ramona, and to various intermediate points. Applicant's immediate objective assertedly is to retain traffic which it is handling for Shell Oil Company, Incorporated. However, the sought rates, if authorized, would be applied to all shippers alike. Moreover, upon publication in the highway common carrier tariff they would be available for adoption by other carriers without further order of the Commission.

Public hearing was had before Examiner Bryant at Los Angeles on October 10 and 11, 1949. The matter is ready for decision.

The principal witness in support of the application was the vice president and general manager of Asbury Transportation Company.³ This witness declared that within the last two or three years a substantial volume of the California petroleum traffic has been diverted from for-hire to proprietary vehicles. More specifically, he said that Shell and other oil companies had diverted a considerable

² Decision No. 32608 of December 5, 1939 (unreported), in Cases Nos. 4246 and 4434, as amended.

³ For convenience, this witness will be sometimes referred to hereinafter as "the general manager"; applicant will be referred to as "Asbury"; and Shell Oil Company, Incorporated, will be referred to as "Shell".

movement of gasoline from his company's vehicles to their own. With particular reference to the shipment of Shell gasoline from San Diego to points herein involved, estimated to exceed 4,000,000 gallons annually, he asserted that Shell representatives told him more than a year ago that only a rate reduction would preserve the traffic to for-hire carriers. Thereafter, according to the general manager, his company made a study of its costs, concluded that the rates herein proposed would be reasonable, and received the assurance of Shell that such rates would be sufficiently low to prevent the installation and use of proprietary equipment at this time. He believed it was to the best interests of his company to preserve the business at the sought rates rather than permit it to go to proprietary operations. If the traffic were lost, he was of the opinion that other business which Asbury and other carriers enjoy in the same vicinity would likewise go into proprietary operations.

As justification for the proposed rate reduction, applicant alleged that the bulk of the traffic goes to service stations which are available for unloading 18 hours a day; that applicant is in a position to so schedule the deliveries that the balance of the time can be utilized on return movements; that Shell has provided enlarged storage capacities at a number of the destinations, suitable for large lots; that as a consequence the equipment can be utilized substantially on a round-the-clock basis; that there is no congestion and no waiting at the loading racks at point of origin; that the foregoing conditions permit substantially greater use factors than are possible under average operating conditions; that traffic

density in the territory involved is substantially less than is normally encountered on California highways; and that applicant proposes to use recently developed high-powered Diesel motors which will permit expedited movement over the grades encountered in the territory herein involved.

The proposed rates bear no fixed relationship to the established minimum rates, being lower by amounts ranging from less than one per cent to nearly 30 per cent. The proposed rates approximate, or slightly exceed, applicant's estimated full costs of performing the service, after expansion of the costs to provide an operating ratio of 93 per cent. Applicant's estimates are on what may be termed a "synthetic" rather than an analytical basis. The fixed costs per hour were developed by dividing the fixed annual expenses of a typical vehicle unit by the number of vehicle hours operated annually in the area herein involved. Running costs per mile were those of the assumed vehicle unit, but assertedly gave consideration to known fuel and lubricant consumption rates in this area. The total costs were then developed by multiplying the fixed hourly costs by the estimated loading, unloading, and running hours to each specified point of destination; adding thereto the estimated vehicle running cost and drivers' wages; adding the indirect cost on a percentage basis; expanding for insurance and gross receipts taxes; and expanding for an operating ratio of 93 per cent. The indirect cost was not developed specifically for the movements herein involved, but was taken from the relationship between direct and indirect expenses for all of the property transportation services rendered by applicant in California.

The established minimum rates are on a distance basis, varying according to mileage blocks. The proposed rates, although related generally to the length of haul, are specified separately to each of 21 destinations served by Shell. Applicant proposed no distance scale of its own. The application seeks authority to depart from the long-and-short haul provisions of the Public Utilities Act and of the State Constitution "to the extent necessary to carry out the order herein." Applicant's witnesses were not entirely clear as to the intended application of the sought rates at intermediate or off-route points.

The application includes an affidavit from the traffic manager of Shell stating, among other things, that in the event the Commission does not authorize the sought rates his company will definitely provide its own motor truck equipment for the purpose of performing the transportation in question; and that Shell does not desire to enter into trucking operations except for reasons of economy. The assistant traffic manager of Shell appeared as a witness and testified generally to the same effect. He explained that the company had made a study to determine the cost of operating its own equipment from San Diego to the destinations in question, and had decided that proprietary vehicles would be acquired and operated if the rates herein sought were not approved.

A representative of Union Oil Company of California, called as a witness by applicant, explained that his company ships substantial quantities of gasoline from San Diego to Imperial Valley points, and has given consideration to putting on its own equipment because it feels that the present rates by for-hire carriers are too high. He asserted that proprietary operations would result in a saving to his company.

Granting of the application was opposed by La Salle Trucking Company, a competing highway carrier.⁴ This company did not offer direct evidence of its own, but its counsel actively examined applicant's witnesses throughout the two days of public hearing. He argued that granting of the application would jeopardize the minimum rate structure, to the detriment of other carriers and of shippers who desired to use for-hire transportation. He urged that if the existing minimum rates are excessive in relation to the costs of proprietary trucking, they should be made the subject of study in a general proceeding and not adjusted in a "hodgepodge" manner. Other highway carriers and the major petroleum shippers entered appearances as interested parties, but did not otherwise participate in the proceeding.

The Commission is called upon in this proceeding to find that the proposed reduced rates are reasonable and justified by transportation conditions. The record is convincing that the application was prepared, filed and prosecuted in accordance with what applicant believes to be its best interests. Asbury is in imminent danger of losing a substantial volume of gasoline traffic to proprietary vehicles, and prompt establishment of the sought rates is necessary to enable applicant to retain the traffic. The adjustment herein proposed is not a minor one, and we are fully cognizant of the fact that the consequences of this proceeding may extend beyond the traffic immediately affected and impinge upon the over-all

⁴Upon opening of the hearing, counsel for protestant moved to dismiss the application on the ground that it seeks relief under the Highway Carriers' Act "whereas applicant is now a common carrier operating under the Public Utilities Act." The application is explicit that the rates are intended to be incorporated in the highway common carrier tariff. We are not constrained to dismiss the application upon the technical ground of failure to specify all of the statutory provisions under which relief is sought. The motion will be denied.

minimum rate structure for transportation of gasoline and other petroleum products. Nevertheless, where the choice is one between preserving a particular rate structure or authorizing rate reductions which will permit movement of the traffic, we believe that applicant should be permitted to use its managerial discretion in meeting the needs of commerce. Necessarily, of course, reduced rates may not be permitted to cast an undue burden upon other traffic. In the instant proceeding, although the cost estimates were somewhat skeletonized and the supporting data were not fully disclosed, the figures indicate that the sought rates would not only contribute something to the general cost of applicant's operation, but would in fact be reasonably compensatory. The record does not show that the proposed rates would result in any undue discrimination or be otherwise unlawful. Should it appear to any interested party that the decision herein makes necessary or desirable a further review of the entire minimum rate structure, proceedings may be instituted upon the filing of an appropriate petition.

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 rates sought by the applicant in this proceeding are reasonable and justified by transportation conditions. The application will be granted. In view of the evidence that prompt action is required if the traffic is to be preserved to applicant, the order which follows will authorize establishment of the rates on less than statutory notice.

Authority to depart from the long-and-short haul requirements of Section 24(a) of the Public Utilities Act, and Article XII, Section 21, of the Constitution of the State of California, has not been justified and will be denied.

A.30590* IB

ORDER

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

IT IS HEREBY ORDERED that the rates proposed in the above-entitled application, as amended, may be established within sixty (60) days after the effective date of this order, and on not less than five (5) days' notice to the Commission and to the public.

In all other respects the application, as amended, be and it is hereby denied.

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

Dated at San Francisco, California, this 13th day of December, 1949.

R. E. [Signature]
Justice J. [Signature]
[Signature]
Harold P. [Signature]
[Signature]
 Commissioners