

ORIGINALDecision No. 54545

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
 the Rates, Rules, Regulations, Charges,)
 Allowances and Practices of all Common)
 Carriers, Highway Carriers, and City)
 Carriers, relating to the transportation)
 of Petroleum and Petroleum Products in)
 Bulk (Commodities for which Rates are)
 provided in Minimum Rate Tariff No. 6).)

Case No. 5436
 Petition No. 19, filed
 October 24, 1956

Phil Jacobson, for applicant.
Harry M. Schafer, for Union Oil Company,
 intervenor in support of petition.
Theodore A. Russell, for the Tank Truck
 Operators' Association, a conference of
 the California Trucking Associations, Inc.,
 interested party.
 A. E. Patton, by W. Y. Bell, for Richfield Oil
 Corporation, interested party.
W. J. Knoell, for Tank Truck Operators'
 Tariff Bureau, interested party.
R. A. Lubich and John F. Specht, for the
 staff of the Public Utilities Commission
 of the State of California.

O P I N I O N

L P G Transportation Corp. is a California corporation engaged in operations as a highway common carrier of liquid petroleum gases under a certificate of public convenience and necessity granted by Decision No. 42849, dated May 10, 1949, as amended by Decision No. 42996, dated June 14, 1949. It seeks authority under Section 452 of the Public Utilities Code to establish reduced rates for the transportation of butane mix between Battles (near Santa Maria) on the one hand and Wilmington and Brea on the other hand, which rates are lower than those that apply as minimum under the provisions of Minimum Rate Tariff No. 6 (formerly City Carriers' Tariff No. 5 - Highway Carriers' Tariff No. 6). Petitioner's present rates and

its proposed rates for the transportation are as follows:

Between Battles and	<u>Present Rates</u> <u>per Gallon</u>	<u>Proposed Rates</u> <u>per Gallon</u>
Wilmington	\$.01728	\$.015
Brea	.02128	.018

Public hearing on the application was held before Examiner C. S. Abernathy at Los Angeles on January 7, 1957. Evidence was presented by petitioner through its president, by a representative of Union Oil Company (an interested shipper) and by a highway common carrier engaged in like operations. Evidence was also presented by three carrier witnesses called on behalf of the California Trucking Associations, Inc., an interested party. Members of the Commission's engineering and rate staffs participated in the development of the record.

Petitioner's president testified and submitted exhibits to show that under present rates the services in question yield substantial profits and that under the sought reduced rates the services would be adequately compensatory. According to his exhibits, which purported to set forth the results of operations over three months, September through November, 1956, the services under present rates between Battles and Wilmington resulted in earnings as indicated by an operating ratio of 80.2 percent and the services between Battles and Brea resulted in earnings as indicated by an operating ratio of 68.3 percent. The exhibits state that had the sought rates been in effect during this period the resultant operating ratios would have been 91.95 percent and 80.7 percent, respectively.

The representative of the Union Oil Company testified that he had made a determination of the costs which his company would incur were it to perform the transportation for its own account and that such costs are lower than the proposed rates. He declared that

in the event that the proposed rates are not authorized his company would perform the services itself.

The carrier witness called by petitioner testified that his company is engaged in performing the same services as those involved herein, that they are profitable, and that in the event the sought rates are authorized for petitioner, his company would undertake to meet them in order to remain competitive.

The witnesses who were called on behalf of the California Trucking Associations, Inc., testified that their respective companies are engaged in the business of transporting liquefied petroleum gases, including butane mix, in tank truck equipment as highway common carriers. They submitted exhibits setting forth the sizes of the vehicles used by their companies in this service.

Discussion, Findings and Conclusions

Under the provisions of Section 452 of the Public Utilities Code the rates which petitioner seeks may be authorized on a finding that they are justified by transportation conditions. Grounds for such a finding have not been provided on this record.

First, the evidence is clear that petitioner's showing is based in part upon unauthorized operations. The authority under which petitioner's services as a highway common carrier of liquefied petroleum gases are conducted permit operations over 10 designated routes with the right to make lateral departures therefrom within a radius of 50 miles. In so far as the services which are involved herein are concerned, the authorized routes are U. S. Highways 101 and 101 By-Pass. The testimony of petitioner's president shows that in performing the services petitioner routes its vehicles to and from the Los Angeles area over Highway 101 Alternate, over which it has no authority to operate, from the junction of said highway with Highway 101 at El Rio north of Oxnard. This departure from

the authorized routes is for a distance of about 50 miles, or about one quarter of the distance between Battles and Wilmington and between Battles and Brea. This is not an inconsequential departure, and will not be disregarded. Because of this unauthorized aspect of the operations, and because the record does not otherwise disclose the transportation conditions which would apply to the services if performed in conformity with petitioner's authority, the showing will not be accepted as basis for approving the sought rates.

Second, the evidence is not persuasive that, aside from the matter of unauthorized routing, petitioner can achieve the operating results represented in its exhibits by operation of its vehicles within legal speed limits and by employment of its drivers for periods not in excess of the maximum prescribed by the Commission's General Order No. 99. The testimony of petitioner's president pertaining to vehicle speeds and drivers' hours is somewhat ambiguous and conflicting. It appears, however, that between Battles and Wilmington the vehicles are operated at average speeds ranging from 38.5 to 40.5 miles per hour and that between Battles and Brea the vehicles are operated at average speeds ranging from 39.9 to 42 miles per hour. Considered in the light of the circumstances under which these speeds are obtained -- under conditions which include stops for vehicle checks and for drivers' "coffee breaks", and conditions of traffic congestion and restricted speeds in the urban areas along the route -- the average speeds shown appear so high in relation to the legal maximum of 45 miles per hour applicable to the vehicle units used in the services that they will not be accepted as reasonable without a substantial affirmative showing concerning their propriety. Such a showing was not made. With respect to hours of duty of the drivers employed in the services, petitioner's cost figures reflect 15 hours of continuous

duty between Battles and Wilmington and 15½ hours between Battles and Brea. Under the provisions of General Order No. 99, 15 hours of continuous duty for drivers is the designated maximum. In view of this maximum, and the number of hours reported, the foregoing comments concerning need for establishment of the propriety of the vehicle speeds apply likewise in connection with the drivers' hours.¹

Other infirmities of petitioner's showing which may be mentioned but which do not require extensive discussion are (a) an absence of supporting detail in connection with the cost showing and (b) the limited nature of the showing in that it was confined to past operations without attempting to set forth estimates of results that may reasonably be expected in the future. The cost data were presented in summary form and were explained largely in general terms. Petitioner declined to submit details in support of the asserted correctness of the data. With reference to estimates for the future, petitioner did not undertake to measure to what extent the level of its operating costs would be affected by various expense increases which petitioner has recently experienced or to which it is committed. In these respects the showing of transportation conditions under which the sought rates would apply is deficient.

Upon careful consideration of the record in this matter, the Commission finds and concludes that the reduced rates which

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Aside from the matter of compliance with the provisions of General Order No. 99, the propriety of the drivers' duty hours has a substantial bearing upon the costs of the service, particularly in view of the high vehicle speeds. The 15 and 15½ duty hours cover one round trip between Battles and Wilmington and between Battles and Brea, respectively. With the duty hours at or slightly above the prescribed maximum for a single shift, any reduction in vehicle speeds to conform to legal speed limits obviously would require the use of additional drivers and an increase in operating costs accordingly.

petitioner seeks to establish have not been shown to be justified by transportation conditions within the meaning of Section 452 of the Public Utilities Code. The petition will be denied.

O R D E R

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

IT IS HEREBY ORDERED that Petition No. 19, in Case No. 5436, be and it hereby is denied.

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

Dated at San Francisco, California, this 19th day of FEBRUARY, 1957.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.