

ORIGINAL

Decision No. 55421

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation by)
the Commission on its own motion of)
rates published in Section 3-A of)
Southwestern Motor Tariff Bureau)
Local and Proportional Petroleum)
Tank Truck Tariff No. 1, Cal. P.U.C.)
No. 11 of J. L. Beeler, Agent, for)
the transportation of petroleum and)
petroleum products.)

Case No. 5694

Ivan McWhinney, for respondents.

A. E. Patton, by W. Y. Bell, for Richfield Oil Corporation, interested party.

A. D. Carleton, by E. W. Rowe, for Standard Oil Company of California, interested party.

William J. Knoell, for Tank Truck Operators' Tariff Bureau, interested party.

J. W. Mallory, for the staff of the Public Utilities Commission of the State of California.

O P I N I O N

This is an investigation by the Commission on its own motion into the lawfulness and propriety of certain rates and charges for the transportation of petroleum and petroleum products which are maintained by J. L. Beeler, a tariff publishing agent, on behalf of the following respondent highway common carriers and/or petroleum irregular route common carriers: Floyd G. Powers and Raymond L. Smith (doing business as Airway Trucking Company), Belyea Truck Co., Capitol Tank Lines, Inc., Chancellor & Ogden, Inc., El Jo Corporation, George Hillyer, Lacey Trucking Co., V. S. Morgan Co., National Tank

Lines, President Tank Lines, Inc., Routh Transportation, Union Truck Co., Inc., W. R. Webster and W. O. Webster (doing business as Webster Tank Truck Service), and M. E. Erskine (doing business as D & M Tank Line). The investigation stems from the fact that the rates in question apparently are lower than those which may be assessed under the minimum rate orders of the Commission.¹

On January 30, 1957, subsequent to notice to respondents and to other persons and organizations believed to be interested, public hearing on the matter was held before Examiner C. S. Abernathy at Los Angeles. Evidence was presented by a rate expert of the Commission's staff and by respondents' tariff agent, J. L. Beeler.

The facts in this matter are not in dispute. Minimum rates for the transportation of specified petroleum products in bulk by highway carriers have been promulgated in Minimum Rate Tariff No. 6 and by related decisions of the Commission. These rates do not apply for transportation by rail carriers. In various instances the rates of rail carriers are lower than those that are set forth in Minimum Rate Tariff No. 6. Under alternative provisions of the tariff, highway common carriers and petroleum irregular route carriers may establish and maintain rates the same as the rates of other common carriers (including railroads) when such rates produce lower charges for the same transportation than the rates in the minimum rate tariff. J. L. Beeler has published rates on behalf

¹ It appears that subsequent to the initiating of this proceeding, the participation of Belyea Truck Co., George Hillyer, and M. E. Erskine (doing business as D & M Tank Line) in the rates in issue herein has been canceled. The investigation, as it applies to these carriers, will be terminated.

of the respondent carriers named above which are lower, or produce charges lower, than those provided for under the provisions of the applicable minimum rate orders in various respects. In some instances the rates are lower directly. Lower charges also result under respondents' rates because of less restrictive provisions governing the routing of shipments and switching services than ✓
would apply were the transportation performed by rail carriers. ✓
 Furthermore, regulations corresponding to those which govern the ✓
 transportation of flammables and other dangerous articles by rail do not apply in connection with respondents' rail competitive rates.² In this sense, also, respondents' rail competitive rates are lower in effect than those of the rail carriers. In addition, in various instances where respondents' establishment of rail competitive rates has involved departures from the long-and-short haul provisions of Section 460 of the Public Utilities Code and of Article XII, Section 21, of the State Constitution, respondents have not obtained authorization from the Commission for said departures as required by the Public Utilities Code and the Constitution.

Although conceding that respondents' rail competitive rates are now less in various respects than the corresponding rates of the rail carriers, respondents' tariff agent nevertheless declared that they are not improper. He asserted that the provisions of Section 454 of the Public Utilities Code are controlling in the circumstances and

² Regulations which govern the transportation of flammables, explosives and other dangerous articles by the rail carriers are published in Tariff No. 9, or reissues thereof, of H. A. Campbell, Agent.

that before increases may be effected in the rates the requirements of said section must be met.³ In support of this view he said that in hundreds of instances over the past years he has sought and has been granted authority under Section 454 to establish increased rates in circumstances similar to those herein.

As a further explanation of the present level of respondents' rail competitive rates, the tariff agent said that in recent years the increases and other changes which have been effected in the rail rates have been so numerous as to exceed his ability to make like changes in respondents' rates. He said, also, that the maintenance of rail competitive rates is particularly burdensome from a tariff-publishing standpoint due to the large number of tariff publications of the rail carriers that must be continually reviewed, analyzed and reproduced in whole or in part in order to avoid rate differences of the kind which are in issue herein.

Discussion, Conclusions and Findings

It is evident that respondents' rates, rules and regulations which are the subject of this investigation are lower in volume and effect than the rates, rules and regulations which are provided by Minimum Rate Tariff No. 6. It is also evident that the competitive conditions which prompted respondents to establish the reduced rates under authority of the alternative provisions of the minimum rate tariff have changed and that as a consequence the rates are lower than necessary to maintain respondents on a plane of rate equality with competing common carriers.

³ No public utility shall raise any rate or so alter any classification, contract, practice or rule as to result in any increase in any rate except upon a showing before the Commission and a finding by the Commission that such increase is justified. Section 454, Public Utilities Code.

Upon consideration of the evidence in this matter, the Commission is of the opinion and finds as a fact (a) that various of the rates, rules and regulations which are maintained in respondents' behalf by J. L. Beeler in Section 3-A of his Local and Proportional Tank Truck Tariff No. 1, Cal. P.U.C. No. 11, for the transportation of petroleum and petroleum products in bulk are lower in volume or effect than the rates, rules and regulations that may be assessed for said transportation in accordance with the provisions of Minimum Rate Tariff No. 6; (b) that the increases which will result from compliance with the following order are justified; and (c) that various of said rates, rules and regulations of respondents are contrary to the prohibitions of Section 460 of the Public Utilities Code and of Section 21 of Article XII of the State Constitution in that they result in greater compensation in the aggregate for transportation for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance; and (d) that various of said rates, rules and regulations of respondents are not plainly stated in the manner required by Section 487 of the Public Utilities Code.

O R D E R

Based on the evidence of record and on the conclusions and findings set forth in the proceeding,

IT IS HEREBY ORDERED that

1. Floyd G. Powers and Raymond L. Smith (doing business as Airway Trucking Company), Capitol Tank Lines, Inc., Chancellor & Ogden, Inc., El Jo Corporation, Lacey Trucking Co., V. B. Morgan Co., National Tank Lines, President Tank Lines, Inc., South Transportation, Union Truck Co., Inc., and W. R. Webster and W. O. Webster (doing business as Webster Tank Truck Services), respondents in the above-numbered proceeding, be and they hereby are ordered and directed to amend their tariff, rates, rules and regulations as set forth in Section 3-A of Local and Proportional Petroleum Tank Truck Tariff No. 1, Cal. P.U.C. No. 11, of J. L. Beeler, Agent as follows:

- a. To effect such increases and revisions as necessary to make said rates, rules and regulations conform in volume and effect to the minimum rates, rules and regulations which apply for the transportation of petroleum and petroleum products by highway carriers pursuant to the provisions of Minimum Rate Tariff No. 6, including Item Nos. 110 and 120 series of said Minimum Rate Tariff No. 6.
 - b. To do such things as are necessary to the establishment, in conformity to the Commission's General Order No. 80, of a plain description of the commodities for which rates are provided in the aforesaid Section 3-A of Local and Proportional Petroleum Tank Truck Tariff No. 1, Cal. P.U.C. No. 11, of J. L. Beeler, Agent.
2. The aforesaid respondents which are named in paragraph 1 above, be and they hereby are authorized to depart from the provisions of Section 21 of Article XII of the Constitution of the State of California and from the provisions of Section 460 of the Public Utilities Code to the extent necessary to carry out the effect of this order.
3. The aforesaid respondents which are named in paragraph 1 above, shall establish and put into effect, on not less than 5 days notice to the Commission and to the public and on not less than 30 days after the effective date of this order, the revised rates, rules and regulations required by this order.
4. The aforesaid respondents which are named in paragraph 1 above, shall, with the establishment of the revised rates, rules and regulations in accordance with paragraph 3, herein, thenceforth cease and desist from assessing or collecting lesser rates than the minimum rates and charges prescribed by the Commission for the transportation of petroleum and petroleum products in bulk by highway carriers.
5. This investigation as it applies to Belyea Truck Co., George Hillyer, and M. E. Erskine (doing business as D & M Tank Line), be, and it hereby is, terminated.

IT IS FURTHER ORDERED that the Secretary of this Commission is directed to cause personal service of this order to be made upon the respondents named in paragraph 1, herein.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of August, 1957.

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

Commissioner Ray E. Untereiner, being necessarily absent, did not participate in the disposition of this proceeding.