

ORIGINAL

Decision No. 67770

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LONNIE CASE TRUCKING INC.,
 Successor to Cities Fuel Lines,
 a California corporation,
 dba EMPIRE TRANSPORTATION
 COMPANY, and SECURITY TRANSPOR-
 TATION CO., Successor to Security
 Truck Line, for an order author-
 izing departure from the
 provisions of Section 454 of the
 Public Utilities Code, to advance
 certain rates and charges to the
 level prescribed by the Commis-
 sion's Minimum Rate Tariff No. 6.

Application No. 46643
 (Filed May 18, 1964)

C. R. Nickerson, for applicants.

Denver J. McCracken, for Western Motor
 Tariff Bureau, Inc., interested
 party.

Henry E. Frank, for the Commission staff.

O P I N I O N

Lonnie Case Trucking, Inc. (Case), and Security Trans-
 portation Co. (Transportation), a corporation, operate as highway
 common carriers between points in this State. By this application
 they seek authority to increase rates on bulk petroleum and
 petroleum products transported in tank truck equipment.

Public hearing of the application was held before
 Examiner Bishop at San Francisco on July 9, 1964.

By authority of Decision No. 65678, dated July 9, 1963,
 in Application No. 45419, Case was authorized to acquire the
 highway common carrier and petroleum irregular route carrier
 operative rights of Cities Fuel Lines, a corporation, doing
 business as Empire Transportation Company. By Decision No. 64905,

dated February 5, 1963, in Application No. 45054, Transportation was authorized to acquire the operative rights of Security Truck Line, a predecessor corporation.

Under the terms of said Decision No. 65678, Case was required to establish rates on the same level, subject to the outstanding minimum rate orders, as the rates previously published by Cities Fuel Lines. Decision No. 64905 directed Transportation to amend or reissue the tariffs naming the rates of Security Truck Line to show that Transportation had adopted said rates or established them as its own.

The rates on petroleum and petroleum products in bulk applicable via Cities Fuel Lines and Security Truck Line were set forth, on the dates of issuance of the above-mentioned decisions, in Tariffs Nos. 3-D, 30-A and 33-B, issued by Western Motor Tariff Bureau, Agent. Pursuant to the directives in the decisions, the record indicates, the rates of Cities Fuel Lines were adopted by Case and those of Security Truck Line were adopted by Transportation.

Minimum rates, rules and regulations for the transportation of petroleum and petroleum products by highway carriers are set forth in the Commission's Minimum Rate Tariff No. 6. Under the alternative rate provisions of that tariff, permit carriers may observe, and highway common carriers and petroleum irregular route carriers may publish and apply, rates equivalent to those published in railroad tariffs where such rates produce lower charges for the same transportation than result under the rates specifically published in said minimum rate tariff. The record shows that many of the rates published for Cities Fuel Lines and

Security Truck Line in said tariffs of Western Motor Tariff Bureau reflected the levels of the applicable rail rates and were lower, by varying amounts, than the rates named in Minimum Rate Tariff No. 6 between the same points. Said rail-competitive rates became the rates of applicants upon implementation of Decisions Nos. 64905 and 65678.

Applicants, the record further shows, considered the rail-competitive rates to be insufficient to be compensatory for the services involved, insofar as their own operations were concerned.^{1/} Some time prior to December 1, 1963, at the direction of applicants, tariff filings were made with the Commission which would eliminate Case and Transportation as parties to Western Motor Tariff Bureau Tariffs Nos. 3-D, 30-A and 33-B, and would concurrently make these carriers parties to Pacific Coast Tariff Bureau Tariff No. 6, issued by C. R. Nickerson, Agent. The latter tariff names rates on bulk petroleum and petroleum products transported in tank truck equipment; said rates are on levels equivalent to those specifically published in the Commission's Minimum Rate Tariff No. 6.

The above-mentioned tariff filings became effective, as scheduled, on December 1, 1963. The effect of eliminating applicants from the Western Motor Tariff Bureau tariffs and making them parties to the Pacific Coast Tariff Bureau tariffs was to increase their bulk petroleum rates from the rail-competitive levels to the levels of the rates set forth in the Commission's Minimum Rate Tariff No. 6. No authority to make such increases had been secured from the Commission by applicants prior to making the

^{1/} The rail-competitive rates set forth in the above-mentioned Tariffs Nos. 3-D, 30-A and 33-B, applied and continue to apply in connection with numerous other highway carriers, parties to said tariffs. According to the application, 135 such carriers were parties to the tariffs in question, as of January 1964.

tariff filings in question. In effect, the instant application seeks authority for the increases in rates which took place on December 1, 1963.^{2/}

The tariff publishing agent for Pacific Coast Tariff Bureau testified on behalf of applicants. The vice president of Case and the terminal manager of Transportation testified on behalf of their respective companies. The tariff agent testified that the Commission's staff, by letters dated December 18 and 20, 1963, had informed Transportation and Case, respectively, that increase authority was required by Section 454 of the Public Utilities Code for the tariff adjustments in question. He further testified that applicants had been of the opinion that such authority was not necessary. Additionally, they had believed that the authorities originally granted to maintain the rates sought to be canceled (when said rates were those of Cities Fuel Lines and Security Truck Line) might not be transferred from one agent to another.^{3/}

With respect to the applicant Case, the agent pointed out that the provision in Decision No. 65678, above, which directed Case to publish rates on the same level as those previously published by Cities Fuel Lines, contained the restrictive language "subject to outstanding minimum rate orders". Apparently Case construed this provision as authorizing it to make the aforesaid adjustment of December 1, 1963.

The vice president of Case testified that his company did not consider, to any appreciable extent, the level of the rates of Cities Fuel Lines when the latter carrier was taken over.

^{2/} The application herein was filed on May 18, 1964.

^{3/} Reference was made to certain authorizations to depart from the long- and short-haul provisions of the Public Utilities Code and of the Constitution of the State of California, in connection with the establishment of rail-competitive rates under alternative rate provisions of the minimum rate orders. Such authorizations, it is to be observed, were issued to the carriers involved rather than to tariff publishers acting as their agents.

Case has four pieces of tank truck equipment which it utilizes in bulk petroleum hauls between the Bakersfield producing area and points in Fresno County. Many of the rail-competitive rates to which this carrier was formerly a party in the Western Motor Tariff Bureau apply between points far removed from Case's base of operations. According to the witness, Case could not recover, under the rail-competitive rates, the costs involved in making the long empty hauls from and to the areas in question in addition to the costs of the loaded movements. He stated that his company had not made any cost studies relating to the transportation to which the rates herein in issue apply, as no transportation had been performed by Case under those rates. Based on his experience in the trucking business, he was of the opinion that said rates generally were insufficient to return to his company the costs of operation.

The terminal manager of Transportation testified to the same general effect. This witness had been employed by the predecessor company, Security Truck Line, as operations manager prior to the transfer of operative rights to the present owner. His company, he stated, does not possess any tank truck equipment at the present time. The predecessor company at one time did own such equipment, the last units of which were sold in 1962. Transportation, he said, is currently negotiating with three large oil companies to transport bulk petroleum for them. In the event that such an arrangement is worked out, Transportation will acquire suitable tank truck equipment for that purpose and the rates to be assessed would be those set forth in said Pacific Coast Tariff Bureau Tariff No. 6.

No one opposed the granting of the application. Representatives of the Western Motor Tariff Bureau and of the Commission's Transportation Division Rate Branch staff assisted in the development of the record.

The rates here in issue, which are set forth or otherwise identified in Exhibit "A" of the application, apply between numerous points in central and southern California, including movements between those two areas. As hereinbefore stated, they presently apply for some 135 petroleum irregular route carriers. It appears that like rates are published in other common carrier tariffs for many other haulers and that some 400 carriers now have the benefit of the rail-competitive bulk petroleum rates, either under common carrier tariffs or, as permit carriers, under the alternative rate provisions of the Commission's Minimum Rate Tariff No. 6.

Clearly, the cancellation of applicants from participation in the Western Motor Tariff Bureau tariffs, with their concurrent addition as parties to Pacific Coast Tariff Bureau Tariff No. 6, resulted in increases in rates for which no authority was obtained from this Commission. Section 454 of the Public Utilities Code provides that 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. Applicants are hereby cautioned in making future tariff adjustments, or in arranging for the publication of such adjustments for their account, to avoid violations of constitutional, statutory or other regulatory provisions by which they, as for-hire carriers of property, are governed.

We find that:

1. The increases in rates for which authority is herein sought were published to take effect on December 1, 1963.
2. Said publications were made without the required authorization by this Commission.
3. Said failure to secure authorization was apparently based upon misconstruction of the statutes and of the Commission's rules relating to highway common carrier rate adjustments.
4. The rail-competitive rates which applicants seek authorization to cancel continue to apply for the account of numerous other for-hire carriers of bulk petroleum and petroleum products and are still available to the general public.
5. The increases in rates for which authority is herein sought have been justified.

The Commission concludes that the application should be granted to the extent set forth in the ensuing order:

O R D E R

IT IS ORDERED that:

1. Lonnie Case Trucking, Inc. and Security Transportation Co. individually shall, within thirty days after the effective date of this order, cause to be published for their respective accounts the following provisions:

- (a) In Western Motor Tariff Bureau, Inc., Tariffs Nos. 3-D, 30-A and 33-B, or in a "scope of operations" or "participating carrier" directory governing said tariffs, an explanation to the effect that the elimination of said carriers as parties thereto

will result in increases in rates for which authori-
zation was obtained by the decision herein, specifying
decision number and date.

(b) In Pacific Coast Tariff Bureau Tariff No. 6,
or in a "scope of operations" or "participating carrier"
directory governing said tariff, a symbol in connection
with the names of said carriers the explanation of which
shall be to the effect that the addition of said car-
riers, as parties to said publication, will result in
increases in rates for which authorization was obtained
by the decision herein, specifying decision number and
date.

2. Tariff publications required to be made as a result of
the order herein may be made effective not earlier than the tenth
day after the effective date of this order on not less than ten
days' notice to the Commission and to the public.

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

Dated at San Francisco, California, this 25th
day of AUGUST, 1964.

Fredrick B. Holshoff
President

W. E. Marshall

Wesley A. King

George H. Crowder

William M. Bennett
Commissioners