

ORIGINAL

Decision No. 76464

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 and highway
carriers relating to the transporta-
tion of property by vacuum-type
and pump-type tank vehicles
(including transportation for which
rates are provided in Minimum Rate
Tariff No. 13).

Case No. 6008
Petition for Modification
No. 10
(Filed May 1, 1969)

Richard W. Smith, Arlo D. Poe, and H. F. Kollmyer,
for California Trucking Association, petitioner.
J. W. Bohannon, for Mobil Oil Corporation; M. Robert
Day, for Shell Oil Company; and R. L. McCue, for
Atlantic Richfield Company, protestants.
Clarence W. Gieck, for Wm. H. Hutchison & Sons
Service Co., Inc.; Paul Jenkins, for Fix & Brain
Vacuum Truck Service; James E. Ogden and Ernest
T. Wieter, for Chancellor & Ogden, Inc.;
Roy D. Owen, for Rowth Transportation; and
Norval Rice, for Superior Vacuum Trucks,
respondents.
Robert E. Walker and William E. Roe, for the
Commission staff.

O P I N I O N

California Trucking Association (CTA) has petitioned for an increase in the minimum rates established by the Commission in Minimum Rate Tariff No. 13 for the transportation of property in vacuum-type and pump-type tank vehicles. The matter was heard July 16 and 21, 1969 before Examiner Thompson at San Francisco and was submitted on written closing statements received July 31, 1969. Shell Oil Company, Atlantic Richfield Company, Mobil Oil Corporation and the Commission staff oppose the increases sought by petitioner.

A brief recital of certain decisions of the Commission in Case No. 6008 will assist in understanding the issues raised in the proceedings on this petition.

In 1956 California Trucking Association filed Application No. 38489 seeking the establishment of minimum rates for the transportation by highway carriers of liquid commodities in vacuum and pump tank truck equipment. On October 30, 1956 the Commission ordered hearings set in Case No. 5432 for the purpose of receiving evidence in the matter of establishing such minimum rates. Following two days of hearings, the Commission on September 24, 1957 entered its Decision No. 55584 in said proceeding. The Commission found therein that there were common carriers engaged in transporting liquid commodities over public highways at tariff rates published and on file with the Commission, that such transportation was not then subject to minimum rates, and that competition among carriers has resulted in some carriers assessing rates that were unreasonably low. The decision recites that applicant prepared and offered a study of the cost of performing the transportation and that the evidence of record was not convincing regarding the validity of said study. The decision mentions with particularity the basic cost figures relating to use factor and economic service lives of equipment. It was stated that applicant's proposed rates reflect a provision for profit of about 10 percent of the costs shown in its study and that such proposed rates were higher than the then present rates of tariff-publishing carriers by amounts ranging upwards to about 30 percent. The then present rates of the tariff-publishing carriers, and the rates proposed by applicant, were applicable to the time from the departure of the vehicle from the carriers' terminals to its return thereto. The Commission found that notwithstanding the infirmities of applicant's showing, the evidence provided sufficient grounds for the prescription of

minimum rates, and that hourly rates applicable to the time from when the carrier's equipment reports for service until its release from service, and at a level of 5 to 7 percent higher than the then present rates of tariff-publishing carriers would be just, reasonable and nondiscriminatory minimum rates for such transportation. Such minimum rates were established in Minimum Rate Tariff No. 13.

In 1959, 1960 and 1962 the minimum rates were adjusted upwards to offset increases in labor costs.

On October 1, 1963 the Commission entered its Decision No. 66114 increasing the minimum rates to offset increases in labor costs. It said therein,

"Should petitioner undertake to seek in a subsequent phase of this proceeding further increases in the rates in Minimum Rate Tariff No. 13, it should undertake to establish that the data upon which it relies are reasonably representative of the circumstances then applicable to the transportation involved."

In 1968 the minimum rates were increased to offset increases in labor and related costs.

By Petition No. 8, filed August 28, 1968 and amended October 3, 1968, CTA notified the Commission that it had made a study of transportation performed in vacuum tank vehicles and as a result thereof proposed a general revision of the rates in Minimum Rate Tariff No. 13. Hearings were held in that petition in November 1968 and the matter was submitted on briefs received December 23, 1968. On April 1, 1969, the Commission entered its Decision No. 75522 in that proceeding. The decision states that while a number of revisions in specific items of the tariff were proposed the effects of such proposals were to (1) make the minimum rates applicable to all commodities and services involving

the use of vacuum tank vehicles (2) provide hourly minimum rates which are applicable from the time the vehicle leaves the carrier's terminal until it returns, and (3) provide a level of rates which would be reflective of April 1, 1969 cost levels. The decision recites that although petitioner stated that almost 20 percent of the present vacuum truck transportation requested by shippers and performed by carriers is beyond the scope of Minimum Rate Tariff No. 13, it did not explain or describe the activity or services involved in this 20 percent, and if it comprises only the cleaning of cesspools and septic tanks, the removal of water and waste from public highways and the removal of oil waste from beaches and harbors, it does not appear that the establishment of minimum rates for such clean-up work is necessary to the application and enforcement of the minimum rates prescribed in the minimum rate tariff.

Among the Commission's findings in said decision are:

"7. The establishment of minimum rates for the transportation of waste material for disposal is not always in the best interest of the public.

"8. Petitioner has not shown that the establishment of minimum rates for all services involving the use of vacuum-type tank vehicles is necessary to the application and enforcement of the minimum rates established in Minimum Rate Tariff No. 13, nor has it shown that the establishment of minimum rates for such clean-up services is consistent with the best interests of the public."

With respect to the proposal to make the rates applicable from and to the terminal, the Commission found:

"9. It has not been shown that the computation for hourly rates on a terminal to terminal basis will provide just, reasonable and nondiscriminatory minimum rates for the services for which rates are prescribed in Minimum Rate Tariff No. 13."

The decision states that the cost study prepared by petitioner was directed towards its proposed rate structure and was not susceptible

to adjustment and therefore not appropriate for use as a measure for adjusting the then current minimum rates. It was found that since the last adjustment in the rates in Minimum Rate Tariff No. 13, the hourly labor costs incurred by the carriers had increased by at least 30 cents per hour. The Commission in that decision increased the minimum rates by 30 cents per hour.

By its Petition No. 10, herein, petitioner requests adjustment of rates in the present minimum rate tariff to levels of about 110 percent of the full costs estimated by petitioner and set forth in Exhibit 10-1. Petitioner's position in this matter is set forth in its closing statement which, after referring to the directive contained in Decision No. 66114, states:

"In compliance with such directive, a basic study of existing circumstances was undertaken in 1965 and completed in 1968. The study indicated that circumstances have changed since the original study underlying the establishment of Minimum Rate Tariff No. 13 by Decision No. 55584, dated September 24, 1957, and such changed circumstances were presented to the Commission by your Petitioner in Petition No. 8. However, by Decision No. 75522, dated April 1, 1969, the Commission determined that the relief sought by Petitioner in Petition No. 8 encompassed areas of operation not properly within the scope of Minimum Rate Tariff No. 13. Accordingly, your Petitioner has limited the relief sought by Petition No. 10 to modification of the existing rate structure in Minimum Rate Tariff No. 13 consistent with the mandate of Decision No. 75522. The relief sought by Petition No. 10 is limited to modification of the current rate structure based upon known and measurable cost increases measured, in fact, by Petitioner in the above-mentioned study. The current costs experienced by highway carriers operating under Minimum Rate Tariff No. 13 have been presented in the same format as were the costs underlying Minimum Rate Tariff No. 13 when originally instituted."

The evidence offered by petitioner consists of the testimony of the assistant director of its division of transportation

economics and of exhibits prepared by him. He stated that the petitioner's proposals herein are based on an updating of Exhibit G-1 presented by CTA in Application No. 38489. The cost factors in his cost estimates were either brought directly from said Exhibit G-1 or were taken from data developed by CTA for its presentation in Petition No. 8. The witness was under the erroneous impression that the cost study in Exhibit G-1 was the basis for the rates established by the Commission in Minimum Rate Tariff No. 13 in Decision No. 55584. He utilized 8 year service lives for all types of equipment and their appurtenances because that was used in Exhibit G-1. It was found in Decision No. 55584 that the validity of such service lives was not established sufficiently to be acceptable for the purpose of that proceeding. The witness's testimony herein indicates that there are a substantial number of vehicles, and particularly trailing vehicles, with service lives exceeding 8 years that are used by carriers in performing services subject to rates in Minimum Rate Tariff No. 13.

As is pointed out by the Commission staff, the witness was not consistent in his treatment of data in estimating the costs. Overall operations of the carriers, including those not subject to minimum rates, were considered in estimating vehicle fixed costs, running costs and indirect expense; however, in the development of use hours per year (use factor) the witness separated the use of equipment for services not subject to Minimum Rate Tariff No. 13, thereby causing the use factor to be lower than that for the overall operations.

Protestants point out that the indirect expense ratio of 43 percent estimated by the witness is higher than that utilized in

any cost estimates for minimum rate purposes. According to the witness the next highest indirect expense ratio for any class of carriers is around 40 percent which occurs in connection with household goods carriers. The witness stated that the reason for the high indirect expense for vacuum truck services is the amount of field supervision required. He then went on to say that the degree of supervision required depends entirely upon the nature of the job being performed and that it varies widely.

The principal deficiency in petitioner's presentation is that its cost estimates and the format of Exhibit G-1 do not at all reflect the present operations of carriers engaged in vacuum truck services. The witness admitted this in connection with correlating of data for equipment of various capacities. There are other instances of which we will mention two for illustrative purposes.

In the development of pumping costs the witness utilized the format and the cost factors in Exhibit G-1 with adjustment to reflect the current price of gasoline, yet the witness stated that in his opinion other cost factors have changed materially over the years.

Minimum Rate Tariff No. 13 has two scales of rates; one for Territory A, which consists of the counties of Orange, Los Angeles, Riverside, San Bernardino, San Diego and Imperial, and the other scale for the balance of the State comprising Territory B. In Exhibit G-1 costs were developed for three areas called, Los Angeles Basin, Ventura and Bakersfield. The witness herein utilized the same format as in Exhibit G-1, that is, separate cost developments for the three areas. The cost data that he utilized,

however, was based almost entirely upon the operations of four carriers, one of which has principal operations in the Bakersfield area and three having principal operations in the Los Angeles area. He developed a "Ventura Area Cost" by averaging the cost factors of the four carriers and also utilizing some of the factors in Exhibit G-1. He said that he had to do this because "we couldn't find anybody of any size that was actually located in Ventura in this business". He said that the four carriers whose operations formed the basis of his estimates enjoy 75 percent of the total revenues reported to the Commission as being earned from transportation subject to Minimum Rate Tariff No. 13.^{1/} With respect to use factor hours the witness was able only to obtain data from the three Los Angeles Basin carriers; nevertheless, different use factor hours were estimated for all three areas.

The rates proposed by petitioner for Territory B represent an average of the costs developed for Bakersfield Area and Ventura Area; however, the "Ventura Costs" represent a composite of the cost development for Los Angeles (75%) and Bakersfield (25%). The so-called Ventura Costs are meaningless.

Petitioner's closing statement and the testimony of the witness indicate petitioner is under the erroneous impression that in Decision No. 75522 the Commission issued some sort of mandate that there should be no change in the existing minimum rate structure. The structure of the minimum rates should be reflective of actual circumstances and conditions of the transportation subject

^{1/} Exhibit G-1 lists the carriers surveyed by CTA in 1956. There were listed 75 carriers operating approximately 250 pieces of equipment. At that time the four carriers were shown as operating 49 units or approximately 20 percent of the total pieces of equipment. Appendix A of Decision No. 75522 lists 35 carriers known to the Commission as engaged in transportation subject to Minimum Rate Tariff No. 13. From the foregoing an inference can be drawn that since 1956 there have been substantial changes in this type of transportation.

to the minimum rates. In this proceeding the evidence indicates that a different scale of carrying capacities of vehicles would be more reflective of actual circumstances and conditions; however, the evidence does not permit a determination of what rates would be just, reasonable and nondiscriminatory minimum rates for a revised scale of vehicle carrying capacities.^{2/}

In Decision No. 75522 we stated that petitioner proposed that minimum rates be established for each "engagement" of a vacuum truck, that petitioner had not explained or described the services to which the proposed minimum rates would apply, but if it involved only the cleaning of cesspools and septic tanks and certain other clean-up activities, good cause for the extension of minimum rates to cover such services had not been shown. From the evidence herein it appears that there is another type of vacuum truck service petitioner believes should be subject to minimum rate regulation. There was testimony by the witness that these vehicles are sometimes utilized only to pump oil or other fluids from one tank or sump to an adjacent tank or sump. Apparently, while performing this service the vehicle remains stationary. We remind petitioner that the Commission's minimum rate-making power is conferred by statute. With respect to highway carriers it is limited to the establishment of just, reasonable and nondiscriminatory minimum or maximum or minimum and maximum rates for the transportation of property by motor vehicle over the public highways of this State, for accessorial services performed in connection with such transportation, and to

^{2/} For example: there is evidence that instead of rates for capacities of 0 to 35 barrels and 36 to 45 barrels, there should be rates established for capacities of from 0 to 40 barrels and from 41 to 60 barrels; however, the evidence does not permit a determination of what would be the just, reasonable, and nondiscriminatory minimum rate for vehicles of such capacities.

the establishment of such rules and regulations as may be necessary to the application and enforcement of such rates.^{3/}

We find that:

1. By petition filed May 1, 1969, California Trucking Association proposes modifications in the levels of rates prescribed in Minimum Rate Tariff No. 13.

2. Petitioner's rate proposals are based upon its estimates of the costs of providing transportation services in vacuum-type tank vehicles, which estimates are set forth in Exhibit 10-1 herein.

3. The cost estimates, and the underlying data, are not reasonably representative of the current circumstances and conditions applicable to the transportation of property for which minimum rates have been established in Minimum Rate Tariff No. 13.

4. The evidence presented by petitioner does not permit a determination of whether the minimum rates established in Minimum Rate Tariff No. 13 are unreasonable and should be adjusted.

5. The rates proposed by petitioner have not been shown to be the just, reasonable and nondiscriminatory minimum rates for transportation subject to Minimum Rate Tariff No. 13.

We conclude that the petition filed herein should be denied.

^{3/} If such pumping service were to be used as a device by a highway carrier to permit a shipper to obtain transportation services at less than the established minimum rates the Commission could impose sanctions upon the carrier; however, it could not establish minimum rates to be observed by all carriers for pumping services not connected with the transportation of property by motor vehicle over public highways.

O R D E R

IT IS ORDERED that Petition for Modification No. 10 filed by California Trucking Association is denied.

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

Dated at San Francisco, California, this 25th day of NOVEMBER, 1969.

William J. Spence, Jr.
President
Alexander
J. B. Buchanan
Thomas
James L. Stinson
Commissioners