

ORIGINAL

Decision No. 88880 MAY 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Investiga- )  
tion for the purpose of consid- )  
ering and determining minimum )  
rates for transportation of )  
petroleum and petroleum products )  
in bulk, in tank truck equipment )  
statewide as provided in Minimum )  
Rate Tariff 6-B and the revision )  
or reissues thereof. )

Case No. 5436  
Petition for Modification No. 263  
(Filed January 31, 1978; Amended  
April 13, 1978)

OPINION AND ORDER

By this petition, Don E. Keith, an individual, requests authority to apply his existing monthly vehicle rates for volume tender shipments of petroleum products to points of destination located 275 actual highway miles from point of origin in lieu of 250 miles as now published. The present rates are published in Item 710 of Western Motor Tariff Bureau, Inc., Agent, Local and Joint Freight and Express Tariff 18, Cal. P.U.C. 24.

Petitioner contends that the extension is required to meet the needs of shippers' customers because present parameters do not serve the market area which was established many years ago and does not reflect the growth of the economy and changes in market relocations within the state. Petitioner also alleges that it is urgent and imperative that the request be granted as there are shippers of petroleum products who have not yet secured sufficient equipment to conduct full-scale proprietary operations. Petitioner avers that diversion to proprietary operations is resulting in a loss of more than \$50,000 a month since the original filing of this petition.

Petitioner alleges that the proposed changes are necessary to meet the needs of petitioner's shippers and their customers.

Revenue and expense data submitted by petitioner indicates that the transportation may reasonably be expected to be profitable under the proposed rates.

Copies of the petition and amendment were mailed to various shipper organizations, carrier representatives, and other interested parties on or about January 26 and April 12, 1978, respectively. The petition and amendment were listed on the Commission's Daily Calendar of February 1 and April 14, 1978, respectively.

On May 1, 1978, California Trucking Association (CTA) filed a formal protest alleging that under Note 1 of the proposed rules, the unit of carrier's equipment is obligated for a period of 30 days (720 consecutive hours), and therefore, no provision for alternative use is made. CTA also takes exception to the sought waiver of the requirement for written confirmation of tender.

In petitioner's reply to CTA's protest on May 16, 1978, petitioner contends that the proposed rule is basically the same rule which is published in petitioner's present tariff. In addition, the current volume tender rate provisions are complex and carriers and shippers have difficulty with, among other things, the written confirmation of a tender and the written agreement referred to in connection therewith.

The written agreement requires, among other things, that carrier's unit(s) of equipment be specifically identified. When that is done, the equipment so identified cannot be used for any other shipper's transportation during the period set forth in the written agreement. Petitioner's proposal to enter into an oral rather than a written agreement would simplify and liberalize the existing requirement, yet require the shipper to commit itself to a monthly volume tender by requiring, among other things, a prepayment of \$5,207.00. Under petitioner's proposal he would be allowed to accept back-haul traffic and initial hauls from other shippers when the facilities involved in the monthly volume tender movement are shut down or are at full capacity.

Petitioner avers that under the proposal he will achieve a more efficient utilization of his equipment; provide shippers and receivers with the flexibility required in the marketing of the products here involved; and provide the public with the necessary goods and services flowing therefrom.

According to petitioner, protestant's reference to Commission Resolution 18020 dated April 4, 1978 is misleading inasmuch as it applies to Petroleum Contract Carriers and not petitioner's Common Carrier operations of petroleum products.

The Commission agrees with petitioner that the probative evidence set forth in the petition, as amended, clearly shows that the circumstances and conditions surrounding the transportation in question are different from those experienced by other carriers; that the needs of commerce and the public interest require that the sought relief be granted; and that petitioner's proposal is reasonable and justified by transportation conditions.

In the circumstances, the Commission finds that:

1. The needs of commerce and the public interest require that the proposed rates on petroleum products be established.
2. The proposed rates are reasonable and justified by the transportation conditions.

The Commission concludes that the petition should be granted as set forth in the ensuing order, and the effective date of this order shall be the date hereof because there is an immediate need for this rate relief. A public hearing is not necessary.

IT IS ORDERED that:

1. Don E. Keith, an individual, is authorized to perform the transportation shown in Appendix A attached hereto and by this reference made a part hereof.
2. Tariff filings shall be made effective on not less than one day's notice to the Commission and to the public.
3. Don E. Keith, an individual, is authorized to depart from the provisions of Section 461.5 of the Public Utilities Code in

establishing and maintaining the rates authorized herein. Schedules containing the rates published under this authority shall make reference to this order.

4. The authority granted herein shall expire one year after the effective date of this order unless sooner cancelled, modified or extended by further order of the Commission.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 31st day  
of 1 MAY, 1978.

Robert Bateman  
President

William J. Lyons

Vernon L. Stinson

Charles D. Smith

Commissioners

Commissioner Claire T. Dedrick, being  
necessarily absent, did not participate  
in the disposition of this proceeding.

APPENDIX A

## MONTHLY VEHICLE UNIT VOLUME TENDER RATES

1. Rates and provisions herein apply only when performed subject to and in accordance with provisions of this item, and apply to the transportation of shipments of petroleum products as described in Item No. 41, from any origin point to any points of destination located 275 actual highway miles of the first point of origin where loading is commenced. Subject to a minimum of 6,000 gallons per load.
2. The provisions of this item apply only when prior to the transportation of the property the consignor has requested verbally that transportation be performed under the provisions of this item and has selected a monthly period, and indicates date of commencement.
3. All applicable rates and charges must be paid by the consignor and shall be applied subject to Notes 1 through 20 as follows:

RATES  
(VEHICLE UNIT RATES)

- (a) The basic charge per unit of carrier's equipment per monthly period shall be:
  - (1) For all commodities except those moving in pressurized equipment-----\$781.00  
PLUS
- (b) An additional charge of \$13.70 per man, per hour, for all times that drivers are actually driving carrier's equipment, and for all times consumed in loading and unloading operations, the additional charge shall be assessed at \$13.70 per man, per hour, or 31 cents per mile, whichever produces the higher total charge. (See minimum hours charge in Note 15.)  
PLUS
- (c) An additional charge per mile, as follows:
 

First 5,000 miles (Minimum per month per unit equipment, \$1,550)-----	\$ .31
Next 5,000 miles -----	\$.26 1/2
Over 10,000 miles -----	\$.26 1/2

Note 1: (A) Monthly period shall commence on the date and time of arrival of carrier's equipment at the first point of origin to transport the first shipment in the monthly period and terminate 720 hours later; however,

the monthly period shall not be deemed to be terminated until the unit of carrier's equipment is returned or charges paid for return of unit of carrier's equipment to first point of origin of the first shipment. Except as provided under Note 13, upon expiration of the 720 consecutive hours or the monthly period, a unit under load may be unloaded; however, no new loading of carrier's equipment will be permitted. Charges set forth in Paragraphs 3(B) and 3(C) shall be assessed for time used in excess of 720 hours, except that minimum charge provisions will not be applicable, for hours in excess of 720.

- (B) Each unit of equipment (for definition, see Note 3) shall be made available to the shipper for the full month requested except that if the unit of equipment, (for definition, see Note 3) is inoperable for a period exceeding four hours in any day of any month requested awaiting replacement or repairs, the month shall be extended for any such time exceeding four (4) hours for each inoperable period.
- (C) The basic charge for carrier's unit of equipment will not be subject to any allowances.
- (D) The basic charge for carrier's unit of equipment will not be applicable to the period of time that a monthly period may be extended due to carrier's equipment failure.

Note 2: As used in this item, monthly period means 30 consecutive days (720 consecutive hours).

Note 3: As used in this item "unit of carrier's equipment" means any power unit, tank trailer or tank semitrailer, or any combination of such highway vehicles operated together as a single unit. It also includes any of vehicles used in the replacement of the unit of carrier's equipment, or a portion thereof, which has become inoperable while engaged in transportation of this item.

Note 4: Mileage applicable in connection with this item shall be the actual mileages that carrier's unit of equipment operates during the full monthly period requested and shall be computed from the time that carrier's equipment arrives at first point of origin until its return to that same point at the end of the monthly period requested.

Note 5: The mileage charge will apply for all miles required to exchange drivers at other than the first point of origin.

- Note 6: Carrier will provide internal cargo tank cleaning if requested by the shipper during any monthly period, subject to additional charges provided in Item 243 for the cleaning of each unit of carrier's equipment. In addition to such charges, carriers will also assess the applicable mileage and hourly charges set forth herein.
- Note 7: When transportation is performed under the provisions of this item, the following provisions or rules will not apply:  
Page 5 - Note 1, Group 2 mileage basing point -  
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- Item No. 80 - Application of governing distance table
  - Item No. 120 - Assessment of charges
  - Item No. 160 - Collect on delivery shipments
  - Item No. 180 - Demurrage or detention charges
  - Item No. 230 - Group rates
  - Item No. 243 - Internal cargo tank cleaning (except as provided in Note 6)
  - Item No. 245 - Issuance of shipping documents
  - Item No. 250 - Paragraph 2(B) - Pumping charge
  - Item No. 255 - Shipments returned
  - Item Nos. 260 and 270 - Minimum charge
  - Item No. 300 - Railhead delivery
  - Item No. 320 - Shipments stopped in transit for weighing, application of seals or for partial loading or unloading
  - Item No. 350 - Shipments diverted
  - Item No. 360 - Vapor recovery and/or bottom loading equipment
  - Item No. 375 - Station list and conditions and railhead pickup and delivery zone limits.
- Note 8: All required tolls, ferry, special permits and weighmaster fees shall be in addition to the above rates and charges. When requested by the consignor, carrier shall pay required tolls, ferry, special permits and weighmaster fees, and those fees or charges shall be treated as charges advanced for the account of the consignor.
- Note 9: The charge for collecting and remitting amounts collected on C.O.D. shipments transported under provisions of this item shall be \$3.80 per collection, subject to a maximum total charge of \$27.30 per monthly period.
- Note 10: (a) The provisions of this item shall not apply unless at the time of the pick-up of each shipment a shipping document shall have been issued by the carrier to the consignor. In the event two or more points of origin are involved in the shipment, the shipping document shall indicate each such point of origin.

(b) A shipping document shall be issued by the carrier to the consignor for each individual shipment, and shall show beginning and ending times, chargeable hours, loaded and empty miles traversed on that trip. A copy of each shipping document shall be retained and preserved by the issuing carrier for a period of not less than three years from date of issuance. The form of shipping document in Item No. 740 will be suitable and proper.

- Note 11: (a) When pumping service is performed by the carrier, at steam generating facilities, an additional charge of \$3.20 per hour shall be made for the first ten hours plus an additional \$1.10 per hour, or fraction thereof, for all additional hours. The minimum charge for pumping service shall be the charge for one hour.  
(b) When pumping service is performed by the carrier at locations other than steam generating facilities, an additional charge of \$6.00 shall be assessed for each pumping service. In no event shall more than one charge be assessed in connection with a single shipment.
- Note 12: When the total loaded miles exceed the total empty miles of the monthly period, an additional charge of 5 1/4 cents per mile will be made for each excess loaded mile traveled by the carrier's equipment.
- Note 13: No allowance shall be made to the shipper for any non-productive or lost time which is not attributable to the carrier, except that if the carrier's equipment is inoperable for a period exceeding four hours in any day waiting replacement or repair, the monthly period shall be extended for any such time exceeding four hours.
- Note 14: In the event that a driver is unable to complete a shipment because of an excess of hours of service and must layover enroute as required by law, a charge of \$13.70 per hour, minimum eight hours, will be assessed in addition to all other time that a driver or drivers are assigned to operate the carrier's equipment.
- Note 15: Subject to a minimum charge based upon 20 hours for each day that a driver or drivers are assigned to operate carrier's equipment.
- Note 16: If at shipper's request, equipment includes bottom loading capability or pumps or meters, the following additional charge shall be assessed per month:
- |  |         |
|--|---------|
| Per meter -----                                    | \$50.40 |
| Per pump -----                                     | \$20.40 |
| Tanks with bottom loader, per<br>compartment ----- | \$19.15 |



Tanks with vapor recovery system, per  
compartment -----\$ 4.80

Note 17: In the event a monthly period expires prior to the last day of a calendar month, and the shipper elects to start a yearly period with the same unit of carrier's equipment on the first day of the succeeding month, the monthly period shall be extended upon payment of the following charges per day:

(a) Basic charge per unit of carrier's  
equipment -----\$33.60

PLUS

(b) The additional hourly charges provided in  
Paragraph 3(b) of this item.

PLUS

(c) An additional charge of 24 cents per mile,  
per day, per unit of carrier's equipment.

Note 18: Within seven days after the start of transportation hereunder, carrier shall bill and collect a prepayment of \$5,207.00. Such prepayment shall be deducted from the total transportation charges accumulated during such monthly period provided, however, that if the same shipper elects to use the same unit of carrier's equipment for a subsequent monthly period beginning within 24 hours, such prepayment shall not be deducted and shall be considered the required prepayment for said subsequent monthly period.

Note 19: In the event a monthly period is terminated by the shipper prior to the expiration of 720 consecutive hours, shipper shall pay full basic charge and aggregate charges to date of termination.

Note 20: ACTUAL HIGHWAY MILEAGE means the actual highway distance along the shortest usable route.

(END OF APPENDIX A)