EA /KD

ORIGINAL

Decision No. 90222 APR 24 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the investigation for the purpose of considering 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 revisions or reissues thereof.	Case No. 5436 Petition for Modification No. 263 (Filed January 31, 1978; amended April 13, 1978) Petition for Modification No. 269 (Filed April 13, 1978; amended May 2, 1978 and December 18, 1978)

Chickering & Gregory, by Edward P. Nelsen, Attorney at Law, for Don E. Keith, petitioner in Pet. 263 and Pet. 269.
William A. Haerle, Attorney at Law, for California Trucking Association, petitioner for rehearing of D.88880 in Pet. 263, and protestant in Pet. 269.
Brundage, Davis, Frommer, & Jessinger, by Roger A. Carnagey, Attorney at Law, for Western Conference of Teamsters, California Teamsters Public Affairs Council, protestant in Pet. 263 and Pet. 269.
Everest A. Benton, for the Commission staff.

OPINION

Don E. Keith (Keith), an individual, is a petroleum irregular route carrier engaged in the transportation of petroleum and petroleum products in tank truck equipment. He seeks authority to change or reduce specified common carrier rates published on his behalf in Western Motor Tariff Bureau, Inc., Agent, Local and

Joint Freight and Express Tariff 18, Cal. P.U.C. 24 (Tariff 18), for transportation of certain shipments of petroleum products.

Public hearing on these matters was held on a consolidated record before Administrative Law Judge Norman B. Haley at Los Angeles on January 17 and 18, 1979. The matter was submitted on February 2, 1979, the due date for letter briefs.

Keith presented the only evidence. Representatives of California Trucking Association (CTA), Western Conference of Teamsters, California Teamsters Public Affairs Council (Teamsters), and the Commission staff (staff) assisted in developing the record through cross-examination of Keith's witnesses. Keith and CTA furnished letter briefs. Teamsters' position is stated in late-filed Exhibit 3.

Presentation of Keith

Keith testified on his own behalf. In addition, Earl N. Miles (cost witness) and Elliott A. Smith (shipper witness) were called. The shipper witness is vice president of supply and distribution for Jack Holland and Son (Holland), a fuel oil distributor in Bakersfield.

In addition to his petroleum irregular route certificate, Keith holds a petroleum contract carrier permit and certain other carrier authorities. He operates between 30 and 35 complete units of truck equipment and has from 75 to 80 employees. Between 65 and 70 of the employees are drivers. Keith's drivers are subject to a contract with the International Union of Petroleum and Industrial Workers, AFL-CIO.

Among other things, Keith hauls for refineries in the Bakersfield Extended Area (Bakersfield), as described in the Commission's Distance Table 8. These include Holland, Western Asphalt, Lyon Oil Company, California Refinery, Westlake Petroleum, Unesco, Quad Refinery, Mohawk Oil Company, and West Coast Refinery. Diversion of for-hire petroleum hauling to proprietary equipment now is a substantial threat to Keith. Holland has a six-truck proprietary fleet operating out of Bakersfield and proposes to add more of its own trucks as its business expands. West Coast Refinery recently purchased eight new trucks; Mohawk Refinery recently purchased four new ones; and Pacific Refinery, which is located in Sunland, now has a proprietary fleet of 12 to 15 trucks and trailers.

Exhibit 1 is a profit and loss statement reflecting overall carrier operations for nine months ending December 31, 1978. It shows carrier revenue of $2,959,785; expenses of $2,645,248; and a net profit of $314,537, for an operating ratio of 89.37. Appendix B to original Pets. 263 and 269 is Keith's profit and loss statement reflecting petroleum irregular route operations for the year ended November 30, 1977. It shows revenues of $2,287,350; expenses of $2,023,787; a net profit of $263,563; and an operating ratio of 88.48. Keith's balance sheet as of March 31, 1977 shows assets of $2,048,555 and a net worth of $1,080,396.

Petition 263

By D.88880, dated May 31, 1978, Keith was authorized to apply certain existing monthly vehicle rates in Tariff 6-B for volume tender shipments of petroleum products to points of destination located within 275 actual highway miles of point of origin, in lieu of 250 miles. D.88880 also provided, among other things, that volume tender agreements could be oral, rather than in writing. It also provided a definition of "actual highway miles" which was not necessarily the route driven, but rather the mileage via the shortest usable route. The authority in D.88880 is scheduled to expire May 31, 1979.

On June 8, 1978 CTA filed an application for suspension and rehearing of D.88880. By D.89234, dated August 8, 1978, the Commission granted rehearing of D.88880.

It is Keith's position that the authority sought in Pet. 263 involves only very minor changes in revenue under volume tender provisions for the additional distances between 250 and 275 miles compared to revenue under distance rates in cents per 100 pounds. He points out that charges per unit of equipment, per man per hour, mileage, minimum charges, prepayment, and pumping would remain unchanged. He is confident that net revenues will be no less, and in all probability will increase under the proposal, due to increased efficiencies. Keith explains that loading and unloading facilities are available 24 hours a day, 7 days a week. Volume of movement is expected to continue on levels which have made it possible to achieve maximum utilization of equipment.

Keith's rate proposal in Pet. 263 is set forth in Appendix A of the amendment to the petition filed April 13, 1978. The rates themselves are in paragraph 3 under the heading "Vehicle Unit Rates". Increases in the proposed rates were made on the record. The basic monthly charge per unit of carriers' equipment in paragraph 3(a) was increased from $781 to $823. In paragraph 3(b) the two additional charges of $13.70 per man per hour were changed to $14.70. The alternative charge of 31 cents per mile was changed to 32 cents. In paragraph 3(c) the additional charge per mile for the first 5,000 miles was changed from 31 to 32 cents. The additional charge for greater mileages was changed from 26-1/2 to 27-1/2 cents per mile.

Appendix C to amended Pet. 263 shows per-trip cost data for Keith for round trips of 500 miles and 550 miles. Those data show that with total costs considered the carrier would have an operating ratio of 93.63 for each of these distances.

Petition 269

By Pet. 269 Keith seeks authority to publish and file a rate of $1.72 per barrel[1/] for fuel oil from Bakersfield southeasterly to Cushenbury, a one-way distance of about 180 miles. Holland has a contract to be the sole supplier of fuel oil to Kaiser Cement Company (Kaiser) at Cushenbury. When the cement plant is operating at full capacity, Holland ships between 16 and 20 truck and trailer loads a day.

Keith currently hauls fuel oil between Bakersfield and Cushenbury under monthly vehicle volume tender provisions of Tariff 18. Holland hauls some of its own fuel oil in proprietary equipment between these points. Whenever a proprietary truck is added in competition with Keith he loses about $16,000 a month. On the Cushenbury haul he formerly was operating eight or nine trucks, but now is operating five or six due to proprietary competition. Altogether Keith estimates he loses about $50,000 a month from operation of proprietary equipment on the Cushenbury haul. Central Valley Petroleum and Bulldog Trucking are petroleum contract carriers also engaged in the same hauling. The shipper witness stated that if Pet. 269 is granted, his company would transfer its proprietary equipment to other operations and prorate all of the Cushenbury traffic among the for-hire carriers it now uses on that run.

1/ The initial proposal in Pet. 269 was a rate of $1.60 per barrel for minimum loads of 152 barrels, plus $13.70 per man-hour spent on loading and unloading operations. During the hearing the proposal was amended by increasing the per-barrel rate of $1.72 and deleting the hourly charge. In the interest of simplicity Keith would accept authorization in a form similar to Item 556 of Tariff 18, which is a special commodity rate of $2.07 per barrel for hauling residual fuel oil by another carrier, American Transfer Company, from Bakersfield northwesterly to Permanente, as authorized by D.89086 (1978).

Fuel oil is picked up at loading racks at Bakersfield. Loading can be accomplished in 30 minutes at the better racks. At Kaiser's Cushenbury facilities there are pumping systems at two unloading spots. Separate hoses can be hooked up to the truck and trailer so they can be unloaded at the same time. The carrier does not use his own pumps except in unusual cases when there is a breakdown of the consignee's pump. A complete round trip between Bakersfield and Cushenbury takes about 10½ hours. About 8½ hours is driving time.

Fuel oil is loaded into tank truck equipment at Bakersfield at temperatures generally between 200°F and 300°F. Many of the vehicles are insulated. The warmer the oil is at destination, the faster it can be unloaded. Holland does not ship fuel oil to Cushenbury by rail because, among other things, transit time of two to three days is of sufficient duration that the oil would have to be reheated at additional cost in order to unload it.

Kaiser has a storage tank at Cushenbury with a capacity of about 50,000 barrels. Kaiser consumes about 3,000 barrels of fuel oil a day in the manufacture of cement. Holland is under contracts, both with its suppliers and with Kaiser. Holland's contract with Kaiser provides that if the price of fuel oil exceeds the price of natural gas, it does not have to buy fuel oil. This assertedly creates a situation whereby Holland can pass on increased transportation costs to Kaiser, but Kaiser need not buy the oil at a price higher than that of natural gas. It was alleged that this has two damaging effects to Holland. First, under a vehicle volume tender Holland can only estimate its costs per barrel in advance of sale, and if the estimate is wrong, Holland will suffer a loss. Holland learns what its costs are under the volume tender arrangement only when it receives the invoices. Second, although Kaiser could switch to natural gas, Holland would still have commitments to purchase oil from its suppliers. Under the proposed per-barrel rate Holland would know its transportation costs in advance of deliveries and could make arrangements with its suppliers if it cannot sell the oil to Kaiser.

Keith's proposed per-barrel rate in Pet. 269 assertedly would offer several advantages over vehicle volume tender provisions. He explained that when a carrier's trucks are operated under present volume tender provisions, the shipper pays a monthly charge for the unit of equipment subject to the tender. As long as the shipper can make use of the truck involved, it cannot be used to make hauls for any other shipper during the period of the tender. Moreover, unless there is a breakdown of carrier's equipment such that other equipment must be substituted for it, no other equipment of the carrier can be used if charges are to be set pursuant to the volume tender rates. In other words, if there are eight units of equipment under volume tenders, those eight units can be used for no other shipper. Neither can the carrier use an additional unit in the same trade unless he charges distance rates in cents per 100 pounds.

Assertedly, current tariff restrictions governing volume tender have certain consequences which are undesirable if the carrier's efficiency is to be maximized. Keith's trucks return from Cushenbury empty. More revenue could be produced and there would be greater efficiency if after unloading at Cushenbury his vehicles could go to Newhall or Los Angeles and pick up a load of asphalt, crude oil, or other commodity from other shippers for the return trip to Bakersfield. However, because such loads would be hauled for different shippers, current tariff requirements prohibit such use of equipment when subject to volume tender provisions. The proposed per-barrel rate would permit desired flexibility and the trucks would not have to return empty. Economies per unit of product hauled would result from more efficient use of equipment, labor, and diesel fuel. In other words, if the per-barrel rate were in effect, a truck that otherwise would be idle could be dispatched to haul a load to Cushenbury without tying that truck up in a volume tender.

The cost witness explained that the proposed per-barrel rate offers certain benefits to the shipper as well because he would pay for truck equipment only when used. Under the monthly volume tender arrangement the shipper pays a fixed amount per equipment unit covered by the tender. If, for some reason, he has nothing to ship on a given day, the carrier can use his equipment for a different shipment. However, the equipment charge for that day would have to be paid, resulting in higher costs to the shipper.

Exhibit 2, which was developed from Keith's records by the cost witness, is the cost study for Pet. 269. It reflects increased costs since Appendix A to the original petition was filed. Costs are predicated upon an average of 500 trips per year representing 180,000 miles. Revenue of $261.44 per trip is projected at the revised proposed rate of $1.72 per barrel. The original proposed rate was $1.60 per barrel. The higher rate is designed to compensate for an increased allowance of as much as an hour loading and an hour and a half unloading time. It is contemplated that this will reduce instances where separate calculations for excess loading or unloading time will have to be made. The proposed rate of $1.72 per barrel would cover fully distributed costs and produce an operating ratio of 93.8. This is on the assumption that the equipment would return empty from Cushenbury to Bakersfield. Any profit that would be made by hauling petroleum products northerly from Newhall, Los Angeles, or some other point would be in addition to profit which would otherwise be made and would further improve that operating ratio.

In Exhibit 2 the cost witness utilized drivers' wages, including fringe benefits, that Keith pays pursuant to contract with the International Union of Petroleum and Industrial Workers, AFL-CIO. During cross-examination by counsel for Teamsters the witness was of the opinion that criteria could not be developed relative to a prevailing wage in the area. He said that based upon his experience with carriers transporting various kinds of truckload shipments there is a great variety of labor scales in the area. Some carriers have union contracts and others do not. Wages per hour assertedly vary substantially among carriers, even under Teamsters' contracts. Counsel for Teamsters said he realized there is a great divergency in the area. The cost witness stated that if Keith paid the same labor scales as provided in the Teamsters' contract, the $1.72 per-barrel rate still would produce an operating ratio less than 100.

According to the cost witness, Keith is an efficient carrier, as are the other carriers that compete with him in the Bakersfield to Cushenbury traffic. Keith's two competitors on the Cushenbury hauls, Bulldog Trucking and Central Valley Petroleum, were served with Pet. 269, as were other trucking companies who were not direct competitors. Although Pet. 269 was protested by CTA, no carrier protested the petition or otherwise objected to its being granted. Keith contends that this is because other carriers also would benefit if the petition were granted because they would be able to use the per-barrel rate and derive the same benefits as he does.[2/] Specifically, competing carriers would have the opportunity to make additional hauls to Cushenbury as Holland removes its proprietary equipment from that transportation. The proposed rate would increase fuel economy by avoiding the necessity of making the 180-mile return trip from Cushenbury with empty trucks. Assertedly, other carriers also would be able to accept return loads to Bakersfield from other shippers, thereby benefiting from greater utilization of equipment, labor, and fuel. Keith asserts that under Pet. 269 there would be benefits to everyone involved and detriments to no one.

Position of CTA

CTA contends that since the cost witness considers Keith to be an efficient operator, but no more efficient than his competitors, he has not made a showing that the proposed per-barrel rate to Cushenbury is justified by transportation conditions. CTA contends that Keith's depreciation figures are understated. It argues that Exhibit 2 reflects depreciation factors based upon an eight-year period, or 1,440,000 miles per tank unit, whereas Keith testified he attempts to turn over his units somewhere around 500,000 miles. That would be somewhat less than a three-year average service. Assertedly, the maintenance and repair factor in Exhibit 2 reflects a figure approximately one-half of the comparable cost figures in C.5436, Pet. 265, which are the bases for the current minimum rates and charges. CTA concludes

---

2/ When a rate is published in a common carrier tariff which is less than the minimum rate published by the Commission for the same transportation, the lower common carrier rate becomes the minimum rate under Section 3663 of the Public Utilities Code and conforming rules in minimum rate tariffs. Petroleum contract carriers could charge and petroleum common carriers could publish the same rate.

that the maintenance and repair and depreciation figures were adjusted upwards. Accordingly, the operating ratio reflected in Exhibit 2 would move toward the 98.0 mark. Assertedly, this discloses there is some question as to whether Keith should be considered the ratemaking carrier for the transportation involved since any rates he is authorized to publish become new minimum rates because of Section 3663 of the Public Utilities Code and conforming rules in the minimum rate tariff (rules governing alternative applications of common carrier rates).

CTA contends that the threat of proprietary carriage is not sufficient to establish the reasonableness of proposed rates and contends that the Cushenbury traffic already has been lost to proprietary carriage. With respect to Keith's request for relief from requirement for written confirmation of the volume tender agreement, CTA asserts that the Commission has recognized the necessity for written rate schedules and has included such a requirement in its proposed regulatory program.

CTA asserts that the record does not show that Keith's operations are any more efficient than those of his competitors in handling the traffic in question and, therefore, Keith has not made a presentation which allows the Commission to make the mandated findings of Section 452 that the proposal is justified by the needs of commerce or public interest and that the proposed rate is justified by transportation conditions. CTA urges that Pets. 263 and 269 be denied.

Position of Teamsters

Teamsters' position is contained in late-filed Exhibit 3 which is the same as Exhibit 244-20 in C.5436, Order Setting Hearing 244, and related matters. Exhibit 3 relates to issues, some of which are broader than or different from those involved in this proceeding. Teamsters' views in Exhibit 3, as they pertain to this proceeding, can be summarized as follows.

Teamsters contends that the labor component of trucking costs is substantial. It believes that any California freight rate structure, in order to be considered "reasonable", must provide that the wage component of the cost calculation equals or exceeds the prevailing wage, inclusive of fringe benefits. Teamsters states that the prevailing rate may or may not be the union contract rate, and that in certain areas it would not be the union contract rate, but a somewhat lower one. It argues, however, that if a rate filed by a carrier who employs union drivers is considered reasonable, then a rate filed by another carrier who may employ nonunion drivers at significantly lesser cost must be considered unreasonable. Teamsters asserts that subhaulers should be paid sums which include the prevailing wages plus fringe benefits, as well as for use of any equipment supplied by them.

Discussion

Keith is a relatively large carrier of petroleum and petroleum products. The record clearly shows that those operations are profitable. Keith had a net profit from overall carrier operations for nine months ending December 31, 1978 of $314,537. Petroleum irregular route operations resulted in an operating ratio of 88.48 for the year ended November 30, 1977. As of March 31, 1977 Keith's assets exceeded liabilities by a substantial margin.

Keith's operations under rates authorized by D.88880, Pet. 263, are profitable. Total costs for round trips of 500 and 550 miles, as shown in Appendix C to first amendment to Pet. 263, result in an operating ratio of 93.63.

Keith's proposed rate of $1.72 per barrel of fuel oil from Bakersfield to Cushenbury would be profitable. Projected cost data in Exhibit 2 for that operation would produce an operating ratio of 93.8. CTA's contention that the operating ratio would be higher was not supported by any evidence and its challenge by way of cross-examination was inconclusive. Accordingly, CTA's contention is rejected. To the extent Keith obtains return loads to the Bakersfield area from points such as Newhall and Los Angeles, the operating ratio of 93.8 would be improved.

The record shows that the rates proposed in Pets. 263 and 269 would be profitable because of favorable operating conditions. Specifically, the proposed rates would reflect efficiencies (1) from loading and unloading facilities being available 24 hours a day, 7 days a week; (2) high equipment use factor; (3) reduction in amount of paper work; and (4) in the case of Pet. 269, from higher than normal load factors resulting from some return loads being available from Los Angeles and Newhall. More efficient use would be made of equipment, fuel, and labor. There is nothing in the record to show that cost data developed to support the rate proposals in Pets. 263 and 269, including the costs of labor and fringe benefits, are not reasonable costs for the purposes of these proceedings.

Heretofore, we have authorized a number of highway carriers who publish common carrier rates to reduce rates for particular transportation when it has been shown that such reduced rates are not in violation of applicable provisions of the Public Utilities Code. The type of rate relief requested by Keith principally involves Code Sections 452, 726, 3662, and 3663. To a large extent, minimum rates established by the Commission underlie rates in Tariff 18. Minimum rates reflect a number of factors, including cost of performing service by efficient means. Single scales or types of minimum rates usually apply over wide geographic areas. When a common carrier finds that lower rates are justified for particular transportation in a given area because costs reflect efficiencies that it or any other carrier can realize, then the propriety of the minimum rates for that particular transportation requires reassessment. We recently authorized Warren Trucking Co., Inc. (Warren), D.89474 (1978) to publish certain reduced rates for transportation of newsprint to approximately 200 destinations over a wide area of southern California. In Warren we discussed the applicable code sections and certain Commission and Supreme Court cases pertaining to them.

The principal purposes of the rate proposals in Pets. 263 and 269 are to take advantage of the efficiencies identified above and to attract traffic that otherwise will continue moving in proprietary equipment. To the extent minimum rates are greater than those proposed, they are excessive and above the value of the service performed by Keith. Based on this record, the proposed rates are the lowest of the lawful rates for any type or class of carrier expected to participate in the traffic involved. The needs of commerce and the public interest require that those rates be established. They are justified by transportation conditions.

Findings

1. Keith is a certificated petroleum irregular route carrier engaged in the transportation of petroleum and petroleum products in tank truck equipment. He also holds a petroleum contract carrier permit and certain other carrier authorities.

2. The rates for bulk petroleum products proposed in Pets. 263 and 269 would replace certain common carrier rates published on behalf of Keith in Tariff 18.

3. The principal purposes of the relief sought in Pets. 263 and 269 are to meet proprietary competition and to effect operating efficiencies not otherwise attainable.

4. By D.88880, in Pet. 263, Keith was authorized to apply certain existing monthly vehicle rates for volume tender shipments of petroleum products, subject to certain conditions, to points of destination located within 275 actual highway miles of point of origin, in lieu of 250 miles.

5. The effect of D.88880 was to authorize Keith to charge vehicle volume tender rates for distances between 250 and 275 miles, in lieu of distance rates in cents per 100 pounds. This essentially is a change in basis of assessing rates, although certain reductions may result.

6. The authority in D.88880 is scheduled to expire May 31, 1979. Keith seeks extension and certain modification of that authority.

7. Petroleum irregular route operations performed by Keith are profitable.

8. Keith's operations under rates authorized by D.88880, Pet. 263, are profitable.

9. By Pet. 269 Keith seeks to charge $1.72 per barrel of fuel oil from Bakersfield to Cushenbury, a one-way distance of about 180 miles.

10. The rate of $1.72 per barrel sought in Pet. 269 is designed to apply in lieu of existing monthly vehicle rates for volume tender shipments.

11. Keith transports approximately 25 percent of the fuel oil that is transported from Bakersfield to Cushenbury; about 25 percent is hauled by each of two petroleum contract carriers; and about 25 percent is hauled in proprietary equipment.

12. Keith's operations under the $1.72 rate per barrel proposed in Pet. 269 would be profitable.

13. Exhibit 2 shows that the rate of $1.72 per barrel proposed in Pet. 269 would produce an operating ratio of 93.8. To the extent Keith obtains return loads to the Bakersfield area from points such as Newhall and Los Angeles, that operating ratio would be improved.

14. Rates proposed in Pets. 263 and 269 would reflect efficiencies from loading and unloading facilities being available 24 hours a day, 7 days a week; high equipment use factor; reduction in amount of paper work; and in the case of Pet. 269, from higher than normal load factors resulting from some return loads being available from Los Angeles and Newhall. More efficient use of equipment, fuel, and labor would be attainable.

15. Whether fuel oil moves from Bakersfield to Cushenbury by for-hire carriers, by proprietary carrier, or at all, depends upon the cost of natural gas to Kaiser, which is close to the delivered price of fuel oil.

16. Holland does not ship fuel oil to Cushenbury by rail because, among other things, rail transit time is of sufficient duration that the oil would have to be reheated at additional cost in order to unload it.

17. It is probable, as a result of the rate of $1.72 per barrel proposed in Pet. 269, that fuel oil hauled by proprietary equipment from Bakersfield to Cushenbury will be hauled instead by highway carriers, including Keith, thereby increasing their volumes.

18. Costs developed from Keith's records, including costs of labor and fringe benefits, are reasonable costs for the purposes of these proceedings.

19. Minimum rates, as they apply to transportation involved in Pets. 263 and 269, are excessive and above the value of the service. Shippers have the capability of using their own trucks.

20. The special arrangements and efficiencies surrounding transportation involved in Pets. 263 and 269 justify rates lower than or different from the current minimum rates between the points involved.

21. When an intrastate rate is published in a common carrier tariff which is less than the minimum rate published by the Commission for the same transportation, the lower common carrier rate becomes the minimum rate under Section 3663 of the Public Utilities Code and conforming rules in minimum rate tariffs.

22. Published common carrier rates, as sought in Pets. 263 and 269, would be available for use by any shipper or consignee tendering traffic in the volume and manner specified in Tariff 18 between the points involved. Petroleum contract carriers could charge and other petroleum common carriers could publish the same rates.

23. With respect to Section 726 of the Public Utilities Code, current minimum rates are not the lowest of the lawful rates for transportation of petroleum products between points authorized to be served by Keith pursuant to D.88880, Pet. 263, or which are proposed to be served pursuant to Pet. 269.

24. Rates proposed in Pets. 263 and 269 are the lowest of the lawful rates for transportation of petroleum products by the types or classes of carriers reasonably expected to participate in the traffic involved.

25. The rates maintained by Keith pursuant to D.88880, Pet. 263, and proposed in Pet. 269 are not unreasonably low or otherwise contrary to the provisions of Section 452 of the Public Utilities Code. The needs of commerce and the public interest require that those rates be established. They are justified by transportation conditions.

26. The rates proposed in Pets. 263 and 269 should be authorized.

27. Keith should be authorized to depart from long- and short-haul provisions of Sections 460 and 461.5 of the Public Utilities Code.

The Commission has carefully reviewed the entire record in this matter and concludes that Keith should be authorized to publish and file changed or reduced rates for transportation of petroleum products to the extent indicated in the order which follows.

Since the rates authorized in D.88880, Pet. 263, will expire shortly, and the reasonableness of the rates proposed has been demonstrated in both Pets. 263 and 269 and a benefit may be realized by shippers, the following order should be effective the date of signature.

O R D E R

IT IS ORDERED that:

1. Don E. Keith (Keith) is authorized to publish and file rates for transportation of petroleum products in tank truck equipment, as set forth in Appendices A and B hereof.

2. The authority granted in Ordering Paragraph 1 shall continue in effect until further order of the Commission.

3. Tariff publications authorized to be made as a result of the order herein may be made effective on ten days' notice to the Commission and to the public.

4. Keith is authorized to depart from the provisions of Sections 460 and 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.

5. The authority in Decision No. 88880 is rescinded as of the effective date of the tariff publications authorized to be made pursuant to Ordering Paragraph 3 above.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 24th day of APRIL, 1979.

John E. Bryson
President

Vernon L. Sturgeon

Richard D. Gravelle

Claire T. Dedrick

Leonard M. Grimes Jr.
Commissioners

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 $823.00

PLUS

(b) An additional charge of $14.70 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 $14.70 per man, per hour, or 32 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) .... $.32
Next 5,000 miles .... $.27 1/2
Over 10,000 miles .... $.27 1/2

Note 1: (A) Monthly period shall commence on the date and time of arrival of carrier's equipment at the first point or 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 or 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 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 - Pinole
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 pickup 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, and 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 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.

C.5436, Pets. 263, 269 kd

APPENDIX B

RATE IN CENTS PER BARREL,
MINIMUM 160 BARRELS PER SHIPMENT

COMMODITY	FROM	TO	RATE
RESIDUAL FUEL OIL	BAKERSFIELD EXTENDED AREA	CUSHENBURY	172