

Decision No. 15051

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Guardian Gasoline Corporation,
Complainant,

vs.

Sunset Railway Company,
The Atchison, Topeka & Santa Fe
Railway Company,
Defendants.

CASE NO. 2096

Wilshire Oil Company,
Complainant,

vs.

Sunset Railway Company,
The Atchison, Topeka & Santa Fe
Railway Company,
Defendants.

CASE NO. 2098

F. W. Turcotte and B. E. Carmichael, for Complainants,
E. W. Camp and B. Levy, for Defendants.

SQUIRES, COMMISSIONER:

O P I N I O N

These cases were consolidated and heard at the same time on one record, and will be disposed of in one report. A public hearing was had at Los Angeles on April 24, 1925.

Complainants are corporations engaged in the sale and

distribution of petroleum and petroleum products, with offices and places of business in Los Angeles.

The complaint in Case No. 2096, filed February 4, 1925, alleges that the rate of 48 cents per 100 pounds, assessed by defendants for the transportation of four carloads of casinghead gasoline, moving from April 24, 1924 to May 12, 1924, both dates inclusive, from Portland to Los Angeles, was excessive, unjust and unreasonable, in violation of section 13 of the Public Utilities Act, and discriminatory and prejudicial to complainant, and in violation of section 19 of the Act, to the extent that it exceeded 41½ cents per 100 pounds.

In Case No. 2098, filed February 13, 1925, it is alleged that the rate of 60½ cents per 100 pounds assessed by defendants for the transportation of eleven carloads of casinghead gasoline, moving from July 20, 1922 to September 18, 1922, both dates inclusive, from Fellows to Los Angeles, was unjust and unreasonable, in violation of section 13 of the Public Utilities Act, and unduly prejudicial to complainant, and unduly preferential as to complainants' competitors at Taft and Kerto to the extent that it exceeded 41½ cents per 100 pounds. A list of the shipments involved having been registered on August 5, 1924, the Statute of Limitation was tolled by the Commission's Informal Docket, File I.C. 30975.

In support of their allegations in both of these proceedings, complainants rely mainly upon our conclusions in Richfield Oil Company vs. Sunset Railway Company et al. (24 C.R.C. 729). In that case we found the rates assessed for the transportation of petroleum and petroleum products, including gasoline and liquid petroleum gas, from Kerto and Taft to Los Angeles, unjust and

unreasonable to the extent that they exceeded 41½ cents per 100 pounds, and awarded reparation on all shipments moving subsequent to July 1, 1922. Authority was granted the Sunset Railway Company and The Atchison, Topeka & Santa Fe Railway Company to publish the 41½ cent rate via their circuitous route through Barstow, terminal in application. This route involves an excess haul as compared with the short line mileage via the Southern Pacific of 113 miles.

The tariff rate applicable from Pentland to Los Angeles referred to in Case No. 2096, during the period in which the four shipments involved moved, was 48 cents per 100 pounds. Defendants applied and collected that rate upon three of the cars, but on the fourth, moving May 9, 1924, they assessed a rate of 50 cents. This last named rate was applied and collected in error and resulted in a straight overcharge of 2 cents per 100 pounds. Pentland is 2.4 miles south of Kerto and directly intermediate between that point and Los Angeles. Hence it is plain that the rate from Pentland to Los Angeles via the short line haul, being in the same oil producing territory and involving a shorter haul than from Kerto and Taft, could not lawfully be on a higher basis to the terminal point where The Atchison, Topeka & Santa Fe Railway Company meets the rates of its short haul competitor. (Public Utilities Act, Sec. 24). Complying with the decision of the Commission in Richfield Oil Company (supra) defendants published, effective May 15, 1924, the prescribed rate of 41½ cents from Pentland to Los Angeles, non-intermediate in application.

From the record made in Case No. 2096 therefore, I conclude and find that reparation should be paid on the Pentland shipments, the same as was paid on shipments from Kerto and Taft.

the more distant points; and an order should be entered accordingly.

From Fellows to Los Angeles (Case 2098) defendants assessed and collected the published rate of 60½ cents per 100 pounds, as shown in Pacific Freight Tariff Bureau Tariff No. 167, C.R.C. 263. The tariff rate today is 48½ cents, made up of the 41½ cents from Taft to Los Angeles, established in the Richfield Oil case (supra), plus the local mileage rate of 7 cents, Fellows to Taft. This method of making through rates for heavy tonnage commodities moving in regular volume is not just and reasonable and has been expressly condemned. (Associated Jobbers of Los Angeles vs. Southern Pacific, 2 C.R.C. 659).

Prior to May 15, 1924 the rate differential applying to petroleum products as between Kerto-Taft and Fellows to Los Angeles was 2 cents, and this differential prevails to many California and interstate destinations.

Defendants point out that the distance via the line of The Atchison, Topeka & Santa Fe Railway from Bakersfield to Los Angeles is in excess of that via the Southern Pacific Company by 113 miles; that the rates from Kerto and Taft to Los Angeles found reasonable by the Commission in the Richfield Oil case (supra) were measured by the short line route of the Southern Pacific Company and that the Commission, when granting authority to defendants, the Sunset Railway and The Atchison, Topeka & Santa Fe Railway, to publish the rates, terminal in application only, considered rates via the long route less than reasonable. This position cannot be sustained. Where a short route is available for movement of traffic the reasonableness of the rate, so far as the distance factor is concerned, must be determined by that route. To permit higher rates to be charged in this case via the long line would

give rise to complaints for misrouting and would produce discrimination. (I.C.C.Conf. Ruling 214-D).

When defendants reduced the rate from Portland to Los Angeles to the basis of the rate found reasonable by the Commission from Kerto and Taft to Los Angeles via the short line, they conceded that under the existing circumstances and conditions the rate was not less than reasonable. Circuitous lines participating in traffic and electing to meet the rates of their short line competitors cannot be heard to claim consideration on account of their longer haul.

Having carefully considered all the facts of record in Case No. 2098, I am of the opinion and so find that the rates assessed for the transportation of casinghead gasoline between August 5, 1922 to September 18, 1922, inclusive, from Fellows to Los Angeles, were unjust, unreasonable and unduly prejudicial and preferential to the extent that they exceeded a rate of 43 $\frac{1}{2}$ cents; that complainant paid and bore the charges on the shipments in question and that it has been damaged to the amount of the difference between the charges paid and those herein found reasonable, and are entitled to reparation with interest.

The complainants in both these cases should submit statements of the shipments to defendants for check. If it is not possible for the parties to reach an agreement as to the amount of reparation due, the matter may be referred again to the Commission for further consideration and the entry of a supplemental order, if such is found to be necessary.

I recommend the following form of order:

O R D E R

This case being at issue upon complaint and answer on file, having been duly heard and submitted by the interested parties, full investigation of the matters and things involved having been had and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof.

IT IS HEREBY ORDERED that defendants, Sunset Railway Company and The Atchison, Topeka & Santa Fe Railway Company, according as they participate in the transportation, be and they are hereby notified and required to desist on or before July 15, 1925, and thereafter to abstain from publishing, maintaining and applying rates not in accordance with the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Sunset Railway Company and The Atchison, Topeka & Santa Fe Railway Company, according as they participate in the transportation, be and they are hereby notified and required to establish on or before July 15, 1925, upon notice to this Commission and to the general public by not less than fifteen (15) days' filing and posting in the manner prescribed in section 14 of the Public Utilities Act, and thereafter to maintain and apply to the transportation of casinghead gasoline, in carloads, the rates prescribed in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Sunset Railway Company and The Atchison, Topeka & Santa Fe Railway Company, according as they participated in the transportation, refund, with

interest, to complainants, Guardian Gasoline Corporation and Wilshire Oil Company, insofar as their interests may appear, all charges collected in excess of the rates herein found reasonable for the transportation of casinghead gasoline shipped from and to the points involved in this proceeding.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 15th day of June, 1925.

H. B. Brundage

C. Jensen

Eshton Shaw

George D. Squires

Emmert

Commissioners.