

Decision No. 15788

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Los Angeles County,
a Municipal Corporation,
Gilmore Oil Company,
a Corporation,
Complainants,

vs.

Pacific Electric Railway Company,
a Corporation,
Southern Pacific Company,
a Corporation,
Defendants.

ORIGINAL

CASE NO. 2111

D. Decoster, B. H. Carmichael and Glensor, Clewe, Van Dine & Turcotte, by F. W. Turcotte, for Complainants.

C. W. Cornell and G. F. Squires, for Defendant Pacific Electric Railway Company.

C. W. Cornell and L. C. Zimmerman for Defendant Southern Pacific Company.

SQUIRES, COMMISSIONER:

O P I N I O N

Los Angeles County, one of the complainants, is a municipal corporation of the State of California. The other complainant, Gilmore Oil Company, is a corporation engaged in the business of producing, refining, blending, buying and selling petroleum products. By complaint filed March 17, 1925 complainants allege that the rates assessed by defendants during a period of

two years immediately preceding that date for the transportation of road oil moving from Sherman Junction to Los Angeles, Baldwin Park and Compton, were and are unjust and unreasonable, in violation of section 13 of the Public Utilities Act, and unduly discriminatory and prejudicial to complainants and unduly preferential to shippers located at El Segundo in violation of section 19 of the Act. Reparation and rates for the future are asked for.

The A.F.Gilmore Company, a corporation, intervened in support of complainants allegations and requested reparation on shipments of road oil forwarded by it prior to July 1, 1923 from Sherman Junction to Los Angeles. Intervener was the predecessor in interest of complainant, Gilmore Oil Company, in the production and marketing of road oil at Sherman Junction, the latter company on July 1, 1923 assuming control of that portion of intervener's activities in the territory contiguous to Sherman Junction.

The shipments of road oil involved in this proceeding consisted of 607 carloads, of which 377 were destined to Los Angeles, 198 to Compton and 32 to Baldwin Park. The shipments to Los Angeles were made by the A.F.Gilmore Company prior to July 1, 1923 and by the Gilmore Oil Company thereafter and moved Pacific Electric Railway via Vineyard and Culver Junction, a distance of 16 miles. The shipments to Compton and Baldwin Park were made by Los Angeles County and moved via the joint route, Pacific Electric Railway to Los Angeles thence Southern Pacific Company to destinations, distances of 28 and 35 miles, respectively. The applicable rates were; to Los Angeles $3\frac{1}{2}$ cents, to Compton 6 cents and to Baldwin Park 7 cents per 100 pounds prior to February 15, 1925, and 6 cents per 100 pounds thereafter.

The rates here sought are the same as those concurrently maintained by defendants on road oil from El Segundo, namely; to Los Angeles $2\frac{1}{2}$ cents, to Compton 5 cents and to Baldwin Park 6 cents prior to December 22, 1924 and $5\frac{1}{2}$ cents thereafter. The distance from El Segundo to Los Angeles is 17 miles, to Compton 29 miles and to Baldwin Park 36 miles.

The Gilmore Oil Company owns and operates a refinery about one and one-half miles from Sherman Junction, situated in what is known as the "Salt Lake Field". The crude oil is secured from wells adjacent to the refinery and after a special process of refining necessary to produce road oil is transported in insulated trucks to the shipping point at Sherman Junction.

The record shows that the road oil produced by intervener and complainant was and is similar in nature to, and commercially competitive with, oil produced by the Standard Oil Company at El Segundo, known by the trade name of "Cal Oil", L2, L3, L4 and L5. The basic price of road oil is set by the Standard Oil Company and is generally followed by the smaller concerns engaged in manufacturing the same commodity. The record also shows that intervener and complainants were in competition with the Standard Oil Company in marketing their road oil at Los Angeles.

Los Angeles County, during the period involved herein, was under contract to secure its entire supply of road oil from the intervener prior to July 1, 1923 and thereafter from complainant, Gilmore Oil Company. The contract made by the County was awarded to the lowest responsible bidder, predicated on a delivery price f.o.b. shipping point. The freight rate to the ultimate point of consumption apparently was not taken

into consideration when the contract was awarded; hence, the County was compelled to secure its road oil from Sherman Junction and could not purchase at shipping points enjoying lower freight rates.

In support of their allegations complainants rely mainly upon the rates of defendants from El Segundo to Los Angeles, Compton and Baldwin Park and contend that the circumstances and conditions of operation surrounding the traffic from Sherman Junction, not being materially different from those applying to the El Segundo traffic, the rates should be on a parity.

Defendants, on the other hand, maintain that the rates on road oil from El Segundo are less than reasonable, and by testimony and exhibits proved that the 2½ cent rate to Los Angeles was established by the Pacific Electric Railway on January 25, 1922 to meet the rate concurrently in effect via the Atchison, Topeka & Santa Fe Railway, which first named rate, although not fully remunerative, was necessary to hold to the rails of the Pacific Electric part of the El Segundo oil tonnage. Defendants also maintain that the cost of operation is greater in the movement of traffic from Sherman Junction to Los Angeles than from El Segundo to Los Angeles. However, the evidence presented in support of this allegation is not convincing. The record does show some cost items higher in connection with the traffic from Sherman Junction than from El Segundo, and apparently defendants have used these items for comparative purposes without a comprehensive showing with respect to the other elements which must be considered in arriving at an approximation of the total costs of operation. Comparisons are valuable only when every element

entering into the determination of the entire cost of moving a particular commodity is given due consideration, and the final result, rather than the component parts thereof, is used for comparative purposes.

Complainants, however, direct attention to the fact that the rate on road oil maintained by the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway from Wilmington and intermediate points to Los Angeles is $2\frac{1}{2}$ cents per 100 pounds, the same as from El Segundo, the distances varying from 15 to 31 miles; that the rate of the Pacific Electric Railway Company between the same points is 3 cents, and that from Sherman Junction to points east of Los Angeles defendants maintain local and joint rates on road oil on the same basis as from El Segundo when the El Segundo rates are 6 cents or over. They also claim that the assailed rates, Sherman Junction to Compton and Baldwin Park, although now specifically published, were and are the same as the rates made by combination over Los Angeles. A check of the applicable tariffs, however, indicates that while this is true as to Compton, the rates to Baldwin Park were and are less than the combination rates. In the same connection complainants cite our findings in *Wilshire Oil Company vs. Sunset Railway, et al.*, Decision No. 15051, decided June 15, 1925, wherein we held that the rate assessed on casinghead gasoline from Fellows to Los Angeles made by using the full local rate from Fellows to Taft, plus rate from Taft to Los Angeles, was unreasonable, and in so finding said: "This method of making through rates for heavy tonnage commodities moving in regular volume is not just and reasonable and has been expressly condemned". However, in the *Wilshire Oil Company* case the

Commission was confronted with an entirely different situation than is presented in this proceeding, for here the assailed rate to Compton involves a comparatively short haul of 28 miles, while from Fellows to Los Angeles the haul is 221 miles, only 6 miles further than from Taft to Los Angeles.

Both complainants and defendants compare the assailed rates on road oil with rates on other commodities, such as sugar beets, dried beans, clay, hollow tile, lumber, etc., concurrently in effect in the territory contiguous to Los Angeles for distances ranging from 15 to 21 miles. These comparisons have been given consideration, but they are of little probative value, as neither of the parties offered any evidence showing whether or not, with respect to movement, these commodities bear any relationship to road oil.

The rates on road oil from both El Segundo and Sherman Junction to Los Angeles were previously adjudicated by this Commission in Application No.4733, Decision No.7252, decided March 12,1920 (17 C.R.C.894). In that case the Pacific Electric Railway requested authority to increase certain rates on petroleum and petroleum products, including road oil. We prescribed, from El Segundo and Sherman Junction to Los Angeles, a rate on road oil of 4 cents per 100 pounds, which rate became effective April 22, 1920, and which was increased on August 26,1920 to 5 cents by authority of this Commission in Application No.5728, Decision No. 7983 (18 C.R.C.646) and subsequently reduced to $4\frac{1}{2}$ cents effective July 1,1922, following the order of the Interstate Commerce Commission in Docket 13293 (68 I.C.C.676). The $4\frac{1}{2}$ cent rate was continued in effect until January 25,1923, at which time, by action of defendants, the El Segundo to Los Angeles rate was reduced to

2½ cents and the Sherman Junction to Los Angeles rate to 3½ cents, thus destroying the parity of rates existing from El Segundo and Sherman Junction to Los Angeles during the period between April 22, 1920 and January 25, 1923. It is alleged by defendants that these changes were necessary to meet competitive conditions existing at El Segundo which were not controlling at Sherman Junction.

Without going into all the details set forth in the record, it is sufficient here to state that the road oil rates from Sherman Junction and El Segundo to Compton were on a parity from April 22, 1920 to January 25, 1923. On the latter date the El Segundo to Compton rate was reduced from 7 cents to 5 cents, while the Sherman Junction rate was reduced from 7 cents to 6 cents, which rates are in effect today, El Segundo having a differential in its favor to Compton of 1 cent per 100 pounds. The rates from El Segundo and Sherman Junction to Baldwin Park have never been on a parity and at the present time the rate from El Segundo to Baldwin Park is 5½ cents and from Sherman Junction 6 cents, a difference in favor of El Segundo of one-half cent. This is the lowest differential, as between these two points to Baldwin Park, within the past eight years.

There appears in the record to be no competitive or operating reasons why the rate on road oil from Sherman Junction to Los Angeles, a distance of 16 miles, should be 3½ cents, and from El Segundo to Los Angeles, a distance of 17 miles, 2½ cents; from Sherman Junction to Compton, a distance of 28 miles, 6 cents; from El Segundo to Compton, a distance of 29 miles, 5 cents; from Sherman Junction to Baldwin Park, a distance of 35 miles, 6 cents, and from El Segundo to Baldwin Park, a distance of 36 miles, 5½

cents; in short, from oil fields in practically the same locality the rates are lower for the longer than for the shorter haul.

Upon consideration of all the facts, I am of the opinion and so find that the assailed rates on road oil from Sherman Junction to Los Angeles, Compton and Baldwin Park were not in the past nor are they now upon this record shown to be unreasonable; but that they were and are discriminatory and prejudicial to the extent that they exceed the rates on road oil which defendants maintain from El Segundo to Los Angeles, Compton and Baldwin Park.

There is left for consideration whether or not complainants are entitled to reparation because of the discrimination and prejudice found to exist.

Complainant, Los Angeles County, purchased the road oil involved in this proceeding f.o.b. cars Sherman Junction and, therefore, was required to accept the oil at that point regardless of any transportation charge which might have been in effect from competitive producing points. Manifestly, if competitors were in a position to deliver oil at either Los Angeles, Compton or Baldwin Park by a pipe line and employed no railroad common carrier, this complainant could not be heard, and the Commission would have no authority to award reparation.

We are of the opinion that as to complainant, Los Angeles County, the case presents no basis for an award of reparation and the prayer for reparation should be denied.

Complainant, Gilmore Oil Company, and intervener, A.F.Gilmore Company, base their claim for reparation on the ground that they were in competition with other oil companies at Los Angeles, and they assume that since they paid the freight charges they were

damaged in an amount equal to the difference between the charges paid and the charges which would have accrued had the same rates been in effect from Sherman Junction to Los Angeles as from El Segundo to Los Angeles.

This Commission, the Interstate Commerce Commission, and the Supreme Court of the United States have held, in discrimination proceedings, that the damages suffered, if any, are not necessarily an amount equal to the difference in rates. The fact of the damage, and the amount, must be definitely established the same as required in a court of law. (Penn RR.Co. vs. International Coal Co. 230 U.S.184); (Steiger Terra Cotta & Pottery Works vs.Southern Pacific Company 7 C.R.C.288).

The proof contained in this record fails to meet the requirements set forth in those cases and reparation must, therefore, be denied.

I recommend the following form of order:

O R D E R

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

IT IS HEREBY ORDERED that defendants, Pacific Electric Railway Company and Southern Pacific Company, according as they participated in the transportation be, and they are, hereby

notified and required to cease and desist, on or before February 15, 1926, and thereafter to abstain from publishing, maintaining or applying rates on road oil, from Sherman Junction to Los Angeles, Compton and Baldwin Park, which exceed the rates on road oil contemporaneously in effect on like traffic from El Segundo to Los Angeles, Compton and Baldwin Park.

IT IS HEREBY FURTHER ORDERED that defendants, Pacific Electric Railway Company and Southern Pacific Company, according as they participated in the transportation be, and they are, hereby notified and required to establish on or before February 15, 1926 upon notice to this Commission and to the general public by not less than five (5) days' filing and posting in the manner prescribed in Section 14 of the Public Utilities Act, rates on road oil from Sherman Junction to Los Angeles, Compton and Baldwin Park which shall not exceed the rates on road oil contemporaneously in effect from El Segundo to Los Angeles, Compton and Baldwin Park.

IT IS HEREBY FURTHER ORDERED that as to all other matters involved, the complaint in this proceeding be, and the same is, hereby dismissed.

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 21st
day of December, 1925.

W. B. ...
Chas. ...
Geo. D. ...
Leon ...
Commissioners.