

Decision No. 15868

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Vernon Oil Refining Company,
Complainant,

vs.

Pacific Electric Railway Company,
Defendant.

CASE NO. 2161.

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

C. W. Cornell and G. F. Squires, for Defendant.

SQUIRES, COMMISSIONER:

O P I N I O N

Complainant is a corporation engaged in the business of producing, buying, refining, blending and selling petroleum products, including crude oil, with its principal place of business at Los Angeles. By complaint filed August 28, 1925 complainant alleges that the rate assessed by the defendant during a period of two years immediately preceding that date, for the transportation of crude oil moving from Oleo to Los Angeles, was and is excessive, unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and unduly discriminatory and prejudicial to complainant, and unduly preferential to the shipping points of

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Los Nietos, Whittier, El Segundo, Burnett, San Pedro, Wilmington, East San Pedro, Long Beach, East Long Beach, Montebello, and various other shipping points in Los Angeles County, in violation of Section 19 of the Act. Reparation on past shipments and rates for the future are asked.

The shipments, 893 in number, moved in tank cars over the Pacific Electric Railway from Oleo to Los Angeles, a distance of 25 miles. A rate of 4 cents per 100 pounds was collected.

The rate sought by complainant is 3 cents per 100 pounds, the same as is concurrently maintained by the defendant on crude oil from the following points: Wilmington, San Pedro, El Segundo, Long Beach, East Long Beach and Los Nietos to Los Angeles, the distances from those points to Los Angeles being, respectively, 19, 21, 17, 21, 19 and 13 miles.

A public hearing was held at Los Angeles December 9, 1925, and the case having been submitted is now ready for an opinion and order.

The record in this case shows that by Decision No. 7252, decided March 12, 1920, (17 C.R.C. 894) the Commission prescribed as reasonable a rate of 4 cents per 100 pounds from El Segundo, Wilmington, San Pedro, Stewart, and Oleo to Los Angeles, which had the effect of placing all of those points on a rate parity; that the rate of 4 cents from all the points named to Los Angeles was increased to 5 cents in Ex Parte 74, I.C.C., that proceeding being part of a general advance in all freight rates which was ratified by this Commission in Decision No. 7983, August 20, 1920, (18 C.R.C. 646); that on February 28, 1922 the Pacific Electric Railway Company voluntarily reduced the rate from San Pedro, Wilmington and El Segundo to Los Angeles to 3 cents per 100 pounds,

making no adjustment in the rate from Oleo to Los Angeles until May 31, 1922, when it voluntarily reduced the Oleo rate to 4 cents.

Complainant contends that inasmuch as the Commission established the rates from El Segundo, Wilmington, San Pedro and Oleo to Los Angeles on a parity, any subsequent adjustment from El Segundo, Wilmington and San Pedro to Los Angeles should likewise, in order to prevent discrimination, have been reflected in the rate from Oleo to Los Angeles.

Crude oil shipped from Oleo to complainant's refinery at Los Angeles is purchased at the same market prices as crude oil purchased at San Pedro, Wilmington and El Segundo. It is alleged that the 1 cent per 100 pounds difference in freight charges between those points creates discrimination, as complainant markets its crude oil at Los Angeles in competition with oil companies shipping oil to Los Angeles from San Pedro, Wilmington and El Segundo, which latter pay a lower transportation cost.

In support of its allegation that the present rate is unreasonable complainant submitted numerous exhibits showing various rate comparisons on crude oil and earnings per ton mile as contrasted with rates for similar hauls. It also compared the assailed rates on crude oil with rates on other commodities, such as acid, asphalt, sugar beets, beet pulp, water, etc., concurrently in effect in the territory contiguous to Los Angeles for distances ranging from 9 to 40 miles. These comparisons have been given consideration, but they are of small probative value, since neither of the parties offered any evidence showing whether or not, with respect to movement, the commodities named bear any relationship to crude oil.

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Witnesses for the defendant, in support of the propriety of reducing the rates from San Pedro, Wilmington and El Segundo to Los Angeles, testified that the transportation expense of hauling crude oil from those points to Los Angeles was less than the cost of hauling crude oil from Oleo to Los Angeles, the distance between Los Angeles and San Pedro being 12 per cent less than between Oleo and Los Angeles; 22 per cent less between Wilmington and Los Angeles, and 44 per cent less between El Segundo and Los Angeles. They further stated as a fact, which was not contradicted, that train loads of freight are moved from El Segundo to Los Angeles, whereas the movement of freight from Oleo is light.

Expert witnesses for the defendant also testified that while the Pacific Electric Railway Company is earning more than the out-of-pocket cost of handling this traffic from Oleo at 4 cents per 100 pounds, it is not contributing its just share toward the expense of operating the railroad, such as transportation and general expenses, interest, depreciation, etc. Testimony was also given by the defendant showing that on crude oil moving from El Segundo to Los Angeles, tank cars owned by shippers are operated on a mileage basis, while for oil from Oleo the carriers are forced to lease equipment upon a per diem charge at a greatly added expense, since defendant has not sufficient tank cars to supply the demands of the shippers located on its rails.

The testimony regarding the furnishing of tank cars, however, need not be further considered in this case, as Rule 35 of Consolidated Freight Classification No. 4, C.R.C. No. 347, does not require carriers to furnish such equipment.

The rates on crude oil from Oleo, El Segundo,

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Wilmington and San Pedro to Los Angeles were previously adjudicated, as pointed out by complainant, in Application No.4733, Decision No.7252, decided March 12,1920 (17 C.R.C.894). In that case the Pacific Electric Railway Company requested authority to increase certain rates on petroleum and petroleum products, including crude oil. We prescribed, from Oleo, El Segundo, Wilmington and San Pedro to Los Angeles, a rate on crude oil of 4 cents per 100 pounds, effective April 22,1920, which was increased August 26,1920 to 5 cents per 100 pounds in Application No.5728, Decision No.7983 August 20,1920 (18 C.R.C.646). The rate of 5 cents from all points named was continued in effect until February 28,1922, at which time, by action of the defendants, the El Segundo, Wilmington and San Pedro rate to Los Angeles was reduced to 3 cents per 100 pounds, thus destroying the parity existing from Oleo, El Segundo, Wilmington and San Pedro to Los Angeles during the period from April 22,1920 to February 28,1922. It is alleged by defendant that this change was necessary to meet competitive conditions at El Segundo, Wilmington and San Pedro, which competition, it is asserted, is not controlling at Oleo. On May 31,1922 the Pacific Electric Railway Company voluntarily reduced the rate from Oleo to Los Angeles to 4 cents, leaving 1 cent per 100 pounds disparity in the rates between Oleo and Los Angeles, and El Segundo, Wilmington, San Pedro and Los Angeles in favor of the latter points.

The record discloses no competitive or operating reasons why the rate on crude oil from San Pedro, Wilmington and El Segundo to Los Angeles should be 3 cents per 100 pounds for distances of 21, 19 and 17 miles, respectively, and the rate from Oleo to Los Angeles should be 4 cents per 100 pounds

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for a haul of 25 miles, circumstances considered.

Upon consideration of all the facts as presented by the record, I am of the opinion and so find that the assailed rate on crude oil from Oleo to Los Angeles was not in the past nor is it now unjust or unreasonable, but that said rate is discriminatory and prejudicial to the extent that it exceeds the rate on crude oil maintained by the defendant from San Pedro, Wilmington and El Segundo to Los Angeles, and that said discrimination should be removed.

There is left for consideration the question as to whether or not the complainant is entitled to reparation because of the discrimination found to exist.

Complainant, Vernon Oil Refining Company, based its claim for reparation, insofar as discrimination is concerned, on the ground that it is in competition with other oil companies at Los Angeles in marketing its products, and it assumed that, since it paid the freight charges, it has been damaged in an amount equal to the difference between the charges paid and the charges that should have accrued had the same rates been in effect from Oleo to Los Angeles as from El Segundo, Wilmington and San Pedro to Los Angeles.

The Interstate Commerce Commission, the Supreme Court of the United States and this Commission 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 is required in a court of law. (Penn.R.R. vs. International Coal Co., 230 U.S.184, and Steiger Terra Cotta & Pottery Works vs. S.P.Co., 7 C.R.C.288).

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

The following form of order is recommended:

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 the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that defendant, Pacific Electric Railway Company, be and it is hereby notified and required to desist on or before April 15, 1926 from publishing, maintaining or applying rates on crude oil from Olec to Los Angeles which exceed the rates on crude oil contemporaneously in effect on like traffic from El Segundo, Wilmington and San Pedro to Los Angeles.

IT IS HEREBY FURTHER ORDERED that defendant, Pacific Electric Railway Company, be and it is hereby notified and required to establish on or before April 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

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Section 14 of the Public Utilities Act, a rate on crude oil from Oleo to Los Angeles which shall not exceed the rate on crude oil contemporaneously in effect from El Segundo, Wilmington and San Pedro to Los Angeles.

IT IS HEREBY FURTHER ORDERED that all other matters involved in the complaint in this proceeding be and the same are 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 18th day of January, 1926.

H. B. Brundage

C. A. Bailey

George W. Squires

Leon Whitell
Commissioners.

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