

Decision No. 17204

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Gilmore Oil Co.,  
Hercules Gasoline Co.,  
O'Donnell-Gillette Refining Co.,  
Vernon Oil Refining Co.,  
Wilshire Oil Company,  
Complainants,

vs.

The Atchison, Topeka & Santa Fe  
Railway Company,  
Southern Pacific Company,  
Los Angeles & Salt Lake Railroad  
Company,  
Defendants.

ORIGINAL

CASE NO. 2182

B.H. Carmichael, and Glensor, Clewe, Van Dine & Turcotte,  
by H.W. Glensor and F.W. Turcotte, for Complainants.  
E.W. Camp, Platt Kent and Berne Levy, for The Atchison,  
Topeka & Santa Fe Railway Company.  
A.S. Halsted, and E.E. Bennett, for Los Angeles & Salt  
Lake Railroad Company.  
J.E. Lyons and A.A. Johnson, for Southern Pacific Company.  
C.W. Cornell, for Pacific Electric Railway Company.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations engaged in the producing, buying, refining, blending and selling of petroleum products, with their places of business at Los Angeles.

By complaint filed October 13, 1925 it is alleged that the rates assessed on various carloads of petroleum gas oil moving from Wilmington, Santa Fe Springs, Torrance, Pozo, Mallard, Leesdale and Fillmore to Los Angeles, and from Los Angeles to O'Donnell Spur during the period extending from

May 28, 1922 to October 13, 1925 were in the past and for the future will be excessive, unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent they exceeded or may exceed 3 cents per 100 pounds from Wilmington, Santa Fe Springs, Torrance, Pozo, Mallard and Burnett to Los Angeles, and from Los Angeles to O'Donnell Spur, and 6 cents per 100 pounds from Leesdale and Fillmore to Los Angeles.

Shipments moving more than two years prior to the filing of the complaint were the subject of informal correspondence and are registered with the Commission under File numbers I.C.30093 of April 22, 1924; I.C.30233 of May 5, 1925, and I.C.32629 of May 31, 1925, and were seasonably filed to stay the statute of limitation.

The East-West Refining Company intervened in behalf of complainants and by mutual agreement broadened the complaint by bringing into issue the rates on gas oil from Burnett and Santa Fe Springs to Los Angeles. It is alleged by intervener that the rates from these points were in the past, and for the future will be, unjust and unreasonable to the extent they exceeded or may exceed 3 cents per 100 pounds. The Pacific Electric Railway Company intervened in behalf of defendants.

The Commission is asked to prescribe just and reasonable rates for the future and to award reparation.

Complainants and intervener, East-West Refining Company, will be collectively referred to as complainants. Defendants, Atchison, Topeka & Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, and Southern Pacific Company, will be hereinafter referred to as the Santa Fe, Salt Lake Line and Southern Pacific respectively. Rates will be stated in cents per 100 pounds.

Public hearings were held before Examiner Geary at

Los Angeles March 31 and April 1, 2 and 9, 1926, and the case having been duly submitted and briefs filed is now ready for our opinion and order.

The points here involved are all situated in the Southern California oil field districts adjacent to Los Angeles. Wilmington, served by the Santa Fe, Salt Lake Line and Southern Pacific, is 31 miles, 27 miles and 21 miles, respectively, from Los Angeles. Torrance, Santa Fe Springs and Pozo are situated on the Santa Fe, 24, 13 and 26 miles, respectively, from Los Angeles. Burnett, O'Donnell Spur and Mallard on the Salt Lake Line, 19, 11 and 13 miles, respectively, from Los Angeles, and Fillmore and Leesdale on the Southern Pacific, 55 and 61 miles, respectively, from Los Angeles. Effective October 1, 1924, Mallard, on the Salt Lake Line, was changed to Rioco, hence reference hereafter will be made to the latter name.

Complainants' shipments to Los Angeles consisted of 4 cars from Santa Fe Springs; 533 cars from Pozo; 86 cars from Burnett; 3 cars from Rioco; 154 cars from Fillmore; 10 cars from Leesdale, and from Los Angeles to O'Donnell Spur 12 cars, a total movement of 802 cars. Apparently no shipments were made from Wilmington and Torrance to Los Angeles.

The applicable rate on gas oil from Wilmington, Torrance, Santa Fe Springs, Pozo, Rioco and Burnett to Los Angeles and from Los Angeles to O'Donnell Spur was and is 4 cents; from Fillmore to Los Angeles 8 cents and from Leesdale to Los Angeles 12½ cents. These rates were assessed and collected on complainants' shipments, with the exception of 9 cars moving from Leesdale, on which a rate of 8 cents was erroneously applied.

The rates for gas oil here sought by complainants

are the same as those contemporaneously in effect on crude oil. From and to all points here involved, with the exception of Fillmore and Leesdale, the gas oil rates were at the time the shipments moved and are now 1 cent higher than the crude oil rates. From Fillmore the past and present differential in favor of the crude oil rates was and is 2 cents. From Leesdale both the gas oil and crude oil rates are now on a parity, but at the time these shipments moved the Leesdale rate on gas oil was  $6\frac{1}{2}$  cents higher than on crude oil.

Both complainants and defendants agree that the commodity shipped was not gas oil as that commodity is known in the petroleum industry, but a petroleum product colloquially referred to as refinery tops, hereinafter called "tops". Tops are the first "cuts" or distillations of the crude oil and contain the higher fractions of oil, such as gasoline, engine distillate and Kerosene. They are extracted from the crude oil at the source of supply by topping plants and are transported in tank cars to complainants' refineries where the gasoline, engine distillate and kerosene are extracted by a further process of distillation. Tops are very rarely used commercially until the elements are separated into their component parts, the sole exception being, according to the record, of an occasional use as fuel oil in semi-Diesel engines. Their principal value, however, is for further refining and, according to the record, all of complainants' shipments were so used.

Gas oil, as it is technically known in the trade, is derived from the crude oil residuum after the tops are removed and is a product intermediate between the higher fractioned oils and non-viscous oils, such as lubricating greases and asphalt.

It is a comparatively low grade commodity containing none of the higher fractions of oil and is used primarily in the manufacture of illuminating and pintsch gas. It is also used occasionally as a furnace fuel or as a charging stock in the production of gasoline by the cracking process.

Complainants contend that from a transportation standpoint the terms "tops" and "gas oil" are synonymous, they having been used interchangeably in the petroleum industry for years and that undoubtedly the term "gas oil" was first used as descriptive of tops from which gasoline could be made. It is also claimed that for the past 20 years tops have been transported under the gas oil rates.

Defendants do not disclaim knowledge that the gas oil rates have been and are used to transport tops, but they contend that the classification of tops as gas oil is incorrect, contrary to the tariffs, and that the proper rates to apply on tops should be those applicable on petroleum products n.o.i.b.n. (not otherwise indexed by name).

From the evidence submitted in this proceeding and from an examination of past decisions of this Commission, it appears complainants' contention that from a transportation standpoint the terms "gas oil" and "tops" are used interchangeably to designate the commodity here at issue is correct. For a number of years there has been a substantial rail movement in California of tops from the crude oil fields to the refineries, and except in remote instances the movement has been under the gas oil rates.

The question of the proper classification of refinery tops was first considered by the Commission in Application No. 817, decided February 25, 1914, Decision No. 1298, 4, C.R.C. 261. In that proceeding the major rail lines in California sought to increase

the rates on refinery tops from the crude oil basis to the higher basis applicable on engine (naphtha) distillate, a refined product. In denying applicants' authority to make this change Commissioner Thelen, speaking for the Commission, said:

"The carriers claim that refinery tops are an engine distillate and that hence the proper rating is 80 per cent of fifth class. The protestants, being the independent refineries of this State, claim that refinery tops are a petroleum gas oil and that hence the proper rating is the crude oil rating, which is class "D" or corresponding commodity rate for crude oil. \* \* \* We find that the principal carriers here involved have during the last few years themselves either owned or controlled plants from which refinery tops were shipped at the crude oil rate. If there is any reasonable doubt in this case as to whether refinery tops at the present time properly take 80 per cent of fifth class or class "D", the doubt must be resolved in favor of the uniform practice of the carriers during the last seven years, both as carriers for others and as carriers of this product manufactured in plants owned or controlled by them. The claim of the carriers that they only recently found out that there was such a commodity and that it was being shipped at the crude oil rate is not borne out by the evidence.

"I find that refinery tops at the present time come under Item No.90-C and that the proper rating is class "D"."

Again in Case No.1990, Richfield Oil Company vs.Sunset Railway Company, decided December 12, 1924,25 C.R.C.619, the Commission in considering the reasonableness of the rates on refinery tops moving from Shale,Fellows and Pentland to Bakersfield, said:

"The tariff item naming these rates provided a description on oils,petroleum or petroleum products,viz., petroleum gas oil. The complainant described the shipments as gas oil and rates were assessed as above, but defendant now contends the shipments were mis-described. A substantial portion of the record dealt with the technicalities as to what the term 'gas oil' included, but it appears 'gas oil' as generally known to the trade in this territory is a grade of raw material containing various commodities of commercial

"value, such as oil, kerosene and absorption gasoline, which may be obtained upon further refining."

Thus it is apparent that defendants have for the past 19 or 20 years applied the gas oil rates on refinery tops. There is no doubt that in the petroleum industry gas oil and tops are commodities that differ materially one from the other. But where in the transportation field the prevailing practice, extending over a long period of years, has been to apply the gas oil rates on refinery tops, it appears fair to assume that the term "gas oil" was and is meant to be descriptive of refinery tops. This assumption is especially logical inasmuch as the latter term is more or less of a colloquialism coupled with the fact that rates on gas oil have been maintained in defendants' tariffs for a number of years.

However, inasmuch as gas oil and refinery tops are considered different commodities in the petroleum industry, complainants and defendants should, for the future, in order to avoid confusion, endeavor to arrive at a more comprehensive commodity description for refinery tops. Defendants suggest this could be done by limiting refinery tops to a petroleum product having a specific gravity of from 40° to 50° A.P.I. (American Petroleum Institute Scale), and a flash point below 60° F. Gravity is the weight of the oil and can be determined by the use of a hydrometer and thermometer read in conjunction with a graduated chart compiled for that purpose. Flash point is the degree of temperature at which an oil gives off vapor in sufficient quantity to flash or burn momentarily and can be determined by various forms of apparatus, the principal one of which is Tagliabue's Open-Cup Tester.

The classification of refinery tops by the gravity and flash point method is too indefinite for practical purposes.

especially with respect to the use of the flash point as a conclusive test. It is in evidence that some of complainants' shipments of tops flashed at atmospheric temperature, while with others the flash point was over 130° F. This is attributed to the fact that tops having a large gasoline content flash at a low temperature and those containing little or no gasoline flash at a relatively higher temperature. It is also in evidence that the flash point of other petroleum products, such as crude and fuel oil, may be considerably lowered simply by the addition of a few drops of gasoline.

If, after conference, complainants and defendants are not able to reach an agreement as to the proper commodity description to publish for the future, the matter may be referred to the Commission for further attention.

There now remains for consideration the question of whether or not the gas oil rates assessed on complainants' shipments were and are just and reasonable for the transportation of refinery tops.

Tops are not a refined product and, as previously stated, they have practically no commercial use until further refined/ Their value is primarily determined by the gasoline content and depends considerably on the location of the field from which the crude oil is taken.

Complainants' shipments ranged in value from approximately \$1.00 to \$2.75 per barrel, the lower valued tops containing principally kerosene and distillate and practically no gasoline. The contemporaneous price of crude oil varied from about 35 cents to \$2.40 a barrel, the value depending upon the specific gravity of the oil. The higher valued oils were secured from the Santa Fe Springs and Athens fields, these two



areas producing the highest gravity oils found in the State. It may be safely stated, however, that the average value of tops is slightly higher than the average value of crude oil, but materially lower than the value of refined oils.

The evidence shows that complainants' shipments were transported in crude oil tank cars that did not require water white containers. Charges were assessed on an arbitrary weight basis of 7.75 per gallon, the estimated weight used in the transportation of crude oil in tank cars. The actual weight of complainants' shipments varied from 6.6 pounds to 6.98 pounds per gallon, thus resulting in charges on a weight basis ranging from approximately 11 to 17.5 per cent in excess of the actual weight.

The average per car weight applied to the shipments moving from Pozo was 80738.24 pounds, yielding a per car revenue of \$32.23; a per car mile revenue of \$1.2396 and a per ton mile revenue of 3.077 cents. From Santa Fe Springs the average per car weight was 63323 pounds; per car revenue \$25.23; per car mile revenue \$1.940 and per ton mile revenue 6.154 cents; from Burnett the average per car weight was 93530 pounds; per car revenue \$37.41; per car mile revenue \$1.969 and per ton mile revenue 4.210 cents; from Rioco the average per car weight was 96477 pounds; per car revenue \$38.59; per car mile revenue \$2.968 and per ton mile revenue 6.154 cents; from Fillmore the average weight was 85411 pounds; per car revenue \$68.32; per car mile revenue \$1.242 and per ton mile revenue 2.909 cents, and from Leesdale the average per car weight was 62343 pounds; per car revenue \$78.55; per car mile revenue \$1.287 and per ton mile revenue 4.098 cents.

Complainants compare the assailed rate with a rate of 5 cents applicable on refinery tops from Shale, Fellows and Pentland to Bakersfield for distances of 55, 52 and 37 miles, respectively, prescribed by the Commission in Richfield Oil Company vs. Sunset Railway, 25 C.R.C.619. In that proceeding the Commission found:

"The average weight of complainant's shipments was 74476 pounds and based on an average haul of 48 miles and a rate of 5 cents per 100 pounds \* \* \* would produce a per car revenue of \$37.24, per car mile revenue of 77½ cents, per ton mile revenue of \$0.0208".

Complainants also stress the fact that in the original tops case, Application 817, supra, we denied the carriers authority to increase the rates on tops above the level of the concurrently effective crude oil rates, and in Application No.4733, Decision No.7252, in the matter of the application of the Pacific Electric Railway Company to increase rates for the transportation of petroleum and petroleum products, we placed the crude oil and gas oil rates on a parity.

The record indicates that prior to the early part of 1922 defendants for a number of years maintained the gas oil and crude oil rates on an equal basis in the territory here at issue. Effective February 28, 1922, or subsequent thereto, the crude oil rates were reduced without a corresponding adjustment being made in the gas oil rates. As illustrative: On June 24, 1918 the crude and gas oil rate from Wilmington to Los Angeles via the Salt Lake Line was 2 cents. Effective August 8, 1918, in compliance with Freight Rate Authority No.96 of the Director General of Railroads, the 2 cent rate was increased to 6½ cents.

A further increase to 8 cents was made on August 26, 1920 by authority of this Commission in Application No. 5728, Decision No. 7983, 18, C.R.C. 646, wherein we authorized a general increase of 25 per cent in all intrastate freight rates in this territory, the same as was granted by the Interstate Commerce Commission in Ex Parte Order No. 74. The 8 cent rate remained in effect until May 31, 1921, when it was voluntarily reduced to 5 cents. On February 28, 1922 a further reduction to 3 cents was made in the crude oil rate without a corresponding reduction in the gas oil rate. However, on July 1, 1922 the gas oil rate was reduced from 5 cents to  $4\frac{1}{2}$  cents and, effective December 15, 1922, was further reduced to 4 cents. The 3 cent rate on crude oil and the 4 cent rate on gas oil are now in effect. Thus, from June 24, 1918 until February 28, 1922 the crude oil and gas oil rates were on a parity, but since the latter date the crude oil rates have been successively 2 cents,  $1\frac{1}{2}$  cents and 1 cent lower than the gas oil rate. The history of the rates from Wilmington to Los Angeles via the Salt Lake Line may be considered as fairly representative of the rate situation in the territory here involved.

From exhibits presented by complainants it appears that between practically all points in California, save in the territory here involved, the gas oil (refinery tops) and crude oil rates are now and have been on a parity.

Defendants contend that the crude oil rates in Southern California are depressed by pipe line competition and thus, per se, are less than reasonable. It is claimed that the present crude oil rate of 3 cents is an outgrowth of the establishment by the Santa Fe prior to June 24, 1918 of a 2 cent rate

from El Segundo to Los Angeles. This rate, it is claimed, was published after a very large oil company located at El Segundo had threatened to construct a pipe line to Los Angeles unless a satisfactory rate was published for the movement of crude oil. The 2 cent rate, due to war time increases, was successively raised to 6½ cents on August 8, 1918 and to 8 cents on August 26, 1920. Effective May 27, 1921 the 8 cent rate was reduced to 5 cents and on February 28, 1922 was further reduced to 3 cents. Following the establishment of the 3 cent rate from El Segundo to Los Angeles the competing rail carriers made corresponding reductions from shipping points on their respective lines to Los Angeles to place the shippers using their rails on a parity with those shippers at El Segundo. Hence, on or subsequent to February 28, 1922 the crude oil rates from the points here involved, with the exception of Fillmore and Leedale, were placed on the El Segundo-Los Angeles basis and the rates from Fillmore and Leedale arbitrarily established with relation thereto.

Defendants also contend they are confronted with actual pipe line and motor truck competition and presented Exhibit 12 showing the pipe lines maintained by the various oil companies in the vicinity of Los Angeles. There was no affirmative showing, however, as to the extent the claimed competition, either pipe line or motor truck, affects or has affected the movement of crude oil via the rail lines. Neither is there any evidence showing the difference, if any, in the cost of moving crude oil via rail as compared with the cost via motor truck or via the pipe lines. The mere assertion that pipe line or motor truck competition exists without some substantiating evidence as to the extent thereof or the cost of moving the commodity by the

competing lines is of little probative value in arriving at a reasonable rail rate.

Defendants compare the assailed rates contemporaneously in effect between various points in California applicable on many non-competitive commodities, viz., acid, asphalt, canned goods, iron and steel articles, cement, clay and clay products and other articles. These comparisons have been given careful consideration, but the record is devoid of any showing as to the circumstances and conditions surrounding their establishment and maintenance. We have repeatedly held that such comparisons, in the absence of some supporting data, are of little value.

After careful consideration of all the testimony and the exhibits of record in this proceeding, we are of the opinion and find that the assailed rates have been in the past and for the future will be unreasonable to the extent they exceeded or may exceed the contemporaneously applicable rates on crude oil between the points here involved.

We further find that complainants, Gilmore Oil Co., Hercules Gasoline Co., O'Donnell-Gillette Refining Co., Vernon Oil Refining Co., Wilshire Oil Company, and intervener, East-West Refining Company, paid and bore the charges on the shipments in question and have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable and are entitled to reparation, with interest, on all shipments coming within the purview of Section 71 of the Public Utilities Act.

The amount of reparation due cannot be determined on this record. Complainants should submit a statement of the shipments to defendants for check and if it is not possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention.

O R D E R

This case being at issue upon complaint and answer on file, 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 precedes this order and which said opinion is hereby referred to and made a part hereof,

IT IS ORDERED that the defendants, Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, and Los Angeles & Salt Lake Railroad Company, according as they participated in the transportation, be and they are hereby notified and required to cease and desist on or before December 15, 1926 and thereafter to abstain from publishing, maintaining or applying rates on carload shipments of petroleum gas oil from Wilmington, Santa Fe Springs, Torrance, Pozo, Rioco, Burnett, Leesdale and

Fillmore to Los Angeles, and from Los Angeles to O'Donnell Spur, which shall exceed the rates contemporaneously in effect on petroleum crude oil from and to those points.

IT IS FURTHER ORDERED that defendants, Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company, according as they participated in the transportation, be and they are hereby notified and required to establish on or before December 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 petroleum gas oil from Wilmington, Santa Fe Springs, Torrance, Pozo, Rioco, Burnett, Leesdale and Fillmore to Los Angeles, and from Los Angeles to O'Donnell Spur which shall not exceed the rates contemporaneously in effect on petroleum crude oil from and to those points.

IT IS FURTHER ORDERED that defendants, Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to pay, with interest, unto complainants, Gilmore Oil Co., Hercules Gasoline Co., O'Donnell-Gillette Refining Co., Vernon Oil Refining Co., Wilshire Oil Company, and intervener, East-West Refining

Company, as their interests may appear, all charges collected for the transportation of various carloads of petroleum gas oil moving from Wilmington, Santa Fe Springs, Torrance, Pozo, Rioco, Burnett, Leesdale and Fillmore to Los Angeles, and from Los Angeles to O'Donnell Spur during a period extending from May 23, 1922 to October 13, 1925, involved in this proceeding and within the purview of Section 71 of the Public Utilities Act, which exceeded the charges that would have accrued at the rates contemporaneously applicable on petroleum crude oil between these points.

Dated at San Francisco, California, this 1st  
December  
day of ~~November~~, 1926.

H. B. Brundage  
C. A. Seaman  
Ernest J. ...  
Leon ...  
Thos. ...  
Commissioners.