

Decision No. 18697.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

ASSOCIATED OIL COMPANY,  
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,  
a corporation,

Defendant.

Case No. 2369.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation, organized under the laws of the State of California, with its principal place of business at San Francisco, is engaged in the producing, refining and marketing of petroleum and petroleum products. By complaint filed May 21, 1927, amended June 20, 1927, it is alleged that the rates charged for the transportation of less carload shipments of lubricating oil shipped between March 10, 1924, and November 27, 1925 inclusive, aggregating a weight of approximately 430,261 pounds, and less carload shipments of petroleum grease shipped during the same period, aggregating a weight of approximately 25,328 pounds, from Avon to Santa Rosa were unreasonable to the extent they exceeded rates of  $21\frac{1}{2}$  cents and  $18\frac{1}{2}$  cents per 100 pounds, respectively.

The statute of limitation was stayed by informal petition, March 9, 1926, file I.C. No. 34671.

Reparation only is sought. Rates will be stated in cents per 100 pounds.

Avon is on the Southern Pacific Western Division 3.4

miles east of Martinez and 7 miles east of Port Costa. Santa Rosa is on the Southern Pacific 67.7 miles north of Port Costa.

The Western Classification provides a third class rate on lubricating oil and fourth class on lubricating grease in less carload lots.

The applicable rates during the period of movement were constructed by use of a combination found in Southern Pacific tariff 333-G, C.R.C. 2496, Item 10 of which provides for the application of Martinez class rates on shipments originating at Avon, made 7 cents to Port Costa plus  $21\frac{1}{2}$  cents beyond, third class; and 6 cents to Port Costa plus  $18\frac{1}{2}$  cents beyond, fourth class; the factors beyond Port Costa being found in Southern Pacific Company tariff 711-C, C.R.C. 2843.

At Oleum 4.7 miles west of Port Costa and at Richmond 16.1 miles west, the Union Oil Company and Standard Oil Company respectively maintain storage and shipping facilities comparable to those of the complainant located at Avon, and prior to June 10, 1922, the rates from Oleum to Santa Rosa were applicable also from Avon as carried in defendant's tariff 333-F, C.R.C. 2395, Rule 5 (c), which rates were  $21\frac{1}{2}$  cents third class and  $18\frac{1}{2}$  cents fourth class.

By cancellation of Rule 5 (c) effective June 10, 1922, the combination rates as above set forth became the legally applicable rates from Avon, although the increases were unlawful, having been published without the authority of this Commission as required by Section 63 of the Public Utilities Act.

On December 8, 1925, the defendant amended its tariff 333-G, C.R.C. 2496, and by Item 10, provided for the application of the Richmond rates as maximum at Oleum, and thereby restored the original parity maintained between Oleum and Avon, which was unlawfully cancelled June 10, 1922.

Complainant bases its plea for reparation upon the lower rates subsequently established, and the fact that the cancellation of Rule 5 (c) of defendant's tariff was unauthorized and resulted in unreasonable and excessive rates from Avon in violation of Section 13 of the Public Utilities Act. Defendant admits the allegation of the complaint and has signified a willingness to make reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the rates assailed were unreasonable to the extent they exceeded the subsequently established rates of 21½ cents third class and 18½ cents fourth class. We further find that complainant paid and bore the charges on the shipments involved and has been damaged to the extent of the difference between the freight charges paid and those that would have accrued at the rates herein found reasonable, and that it is entitled to reparation.

Complainant will submit statement to defendant for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

#### 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 said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund

to complainant, Associated Oil Company, all charges it may have collected in excess of 21½ cents on shipments of lubricating oil and 18½ cents on lubricating grease involved in this proceeding and forwarded from Avon to Santa Rosa during the period from March 10, 1924, to November 27, 1925 inclusive.

Dated at San Francisco, California, this 8<sup>th</sup> day of August, 1927.

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Leon White

Thos. S. Rowland

M. J. Carr  
Commissioners.