

Decision No. 10355.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HERCULES GASOLINE COMPANY, a corporation,
Complainant,

vs.

THE ARCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
Defendant.

ORIGINAL

Case No. 2384.

B. H. Carmichael and F. W. Turcott of Los Angeles,
and Glensor, Clewe & Van Dine of San Francisco,
by Carmichael & Turcott, for complainant.

E. W. Camp and Charles K. Adams, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation organized under the laws of the State of California, is engaged in the business of producing, buying, refining, blending and selling petroleum products including gas oil. By complaint filed June 21, 1927, it is alleged that the rate charged for the transportation of gas oil in carloads moving from Pozo, California, to Los Angeles during the period extending from October 13, 1925, to January 12, 1927, both dates inclusive, was excessive, unjust and unreasonable to the extent it exceeded 3 cents per 100 pounds.

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

A public hearing was held before Examiner Geary at Los Angeles September 6, 1927, and the case having been duly submitted is now ready for our opinion and order.

The essential facts here for determination are not disputed. The shipments involved, consisting of 305 carloads, moved from Pozo to Los Angeles, a distance of 26 miles, and the charges were assessed rate of 4 cents applicable on petroleum gas oil as published in defendant's Tariff 9777-J, C.R.C. No. 562. The commodity shipped was a petroleum product colloquially referred to as refinery tops, which consist of the first cut or distillation of the crude oil and contain the higher fractional oils such as gasoline, engine distillate and kerosene. Except in remote cases the rail lines in California have never published specific rates on refinery tops but have for years applied the concurrently applicable rates on gas oil. We have held in a number of proceedings that in the transportation field the terms "refinery tops" and "gas oil" are synonymous. (Case 2182, Gilmore Oil Company et al. vs. The Atchison, Topeka and Santa Fe Railway et al., 28 C.R.C. 878 and cases cited therein.)

In Case 2182, *supra*, we found that the rate of 4 cents maintained by The Atchison, Topeka and Santa Fe Railway for the transportation of gas oil or refinery tops from and to the points here involved was unjust and unreasonable to the extent it exceeded 3 cents, and ordered the latter rate to be established on or before January 13, 1927. The Commission also awarded to the complainant in that case reparation on all shipments moving within the statutory period prior to October 13, 1925, the date the complaint in Case 2182 was filed. The Commission's reparation order however did not include any shipments moving during the period extending from October 13, 1925, the time the complaint was filed, until January 13, 1927, the date our order became effective, and the instant proceeding is for the purpose of recovering reparation on the shipments moving during the intervening period not covered by the order.

While defendant denied the allegations of the complaint it interposed no defense at the hearing.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate was unreasonable to the extent it exceeded the subsequently established rate of 3 cents. We further find that complainant paid and bore the charges on the shipments involved in this proceeding and has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable, and that it is entitled to reparation with interest at 6 per cent. per annum.

The amount of reparation due cannot be determined on this record. 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, The Atchison, Topeka and Santa Fe Railway Company, be and it is hereby authorized and directed to refund to complainant, Hercules Gasoline Company of Los Angeles, with interest at six (6) per cent. per annum, all charges it may have collected in excess of 3 cents

per 100 pounds on the shipments involved in this proceeding
forwarded from Pezo to Los Angeles during the period October
13, 1925, to January 12, 1927, inclusive.

Dated at San Francisco, California, this 4th day
of November, 1927.

Forunders
C. Seamy
Leon Whitell
Thos. B. Burt
M. A. Cunn
Commissioners.