

Decision No. 20128

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

HERCULES GASOLINE COMPANY, a corporation,
 EXPORT REFINING CORPORATION, a corporation,
 PAULEY OIL COMPANY, a corporation,
 VERNON OIL REFINING COMPANY, a corporation,
 EAST-WEST REFINING COMPANY, a corporation,
 MacMILLAN PETROLEUM PRODUCTS COMPANY, a corporation,
 GOREHAM-DURBROW OIL COMPANY, a corporation,
 ITALIO-AMERICAN PETROLEUM CORPORATION, a corporation,
 SEABOARD PETROLEUM CORPORATION, a corporation,
 SIERRA REFINING COMPANY, a corporation,
 MARINE REFINING CORPORATION, a corporation,
 TARR & McCOMB CORPORATION, a corporation,
 GILMORE OIL COMPANY, a corporation,
 J. W. JAMESON CORPORATION, a corporation,
 CALIFORNIA REFINING COMPANY, a corporation, and
 JOSEPH SCOTT and E. L. CARMICHAEL, as receivers of the
 Julian Petroleum Corporation, a corporation,

Complainants,

Case No. 2496.

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
 SOUTHERN PACIFIC COMPANY,
 LOS ANGELES & SALT LAKE RAILROAD COMPANY, and
 PACIFIC ELECTRIC RAILWAY COMPANY,

Defendants.

- F. W. Turcotte and E. E. Carmichael, for complainants.
- A. Burton Mason and James E. Lyons, for Southern Pacific Company, defendant.
- E. W. Camp, Platt Kent and Berne Levy, for The Atchison, Topeka & Santa Fe Railway Company, defendant.
- Fred E. Pettit, Jr., and J. P. Quigley, for Los Angeles & Salt Lake Railroad Company, defendant.
- R. E. Wedekind and W. E. Knoche, for Pacific Electric Railway Company, defendant.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations, engaged among other things in buying and selling petroleum products, including gas oil. They

allege by complaint filed February 6, 1928, and as amended May 7, 1928, that the rates charged on numerous carloads of petroleum gas oil shipped commencing March 22, 1923, from Montebello, Rioco, Watson, Signal Hill, O'Donnell Spur, Vinvale, Burnett, La Bolsa and Fillmore to Los Angeles; from Los Angeles to Rioco, Torrance, Long Beach, North Long Beach, El Segundo and East San Pedro; from Burnett to Rioco; from Signal Hill to North Long Beach, Thenard and Rioco; from Rioco and Bakersfield to North Long Beach and from Fulton Wells to National City, were and are now excessive, unjust and unreasonable in violation of Section 13 of the Public Utilities Act of the State of California to the extent they exceeded or may exceed the contemporaneously applicable rates on crude and fuel oil.

Informal complaints covering 1045 carloads were the subject of informal correspondence and appear of record with this Commission under the following file numbers: I.C. 32628 of March 30th and June 3, 1925; 34851 of April 12th and December 27, 1926; 36113 of December 10, 1926; 36379, 36380, 36381, 36383, 36384, 36385, 36386, 36387, 36388 and 36389 of January 31, 1927; 35596, 36384 and 36410 of February 4, 1927; 36526 of February 24, 1927; 36563 and 36564 of March 2, 1927; 36640 of March 18, 1927; 36681 of March 23, 1927; 37006 of March 16, 1927; 37240 of June 28, 1927; 37264 of June 27, 1927, and 37562 of August 22, 1927.

We are asked to prescribe just and reasonable rates for the future and to award reparation. Rates are stated in cents per 100 pounds.

A public hearing was held at Los Angeles before Examiner Geary May 2, 1928, and the case having been duly submitted and briefs filed is now ready for an opinion and order.

The following table shows the origin, destination and rates applied on the shipments involved, together with the rates sought.

ORIGIN	DESTINATION	RATE APPLIED	RATE SOUGHT
Montebello	Los Angeles	4	3
Rioco	" "	4	3
Watson	" "	4	3
Signal Hill	" "	4	3
O'Donnell Spur	" "	4	3
Vinvale	" "	4	3
Burnett	" "	4	3
La Bolsa	" "	6	5
Fillmore	" "	3	6
Los Angeles	Rioco	4	3
" "	Torrance	4	3
" "	Long Beach	4	3
" "	North Long Beach	4	3
" "	El Segundo	4	3
" "	East San Pedro	4	3
Burnett	Rioco	4	3
Signal Hill	North Long Beach	4	3
Rioco	" " "	7	6
Signal Hill	Thenard	7	6
" "	Rioco	8	6
Fulton Wells	National City	19½	18½
Bakersfield	North Long Beach	22	21

The commodity here involved is a petroleum product commonly referred to by the trade as "refinery tops". It is extracted from the first distillations of the crude oils and contains the higher fractions, such as gasoline, distillate and kerosene. No specific rates are named in defendants' tariffs on "refinery tops" between the points involved in this proceeding, and the rates applicable on petroleum gas oil were assessed. In Case No. 2182, Gilmore Oil Co. et al. vs. The Atchison, Topeka & Santa Fe Railway Co. et al. (28 C.R.C. 878), and Case No. 2384, Hercules Gasoline Co. vs. The Atchison, Topeka & Santa Fe Railway Co. (30 C.R.C. 574), we held that in so far as transportation by rail carriers was involved the terms "refinery tops" and gas oil are synonymous. In those proceedings we also found the rates charged for the transportation of numerous carloads of gas oil or "refinery tops" moving between various points, including certain of those involved in this complaint, unjust and unreasonable to the extent they exceeded the contemporaneously applicable rates on crude oil, ordered the defendants to establish the rates found reasonable on

or before January 13, 1927, and awarded reparation on all shipments moving subsequent to May 28, 1922.

These defendants contend, as to shipments moving prior to February 6, 1926, reparation should be denied, alleging that the statute of limitations has expired by reason of the provisions of Section 71 (b) of the Public Utilities Act, reading as follows:

"All 'complaints' concerning unreasonable, excessive, or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues."

Defendants point out in their brief that the term "complaint" as shown in Section 71 (b) refers only to formal proceedings, and that informal complaints cannot be construed as a controlling factor in tolling the statute.

As previously stated, informal complaints were registered with the Commission within two years from the time the cause of action accrued. A typical letter written March 25, 1925, in behalf of the Vernon Oil Refining Company, recorded under our I.C. 32622 of March 30, 1925, sets up the following issues:

"We allege the charges assessed and collected are unjust, unreasonable, unduly discriminatory, prejudicial and preferential in violation of Section 13, Paragraph "A" of the Public Utilities Act of the State of California to the extent they exceed charges at the rate claimed, 3¢ per 100 pounds.

"As the period provided by the statute of limitations is about to expire, we ask that this claim be registered and either presented to the carrier informally for an expression as to their attitude toward reparation or that the papers be returned to us for further handling."

The letters pertaining to the other informal complaints are similar in all respects.

The practice of considering an informal complaint as having the same force as a formal complaint has been recognized by this Commission and the Interstate Commerce Commission and there is nothing of record in this proceeding to justify a change in the practice which has been adhered to for many years. (Case

No. 2490, Van Camp Sea Food Co. vs. I.A. & S.E.R.R., Decision No. 19854, June 1, 1928.) We are of the opinion that the letters and statements of shipments when taken together constitute a substantial compliance with the provisions of Section 71 (b) of the Act.

Following the cases cited and the evidence submitted upon this record we find that the rates assailed applying to petroleum gas oil have been in the past and for the future will be unreasonable to the extent they exceed or may exceed the rates contemporaneously applicable on crude and fuel oil between the points here involved; and that on any shipments of petroleum gas oil involved in this proceeding made by these complainants on which they paid and bore the charges at the rates herein found unreasonable they are entitled to reparation in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, with interest at the rate of 6 per cent per annum.

The amount of reparation due cannot be determined on this record. Complainants should submit statements of shipments to defendants for check, and 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.

O R D E R

This case being at issue upon complaint and answers 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, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that the defendants, The Atchison,

Topeka & Santa Fe Railway Company, Southern Pacific Company, Los Angeles & Salt Lake Railroad Company, and Pacific Electric Railway Company, according as they participate in the transportation, be and they are hereby notified and required to cease and desist on or before October 15, 1928, and thereafter to abstain from publishing, maintaining or assessing rates on petroleum gas oil, carloads, from Montebello, Rioco, Watson, Signal Hill, O'Donnell Spur, Vinvale, Burnett, La Bolsa and Fillmore to Los Angeles; from Los Angeles to Rioco, Torrance, Long Beach, North Long Beach, El Segundo and East San Pedro; from Burnett to Rioco; from Signal Hill to North Long Beach, Thenard and Rioco; from Rioco and Bakersfield to North Long Beach and from Fulton Wells to National City, which shall exceed the rates contemporaneously in effect on petroleum crude oil, carload, from and to those points.

IT IS HEREBY FURTHER ORDERED that defendants, The Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Los Angeles & Salt Lake Railroad Company and Pacific Electric Railway Company, according as they participate in the transportation, be and they are hereby notified and required to establish on or before October 15, 1928, 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, carload, from Montebello, Rioco, Watson, Signal Hill, O'Donnell Spur, Vinvale, Burnett, La Bolsa and Fillmore to Los Angeles; from Los Angeles to Rioco, Torrance, Long Beach, North Long Beach, El Segundo and East San Pedro; from Burnett to Rioco; from Signal Hill to North Long Beach, Thenard and Rioco; from Rioco and Bakersfield to North Long Beach and from Fulton Wells to National City, which shall not exceed the contemporaneous rates on petroleum crude oil from and to those points.

IT IS HEREBY FURTHER ORDERED that defendants, The Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company,

Los Angeles & Salt Lake Railroad Company and Pacific Electric Railway Company according as they participated in the transportation, be and they are hereby authorized and directed to pay with interest at the rate of six (6) per cent. per annum unto complainants, Hercules Gasoline Company, Export Refining Corporation, Pauley Oil Company, Vernon Oil Refining Company, East-West Refining Company, MacMillan Petroleum Products Company, Gorham-Durbrow Oil Company, Italic-American Petroleum Corporation, Seaboard Petroleum Corporation, Sierra Refining Company, Marine Refining Corporation, Tarr & McComb Corporation, Gilmore Oil Company, J. W. Jameson Corporation, California Refining Company, and Joseph Scott and E. L. Carnahan, receivers of the Julian Petroleum Corporation, as their interest may appear, all charges collected for the transportation of various carloads of petroleum gas oil moving from Montebello, Rioco, Watson, Signal Hill, O'Donnell Spur, Vinvale, Burnett, La Bolsa and Fillmore to Los Angeles; from Los Angeles to Rioco, Torrance, Long Beach, North Long Beach, El Segundo and East San Pedro; from Burnett to Rioco; from Signal Hill to North Long Beach, Thehard and Rioco; from Rioco and Bakersfield to North Long Beach and from Fulton Wells to National City, subsequent to March 22, 1923, involved in this proceeding and coming within the scope of Section 21 of the Public Utilities Act, which exceeded the charges that would have accrued at the rates contemporaneously applicable on petroleum crude oil between those points.

Dated at San Francisco, California, this 17th day of August, 1928.

Leon Whitall
B. L. Seaver
James C. [unclear]
John S. [unclear]
M. J. [unclear]
Commissioners.