

Decision No. 29724.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SIERRA OIL COMPANY, INC.,

Complainant,

vs.

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

Defendants.

ORIGINAL

Case No. 2560.

Sanborn & Roehl and DeLancey C. Smith, for
the complainant.

L. N. Bradshaw, for The Western Pacific Railroad
Company.

Platt Kent and Berne Levy, for The Atchison, To-
peka and Santa Fe Railway Company.

J. E. Lyons, for Southern Pacific Company and other
defendants not specially appearing.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in buying, sell-
ing and distributing petroleum products. By complaint filed
June 19, 1928, it is alleged that the rates assessed and collect-
ed on numerous carloads of gasoline moving from Vinvale, East
Long Beach, Signal Hill, Burnett and Thenard to San Leandro on
the Western Pacific Railroad were at the time the shipments moved,
are now and for the future will be unjust and unreasonable, in
violation of Section 13 of the Public Utilities Act, and unduly
prejudicial to complainant and unduly preferential to complain-

ant's competitors, in violation of Section 19 of the Act to the extent they exceeded, exceed or may exceed 36 cents per 100 pounds.

Reparation and rates for the future are sought. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at San Francisco November 22, 1928, and the case having been submitted is now ready for our opinion and order.

Vinvale and Thenard are located on the Southern Pacific Company, Burnett is situated on the Los Angeles & Salt Lake Railroad, and East Long Beach and Signal Hill are served by the Pacific Electric Railway Company. Complainant ships gasoline from these points of origin to its distributing plant at San Leandro for consumption in the San Francisco Bay district. San Leandro is served by both the Southern Pacific and Western Pacific, but complainant's plant is located exclusively on the rails of the Western Pacific Railroad. These two lines have no interchange facilities at San Leandro, hence shipments originating in Southern California for delivery on complainant's industry track must be interchanged with the Western Pacific at either Oakland or Stockton.

Subsequent to the filing of the complaint the Los Angeles & Salt Lake Railroad, The Atchison, Topeka and Santa Fe Railway and The Western Pacific Railroad joined in establishing the 36-cent rate sought by complainants from Burnett to San Leandro on the Western Pacific, and the latter two lines are now willing to join with the Pacific Electric and Southern Pacific in publishing the same rate via the other available routes.

The present rate from Vinvale, Thenard, East Long Beach and Signal Hill to San Leandro on the Western Pacific is 39½ cents via Oakland and 38½ cents via Stockton. The form-

or rate is made combination on Oakland and the latter is the nonintermediate joint fifth-class rate applicable on refined petroleum products.

The Southern Pacific and Pacific Electric now maintain a joint rate of 36 cents on gasoline from the points of origin here involved to San Francisco, Oakland, Alameda, Richmond, San Jose and numerous other points in the San Francisco Bay region, including San Leandro on the Southern Pacific. The same rate also applies in connection with the other defendants from practically all producing points in Southern California to the destination points just named. These rates are nonintermediate in application and were authorized by appropriate orders of this Commission under the provisions of Section 24(a) of the Public Utilities Act. Thus with the exception of San Leandro on the Western Pacific in connection with traffic originating on the Southern Pacific and Pacific Electric, all other distributing points in the bay region are accorded the rate sought by complainant.

Complainant does not seriously contend that the assailed rates are unreasonable in and of themselves, nor does the record support this contention, as the evidence and testimony show that the rates under attack are now materially lower than rates prescribed by this Commission in Cases Nos. 1913 and 1914, Richfield Oil Company vs. Sunset Railway et al., 24 C.R.C. 729-736, for substantially shorter hauls in territory where water competition is not prevalent.

Complainant's main grievance lies in the fact that defendants now have in effect a rate of 36 cents to practically all points in the territory surrounding San Leandro, thus placing it at a serious disadvantage in marketing its products in competition with other distributors of petroleum products

who now enjoy the benefit of a lower rate.

As heretofore stated, the Western Pacific and Santa Fe are agreeable to establishing the 36-cent rate to San Leandro on the Western Pacific, and likewise the record shows that the Pacific Electric is willing to join in this through rate provided its parent company, the Southern Pacific, will give its concurrence. However the Southern Pacific objects to establishing a through rate to San Leandro on the Western Pacific, as it contends it will be forced to short-haul itself, inasmuch as the 36-cent rate now applies to San Leandro on the Southern Pacific Company. It is further contended that under the provisions of Section 33 of the Public Utilities Act the Commission is without authority to compel it to join with other carriers in a joint route unless it receives its full local rate, inasmuch as it now has a satisfactory route between the termini.

Section 33 of the Act reads in part as follows:

"Whenever the Commission, after a hearing upon its own motion or upon complaint, shall find that the rates, fares or charges in force over two or more common carriers, between any two points in this state, are unjust, unreasonable or excessive, or that no satisfactory through route or joint rate, fare or charge exists between such points, and that the public convenience and necessity demand the establishment of a through route and joint rate, fare or charge between such points, the Commission may order such common carriers to establish such through route and may establish and fix a joint rate, fare or charge * * *; provided, that where any railroad * * * which is made a party to a through route has itself over its own line an equally satisfactory through route between the termini of the through route established, such railroad * * * shall have the right to require as its division of the joint rate, fare or charge its local rate, fare or charge over the portion of its line comprised in such through route." (Underscoring ours)

The section of the Act just quoted is clear in its meaning, but the contention of the Southern Pacific that it now has a satisfactory through route between the termini is not borne out by the record. As previously stated, complainant's industry is located exclusively on the rails of the Western Pacific, and

there is no physical connection between the Western Pacific and the Southern Pacific at San Leandro. In order to reach complainant's plant it is necessary to interchange the traffic at either Oakland or Stockton, and thus the Southern Pacific can only serve complainant through the medium of another line haul carrier. Only in this manner can a satisfactory route between the termini be established. The lack of interchange facilities at San Leandro between the Southern Pacific and the Western Pacific precludes the Southern Pacific from providing complainant with a satisfactory route as contemplated by Section 33 of the Act.

After a careful consideration of all the facts of record we are of the opinion and so find that defendants' failure to establish the 36-cent rate to San Leandro on the Western Pacific was and is unduly prejudicial to complainant and unduly preferential to complainant's competitors. The record does not substantiate complainant's allegation that the assailed rates were or are unreasonable, in violation of Section 13 of the Act.

Complainant seeks reparation because of the prejudicial adjustment, but the record is devoid of proof of damage suffered, if any, as required to be made on a finding of undue prejudice, and reparation is therefore denied. (Penn. R.R.Co. vs. International Coal Company, 230 U.S. 184. Los Angeles County vs. Pacific Electric et al., 27 C.R.C. 337.)

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 defendants, Southern Pacific Company, The Western Pacific Railroad Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participate in the transportation, be and they are hereby directed to establish on or before thirty (30) days from the date of this order and upon notice to this Commission and the general public by not less than five (5) days' filing and posting in the manner required by law and thereafter to maintain and apply for the transportation of gasoline, carloads, a rate of 36 cents per 100 pounds from Vinvale, East Long Beach, Signal Hill, Burnett and Thenard to San Leandro on The Western Pacific Railroad Company.

Dated at San Francisco, California, this 25th day of January, 1929.

Thos D. Luitel
C. Deaver
Ernest J. ...
Leon ...
M. A. ...
Commissioners.