Decision No. 21098.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SEABOARD PETROLEUM CORPORATION,
Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
LOS ANGELES AND SALT LAKE RAILROAD COMPANY,
Defendants.

Case No. 2629.

H.M.Avey and Edgar B. Byers, for complainant.

W.H.Loves, A.S.Halstead, E.W.Camp and E.E. Bennett, for defendants.

CARR, Commissioner:

O P I N I O N

Complainant is a corporation engaged in the buying, selling, refining, marketing and shipping of petroleum and its products. By complaint filed November 30, 1928, it is alleged that the charges assessed by defendants on numerous carloads of petroleum and its products moving from Burnett, California, to Los Angeles, California, subsequent to November 9, 1926 (amended to read subsequent to January 8, 1927), were, are and for the future will be inapplicable under the tariffs, excessive, unjust, unreasonable, unduly prejudicial and discriminatory in violation of Sections 13, 17 and 19 of the Public Utilities Act and in violation of the aggregate of intermediate provisions of Section

24(a) of the Act. Reparation and a lawful charge for the future are sought. Rates are stated in cents per 100 pounds.

A public hearing was held at Los Angeles May 9, 1929, before Commissioner Carr and the case was submitted. At the hearing it developed that the issue was essentially one of tariff interpretation.

Complainant's shipments, consisting of approximately 2000 cars of gas oil, originated at Burnett, were forwarded to Los Angeles via the Los Angeles & Salt Lake Railroad and there turned over to The Atchison, Topeka and Santa Fe for switching to complainant's industry, located on the rails of the latter line within the Los Angeles switching limits. Defendants assessed a line haul rate of 3 cents per 100 pounds, accruing to the Los Angeles & Salt Lake Railroad, plus a switching charge of $2.70 per car accruing to The Atchison, Topeka and Santa Fe Railway. At the time the shipments moved the Los Angeles & Salt Lake Railroad had in effect from Long Beach, 3 miles beyond Burnett, to Los Angeles a line haul rate of the same volume as in effect from Burnett, and in addition provided for the absorption of the A.T. & S.F.Ry. switching charge at Los Angeles. Thus the applicable aggregate charge from Burnett exceeded by $2.70 per car that applicable from Long Beach.

The line haul rate from Long Beach was published in Los Angeles & Salt Lake Railroad Tariff 107-E, C.R.C. 306, hereafter referred to as the line haul tariff, and the provision for the absorption of the Santa Fe switching charge was contained in Los Angeles & Salt Lake Railroad Terminal Tariff No.200-E, C.R.C. No. 289. The line haul tariff contained in Item No. 60 a reference to the terminal tariff, which in effect placed within the covers of the latter tariff all the terminal and other charges, privileges and allowances of the terminal tariff.

The charge from Long Beach to points on the Santa Fe in Los Angeles was subject to Item 5 of the line haul tariff which provided:

> "In no case, except as otherwise specifically provided herein, shall a greater charge be made between intermediate points on same line in same direction on like property. * * * * *"

Nothing in the tariff, "specifically" or otherwise, indicates or provides that this rate does not apply as the maximum at the intermediate points, of which Burnett is one. The total charge from Long Beach to an industry on the Santa Fe at Los Angeles was 3 cents per 100 pounds, hence in my opinion and I so find, complainant's shipments were charged $2.70 per car in excess of the applicable tariffs in violation of Section 17 of the Public Utilities Act. The overcharges should be refunded.

This obvious construction of the tariff has removed the cause for the alleged violations of Sections 13, 19 and 24(a) of the Public Utilities Act.

I recommend the following form of order:

O R D E R

This case being at issue upon complaint, full investigation of the matters and things involved having been had, and basing this order on the findings of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that defendants, Los Angeles & Salt Lake Railroad Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, Seaboard Petroleum Corporation, on or before July 15, 1929, with interest at the rate of six (6) per cent. per annum, all charges collected in excess of 3 cents per 100 pounds for the transportation of complainant's shipments of gas oil involved in this proceeding, moving subsequent to January 8, 1927,

from Burnett to Los Angeles.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 16th day of May, 1929.

Commissioners.