

Decision No. 21219.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WILBUR-ELLIS COMPANY,
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

ORIGINAL

Case No. 2527.

E. H. Carmichael and F. W. Turcotte, for the complainant and for the Vegetable Oil Products Company, interveners.

H. H. McElroy and C. N. Bell, for the defendant.

L. E. Stewart and E. B. Byers, for the Globe Grain & Milling Company and the Globe Cotton Oil Mills, interveners.

P. J. Shaw, for Swift & Company, intervener.

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 buying, refining and marketing of fish oil. By complaint filed April 10, 1928, it is alleged that the rates assessed by defendant for the transportation of crude fish oil, both in tank cars and in packages, car-loads, from Monterey to Los Angeles were, are now and for the future will be unjust and unreasonable in violation of Section 13 of the Public Utilities Act of the State of California, inapplicable under the tariffs in violation of Section 17 of the Act, and unjustly discriminatory, unduly preferential and prejudicial, in

violation of Section 19 of the Act.

We are asked to prescribe just, reasonable, non-prejudicial and non-preferential rates for the future and to award reparation. Except as noted, rates will be stated in cents per 100 pounds.

Shipments made by complainant on which the cause of action accrued more than two years prior to the filing of the complaint, although registered with the Commission within the statutory period under our File I.C. 33512 of August 24, 1925, and July 13, 1927, for the purpose of tolling the statute of limitations, are barred from further consideration by reason of the decision of the California Supreme Court rendered April 26, 1929, in Los Angeles & Salt Lake Railroad Company vs. Railroad Commission, S.F. No. 13152, 77 Cal.Dec. 594.

The Globe Grain and Milling Company, Globe Cotton Oil Mills and Swift & Company intervened in behalf of complainant and requested reparation on various shipments of crude fish oil made by them from Monterey to Los Angeles. The Vegetable Oil Products Company, Incorporated, also intervened in behalf of complainant and broadened the issues of the complaint to include rates on crude fish oil, in tank cars, from Monterey to Wilmington. Complainant and interveners will hereinafter be collectively referred to as complainants.

A public hearing was held before Examiner Geary at Los Angeles on March 1, 1929, and the case having been submitted is now ready for an opinion and order.

The shipments here involved, transported in packages, moved during the period barred from consideration, and as the record shows that all shipments are now made in tank cars, it will be unnecessary to further consider the package rates.

Crude fish oil is the by-product of fish canneries located

at Monterey, a point on the Monterey branch of the Southern Pacific Company 15.7 miles west of Del Monte Junction. It has a value of approximately six cents per pound, weighs from 7.5 to 7.6 pounds per gallon, and loads to an average weight varying from 60,000 to 64,000 pounds to the tank car. The season's production totals about 250 tank carloads, the principal portion of which is shipped to Los Angeles and Wilmington, where it is refined and used in the manufacture of soap and for edible purposes. The refined oil to some extent comes in competition with various vegetable and seed oils.

The shipments, transported in tank cars, moved in equipment furnished by both the shippers and the carrier. The applicable rate on the shipments made in cars furnished by the shipper was 38½ cents, but this rate did not apply when the cars were furnished by defendant. However, through error defendant assessed the rate of 38½ cents on all shipments, resulting in an undercharge on the shipments moving in carrier equipment. Subsequent to the filing of the complaint the 38½ cent rate was published, effective January 17, 1929, to apply on shipments in cars furnished by carrier.

Complainants contend that there should be no difference in the rate, regardless of whether the shipper or the carrier furnishes the cars. At the hearing defendant agreed that under the circumstances the 38½ cent rate should apply on all shipments and that it was willing to waive the uncollected undercharges.

Complainants however are here seeking a rate of 31½ cents. This is the same as the rate on crude fish oil, in packages, and on vegetable oils, in tank cars, from San Francisco to Los Angeles. However this rate is nonintermediate in application, published under appropriate authority of this Commission to enable defendant to meet water competition, and does not afford a basis for the

establishment of a reasonable rate from Monterey to Los Angeles.

Aside from this comparison complainants have referred to tank car rates on acid, lime and sulphur solution, molasses, caustic soda, vinegar and cider, applicable between various points in California which are on a somewhat lower basis than the 38½ cent rate assessed complainants' shipments. Defendant on the other hand showed numerous rates on other commodities such as vegetable oils, petroleum oils and creosote oil between points in California substantially higher than the rate assessed complainants' shipments. In fact defendant claims that the 38½ cent rate here at issue is now lower than a reasonable rate and was established in 1922 on the basis of the applicable 5th class nonintermediate, water-compelled rate from San Francisco to Los Angeles to enable shippers of fish oil at Monterey to compete with shippers at San Francisco.

The record as a whole does not show that the 38½ cent rate is unjust and unreasonable, and we so find. In view of the fact that the present rate of 38½ cents applies in tank cars furnished by shippers or defendant, and the offer of defendant to waive the existing undercharges, the cause for the allegations that the rates were in violation of Section 17 and 18 of the Public Utilities Act has been removed.

An order will be issued authorizing defendant to waive the collection of the existing undercharges on the shipments in tank cars furnished by defendant. The proceeding in all other respects will be dismissed.

O R D E R

This case having been heard and submitted, 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,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to waive undercollection from complainants, Globe Grain and Milling Company, Globe Cotton Oil Mills Company, Swift and Company, and Vegetable Products Company, Incorporated, according as their interests may appear, of all charges which may be due in excess of a rate of 38½ cents applicable for the transportation of various carloads of crude fish oil in tank cars furnished by defendant from Monterey to Los Angeles and Wilmington.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 10th day of June, 1929.

Frank R. Keith

C. C. Seamy

Edward J. [unclear]

Leon [unclear]

Commissioners.

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violation of Section 19 of the Act.

We are asked to prescribe just, reasonable, non-prejudicial and non-preferential rates for the future and to award reparation. Except as noted, rates will be stated in cents per 100 pounds.

Shipments made by complainant on which the cause of action accrued more than two years prior to the filing of the complaint, although registered with the Commission within the statutory period under our File I.C. 33512 of August 24, 1925, and July 13, 1927, for the purpose of tolling the statute of limitations, are barred from further consideration by reason of the decision of the California Supreme Court rendered April 26, 1929, in *Los Angeles & Salt Lake Railroad Company vs. Railroad Commission, S.F. No. 13152, 77 Cal.Dec. 594.*

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Complainants contend that there should be no difference in the rate, regardless of whether the shipper or the carrier furnishes the cars. At the hearing defendant agreed that under the circumstances the 38½ cent rate should apply on all shipments and that it was willing to waive the uncollected undercharges.

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IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 10th day of June, 1929.

Thos. J. Routh

C. Searcy
Wm. J. Routh
Leon Whittell

Commissioners.