

ORIGINALDecision No. 21399.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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,
 COREAM-DUREBROW 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 & MccOME CORPORATION, a corporation,
 GILMORE OIL COMPANY, a corporation,
 J. W. JAMESON CORPORATION, a corporation,
 CALIFORNIA REFINING COMPANY, a corporation, and
 JOSEPE SCOTT and E. L. CARNAHAN, as receivers of the
 Julian Petroleum Corporation, a corporation,

Complainants,

vs.

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

Defendants.

Case

No. 2496

BY THE COMMISSION:

FURTHER OPINION

By our Decision No. 20128, dated August 17, 1928, in the above entitled proceeding we found that the rates assessed on numerous carloads of petroleum gas oil shipped during the period March 22, 1923, and subsequent thereto, 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 unjust and unreasonable to the extent they exceeded the rates contemporaneously in effect on petroleum crude and fuel oils. Reparation was awarded complainants on the basis of the rates found reasonable. The cause of action on approximately 1045 shipments involved in the complaint accrued more than two years prior to the filing of the above entitled complaint. They were however a matter of record with the Commission by the filing of so-called informal complaints within the two-year statutory period, and these informal complaints were held by us to be sufficient to stay the statute of limitations.

Prior to the effective date of Decision No. 20128, defendants petitioned for and were granted a rehearing for the purpose of further considering whether or not the informal complaints before us in this proceeding were sufficient to stay the statute of limitations. The matter was held in abeyance, as the same question was before the California Supreme Court on a writ of review of our decision in Van Camp Sea Food Company vs. Los Angeles & Salt Lake Railroad Company, 31 C.R.C. 837, wherein we held that the informal complaint before us in that proceeding stayed the statute of limitations. Our finding in the Van Camp case was held to be in error and the order was annulled by the Supreme Court on April 26, 1929, in Los Angeles & Salt Lake Railroad vs. Railroad Commission et al., S.F. 13152, 77 Cal.Dec. 594.

We have given further consideration to the informal complaints submitted in this proceeding, in the light of the decision of the California Supreme Court in Los Angeles & Salt Lake Railroad vs. Railroad Commission et al., supra, and have concluded that they are substantially in the same form as those considered by the Court and are therefore without force to stay the statute of limitations. Complainants have notified the

Commission in writing that they agree with this interpretation; therefore it would appear that this matter will not require a further hearing.

Upon further consideration of all the facts of record we are of the opinion and so find that as to all shipments involved in this proceeding on which the cause of action accrued more than two years prior to the filing of the formal complaint in this proceeding, the Commission is without authority to award reparation thereon. Our original order will be amended accordingly.

O R D E R

This case having been duly heard, submitted and reopened for further consideration, a 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 the fourth paragraph of our order in the above entitled proceeding entered on August 17, 1928, be and it is hereby amended to read as follows:

"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, Italo-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 H. 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, Thenard and Rioco; from Rioco and Bakersfield to North Long Beach and from Fulton Wells to National City, subject to the condition that this reparation award shall apply only to shipments involved in this proceeding on which the cause of action accrued within two years prior to the filing of the formal complaint."

IT IS HEREBY FURTHER ORDERED that in all other respects our Decision No. 20128, rendered August 17, 1928, in the above entitled proceeding shall remain in full force and effect.

Dated at San Francisco, California, this 29th day of July, 1929.

Thos D. Lovett

C. L. Harvey

Leon A. Hill

Commissioners.