

Decision No. 21935.

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,
 GORHAM-DURBROW OIL COMPANY, a corporation,
~~ITALO-AMERICAN PETROLEUM CORPORATION~~, a corporation,
 SEABOARD PETROLEUM CORPORATION, a corporation,
 SIERRA REFINING COMPANY, a corporation,
 MARINE REFINING CORPORATION, a corporation,
 TARR & McCOMBS CORPORATION, a corporation,
 CHILMORE OIL COMPANY, a corporation,
 J. W. JAMESON CORPORATION, a corporation,
 CALIFORNIA REFINING COMPANY, a corporation, and
 JOSEPH SCOTT and E. L. CARNAHAN, as receivers of the
 Julian Petroleum Corporation, a corporation,

Case

No. 2496

Complainants,

vs.

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

Defendants.

E. E. Carmichael and F. W. Turcotte, for Gorham-Durbrow Oil Company, complainant.

R. E. Wedekind and William G. Knoche, for Pacific Electric Railway Company, defendant.

BY THE COMMISSION:

OPINION AND ORDER ON REHEARING

Upon a petition duly filed, a hearing was held in this case to determine if reparation is due to the Gorham-Durbrow Oil Company, a corporation, in connection with certain carload shipments described as kerosene stock, forwarded via the Pacific

Electric Railway Company from Los Angeles to Long Beach during the period May 14, 1927, to and including March 2, 1928.

By our Decision No. 20128, August 17, 1928, we held that the rates applying to petroleum gas oil were unreasonable to the extent they exceeded the rates applicable on crude and fuel oil between the points here involved, and ordered reparation to such basis, with interest at the rate of 6 per cent. per annum. Supplemental decisions were rendered, No. 20399, October 29, 1928, and No. 21399, July 29, 1929, but these decisions had only to do with the statute of limitations, occasioned by the decision of our Supreme Court on April 26, 1929, in Los Angeles & Salt Lake Railroad vs. Railroad Commission et al., S.F. No. 13152, 77 Cal.Dec. 594 (referred to as the Van Camp case). They had no reference to the volume of the rates assessed against any shipments included in the reparation demands.

The instant petition alleged that during the period commencing May 14, 1927, and ending December 13, 1927, the Marine Refining Corporation shipped from Los Angeles to Long Beach 30 tank carloads of petroleum gas oil, and during the period January 17, 1928, to and including March 2, 1928, shipped from the same point to the same destination 54 tank carloads of petroleum gas oil, each of which shipments was described in the bill of lading as "kerosene stock". It is alleged that the charges collected against these 84 carloads of so-called kerosene stock were unjust and unreasonable and not in harmony with our Decision No. 20128 to the extent that they exceeded a rate of 3 cents per 100 pounds based on an estimated weight of 7.75 pounds per gallon, which rate and weight were found to be just and reasonable. The prayer is that defendant, Pacific Electric Railway Company, be required to pay to the Gorham-Durbrow Oil Company reparation for the unlawful charges.

The issue presented on this record is, did the term "kerosene stock" fail to properly and completely describe the shipments and should they be given the petroleum gas rate. The consignments were described on the bills of lading by the complainant as kerosene stock, and charges were assessed at rate of 4 cents per 100 pounds on estimated weight of 6.6 pounds per gallon, apparently under Item 896 page 78 of Pacific Electric Railway's Local and Joint Proportional Tariff 120-C, C.R.C. 239, applying to refined petroleum products. It is claimed the commodity should have been billed as petroleum gas oil at an estimated weight of 7.75 pounds per gallon, and by reason of our Decision No. 20128 is entitled to the rate of 3 cents per 100 pounds.

Witnesses for complainant testified they purchased petroleum gas oil and that this commodity is also known to the trade as kerosene stock, or second-run refinery tops, all of which from a transportation standpoint is considered to be petroleum gas oil. The process used in treating the crude petroleum is to put the oil through stills and remove what is termed the first cut, consisting principally of gasoline stock; the deeper or second cut is principally kerosene and distillate stock, and the third cut the residuum. The shipments here involved consisted of the second cut, which was manufactured into kerosene oil.

Defendant's testimony referred mainly to the fact that kerosene stock was not mentioned in the original proceeding. There was no proof that the term petroleum gas oil is not also employed by the trade to designate kerosene stock.

Upon the facts of record we find that the kerosene stock as herein described is a petroleum gas oil and that the rate of 3 cents per 100 pounds, estimated weight of 7.75 pounds per gallon, as prescribed by our original Decision No. 20128,

is the just and reasonable rate to be applied to these shipments.

We further find that complainant, Gorham-Durbrow Oil Company, received the shipments as described in Exhibits Nos. 34 and 35, and paid and bore the charges thereon, that it has been damaged to the extent that the charges collected exceeded those that would have accrued at the rate herein found reasonable, and that it is entitled to receive from defendant, Pacific Electric Railway Company, reparation in the sum of \$227.36, with interest at six (6) per cent. per annum.

Dated at San Francisco, California, this 20th day of December, 1929.

Frank D. Smith

O. L. Leamy

Ernest W. ...

Leon ...

M. P. ...
Commissioners.