

ORIGINAL

Decision No. 22312

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PAN-PACIFIC OIL COMPANY, a corporation,  
BRANCOCK OIL COMPANY, a corporation,

Complainants,

vs.

Case No. 2724.

PACIFIC ELECTRIC RAILWAY COMPANY,  
a corporation, and  
LOS ANGELES & SALT LAKE RAILROAD COMPANY,  
a corporation,

Defendants.

B. H. Carmichael and F. W. Turcotte, for  
complainants.

A. S. Halsted, E. E. Bennett and J. P. Quigley,  
for Los Angeles & Salt Lake Railroad Company,  
defendant.

Frank Karr, R. E. Wedekind and W. C. Knoche, for  
Pacific Electric Railway Company, defendant.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations engaged in producing, buying, refining and marketing petroleum products. By complaint filed July 20, 1929, it is alleged (a) that the rates assessed and collected by defendants for the transportation of carload shipments of gas oil between all points on their lines in California, and particularly from Watson to Burnett, were inapplicable under the tariff, in violation of Section 17(2) of the Public Utilities Act; and (b) that the rates assessed and collected for the transportation of numerous carloads of gas oil

from Watson to Burnett and from East Long Beach to Long Beach were, are, and for the future will be, unjust and unreasonable, in violation of Section 13 of the Act.

We are asked to prescribe lawful rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles September 18, 1929, and the proceeding having been submitted is now ready for an opinion and order.

While the complainants attack the rates on gas oil between all points in California on the lines of defendants, the proof offered at the hearing was devoted entirely to the rates on this commodity from Watson to Burnett and from East Long Beach to Long Beach. There was no effort made to show that the rates on gas oil between other points were in any manner unlawful and therefore no further consideration will be given to these rates.

Complainants' shipments consisted of a petroleum product commonly referred to as refinery tops and containing the higher fractioned oils, such as gasoline, kerosene and distillate. This commodity requires further processing before it is commercially usable. Defendants do not maintain specific rates for the transportation of refinery tops but have for years transported this product under the gas oil rates. We have held that in the transportation field the terms "gas oil" and "refinery tops" are synonymous. (Richfield Oil Co. vs. Sunset Railway, 25 C.R.C. 619; Gilmore Oil Co. et al. vs. A.T. & S.F. Ry. et al., 28 C.R.C. 878; Hercules Gasoline Company vs. A.T. & S.F. Ry., 30 C.R.C. 574; and Hercules Gasoline Co. et al. vs. A.T. & S.F. Ry. et al., 32 C.R.C. 164.) And we also held in those proceedings that the gas oil rates were unreasonable to the extent they exceeded

the contemporaneously applicable rates on crude oil.

At the time complainants' shipments moved from Watson to Burnett the rate on both gas and crude oil was 5 cents per 100 pounds. The movement involved a joint haul of 11 miles via the Pacific Electric Railway and Los Angeles & Salt Lake Railroad Company. Defendants assessed and collected the refined oil rate of 7 cents subject to an estimated weight of 6.6 pounds per gallon. Under the tariffs the applicable rate from Watson to Burnett was 5 cents per 100 pounds, subject to an estimated weight of 7.75 pounds per gallon, resulting in a straight overcharge on complainants' shipments from Watson to Burnett. Complainants attack the 5-cent rate from Watson to Burnett as being unreasonable to the extent it exceeded, exceeds or may exceed 4 cents. Although this rate is of the same volume as the crude oil rate they contend the latter is too high when compared with other rates on crude oil between various points in Southern California for comparable distances. The crude oil rates used for comparative purposes apply between points where there is acute pipe line or motor truck competition, and have not on this record been shown to be a proper guide for determining maximum reasonable rates on gas oil from Watson to Burnett. There is nothing in this record which would justify us in prescribing rates on gas oil lower than those concurrently in effect on crude oil.

On the shipments from East Long Beach to Long Beach, a distance of 9 miles, defendants assessed the applicable gas oil rate of  $3\frac{1}{2}$  cents. However at the time of movement, as well as at present, the crude oil rate between the same points was and is 3 cents per 100 pounds. Thus complainants were charged a rate  $\frac{1}{2}$  cent higher than the basis we have heretofore held to be reasonable for rates on gas oil. (Richfield Oil Company vs. Sunset Railway, supra; Gilmore Oil Co. et al. vs. A.T. & S.F. Ry.

et al., supra; and Hercules Gasoline Company vs. A.T. & S.F. Ry., supra.)

Upon consideration of all the facts of record we are of the opinion and so find that the rate of 7 cents per 100 pounds, subject to an estimated weight of 8.6 pounds per gallon on complainants' shipments moving from Watson to Burnett was inapplicable under the tariff to the extent it exceeded 5 cents per 100 pounds, subject to an estimated weight of 7.75 pounds per gallon; that the rate of  $3\frac{1}{2}$  cents per 100 pounds from East Long Beach to Long Beach was, is, and for the future will be unreasonable to the extent it exceeds the contemporaneously applicable rate on crude oil; that complainants made the shipments as described, paid or bore the charges thereon, and have been damaged to the extent of the difference between the charges paid and those herein found lawful and are entitled to reparation with interest at the rate of six per cent. per annum. We are of the further opinion and find that the applicable rate of 5 cents per 100 pounds on gas oil from Watson to Burnett was not and is not unreasonable.

The amount of reparation due cannot be determined on this record. Complainants will submit to defendants for verification a statement of the shipments made and upon payment of the reparation defendants will notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary. Shipments moving subsequent to the filing of the complaint may be included in the reparation statement if accompanied by proof, in the form of an affidavit, that the shipments were made and the freight charges thereon paid and borne by complainants.

O R D E R

This case having been duly heard and submitted, 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, Pacific Electric Railway Company and Los Angeles & Salt Lake Railroad Company, according as they participate in the transportation, be and they are hereby ordered to cease and desist and thereafter to abstain from applying for the transportation of petroleum gas oil, in carloads, a rate in excess of 5 cents per 100 pounds from Watson to Burnett and 3 cents per 100 pounds from East Long Beach to Long Beach.

IT IS HEREBY FURTHER ORDERED that defendants, Pacific Electric Railway Company and Los Angeles & Salt Lake Railroad Company, according as they participate in the transportation, be and they are hereby notified and required to establish on or before thirty (30) days from the effective date of this order, upon not less than five (5) days' notice to the Commission and the public, and thereafter to maintain and apply to the transportation of gas oil, in carloads, from East Long Beach to Long Beach, a rate not to exceed 3 cents per 100 pounds.

IT IS HEREBY FURTHER ORDERED that defendants, Pacific Electric Railway Company and Los Angeles & Salt Lake Railroad Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainants, Pan-Pacific Oil Company and Hancock Oil Company, according as their interests may appear, all charges collected for the transportation of the shipments of petroleum gas oil involved in this proceeding in excess of 5 cents per 100 pounds

from Watson to Burnett and in excess of 3 cents per 100 pounds from East Long Beach to Long Beach, providing this reparation award shall apply only on shipments upon which the cause of action accrued within the two-year period immediately preceding the filing of this complaint.

Dated at San Francisco, California, this 9th day of April, 1930.

Chas. Scully

John Whalley  
Thos. B. Linton

W. P. Carr  
Commissioners.