

Decision No. 22573.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

**ORIGINAL**

GRIFFITH COMPANY,  
HERCULES GASOLINE COMPANY,  
SAMSON TIRE & RUBBER CORPORATION,

Complainants,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY,

Defendant.

Case No. 2700.

F. W. Turcotte and E. E. Carmichael for complainants.

Frank Karr, R. E. Wedekind and W. G. Knoche, for  
defendant.

BY THE COMMISSION:

O P I N I O N

Complainant Griffith Company is a corporation engaged in the general contracting and paving business; the Hercules Gasoline Company is a corporation engaged in producing, refining and marketing petroleum and petroleum products; and the Samson Tire & Rubber Corporation is engaged in manufacturing and marketing automobile tires and tubes. By complaint seasonably filed it is alleged that the charges assessed and collected on numerous car-loads of petroleum and petroleum products transported from Athens and Watson to Los Angeles and from Los Angeles to Compton during the two-year period immediately preceding the filing of this complaint were, are, and for the future will be inapplicable under

the tariffs, unjust, unreasonable, unduly prejudicial and discriminatory, in violation of Sections 13, 17 and 19 of the Public Utilities Act, and in violation of the long and short haul provisions of the Constitution of the State of California and of Section 24(a) of the Act.

Reparation and rates for the future are sought. Rates will be stated in cents per hundred pounds.

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

Complainants' shipments consisted of 253 cars of crude oil from Athens to Los Angeles, 251 cars of asphalt from Watson to Los Angeles, and 14 cars of fuel oil from Los Angeles to Compton. The line haul movement was via the Pacific Electric Railway, but in each case the shipments originated at or were destined to industries located on the rails of either the Atchison, Topeka and Santa Fe Railway or the Los Angeles & Salt Lake Railroad Company at Los Angeles. For the line haul service the Pacific Electric Railway assessed and collected a rate of 3 cents on the crude oil from Athens to Los Angeles,  $2\frac{1}{2}$  cents on the asphalt from Watson to Los Angeles, and 3 cents on the fuel oil from Los Angeles to Compton, plus a switching charge of \$2.70 per car accruing to the Atchison, Topeka and Santa Fe Railway or the Los Angeles & Salt Lake Railroad Company, as the case may be, for performing the switching service at Los Angeles.

During the period the shipments moved, as well as at the present time, the Pacific Electric Railway maintained from San Pedro to Los Angeles rates of 3 cents and  $2\frac{1}{2}$  cents respectively on crude oil and asphalt, and from Los Angeles to San Pedro a rate of 3 cents on fuel oil, which were of the same volume as the line haul rates assessed on complainants' shipments from Athens

and Watson to Los Angeles and from Los Angeles to Compton. Athens, Watson and Compton are directly intermediate points on the Pacific Electric Railway between San Pedro and Los Angeles. In connection with the traffic between San Pedro and Los Angeles the Pacific Electric Railway provided in Item 87 of its Terminal Tariff 2-F, C.R.C. 255, or succeeding issues, that the \$2.70 per car switching charge exacted by the Atchison, Topeka and Santa Fe Railway or the Los Angeles & Salt Lake Railroad Company at Los Angeles would be absorbed. This absorption item became effective August 22, 1923, and was an enlargement of the general absorption provisions relating to competitive traffic, inasmuch as traffic between San Pedro and Los Angeles was not competitive from a transportation standpoint as that term is defined in Item 10 of the Terminal Tariff, for neither the Atchison, Topeka and Santa Fe Railway nor the Los Angeles & Salt Lake Railroad directly reached San Pedro. Thus by this absorption of the connecting lines' switching charges at Los Angeles the charges assessed by the Pacific Electric Railway on crude oil and asphalt from San Pedro to Los Angeles and on fuel oil from Los Angeles to San Pedro when shipments originated at or were destined to industries on the Atchison, Topeka and Santa Fe Railway or the Los Angeles & Salt Lake Railroad Company, were \$2.70 per car less than on like traffic from Athens and Watson to Los Angeles or from Los Angeles to Compton, resulting in a greater charge for the shorter than for the longer haul over the same line or route in the same direction, the shorter being included within the longer distance.

Complainants contend that not only did the charges collected result in a violation of the long and short haul clauses but that under the tariffs of the Pacific Electric Railway Company the rates between San Pedro and Los Angeles heretofore referred to, definitely established the maximum charges that could be made

at the intermediate points, for Item 5-A of Pacific Electric Local Freight Tariff 120-C, C.R.C. 289, provides that:

"The rates named in this tariff will apply as maximum from or to intermediate points, except as otherwise specifically provided."

In Seaboard Petroleum Corporation vs. A.T. & S.F. Ry. et al., 33 C.R.C. 67, the Commission had an analogous situation before it, in construing an intermediate rule in the tariffs of the Los Angeles & Salt Lake Railroad Company. The latter company maintained a rate of 3 cents per 100 pounds for the transportation of gas oil from Long Beach and Burnett to Los Angeles, but as to traffic from Long Beach it absorbed the \$2.70 per car switching charge of the Atchison, Topeka and Santa Fe Railway at Los Angeles, resulting in a lower charge from Long Beach than from Burnett, a point directly intermediate to Long Beach in the movement to Los Angeles. We held that under the intermediate rule in the line haul tariff of the Los Angeles & Salt Lake Railroad Company the charge applicable from Long Beach to an industry on the Atchison, Topeka and Santa Fe Railway at Los Angeles established the maximum charge from the intermediate points, of which Burnett was one.

Defendant attempted to distinguish this case from the Seaboard Case upon the theory that the wording of the intermediate rule in Item 5-A of Pacific Electric Railway Tariff C.R.C. 289 differs in some respects from the intermediate rule considered by the Commission in the Seaboard Case. Whatever slight distinction there may be in the intermediate rules considered in the Seaboard Case and the instant proceeding is not material. At best the intermediate application rule in the Pacific Electric Line Haul Tariff C.R.C. No. 289 is susceptible of two interpretations. One interpretation makes the tariff lawful while the other results in the collection of charges in violation of Article XII Section

21 of the State Constitution and Section 24(a) of the Public Utilities Act. It seems obvious to us complainants have placed the reasonable interpretation upon an ambiguous rule and it should be given the construction which will bring it into conformity with the long and short haul provisions of the Constitution and the Public Utilities Act.

After consideration of all the facts of record we are of the opinion and so find that under the tariff the maximum charge including a switching service of the Atchison, Topeka and Santa Fe Railway or Los Angeles & Salt Lake Railroad Company at Los Angeles, was and is  $2\frac{1}{2}$  cents on asphalt from Watson to Los Angeles, 3 cents on crude oil from Athens to Los Angeles, and 3 cents on fuel oil from Los Angeles to Compton; that complainants made the shipments as described, paid and bore the charges thereon, and are entitled to reparation with interest at six per cent. per annum for the said overcharges in the difference between the charges assessed and collected and those here found applicable.

In view of our finding herein, the cause for the allegation of violations of Sections 13, 19 and 24(a) of the Public Utilities Act has been removed.

#### 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 defendant, Pacific Electric Railway Company, cease and desist and thereafter abstain from applying, collecting, demanding or receiving for the transportation of asphalt from Watson to Los Angeles, crude oil from Athens

to Los Angeles, and fuel oil from Los Angeles to Compton, charges in excess of those herein found applicable.

IT IS HEREBY FURTHER ORDERED that defendant, Pacific Electric Railway Company, refund with interest at six (6) per cent. per annum to complainants, Griffith Company, Hercules Gasoline Company and Samson Tire & Rubber Corporation, according as their interests may appear, all charges collected for the transportation of asphalt from Watson to Los Angeles, crude oil from Athens to Los Angeles, and fuel oil from Los Angeles to Compton in excess of the charges herein found applicable.

Dated at San Francisco, California, this 23<sup>rd</sup> day of June, 1930.

C. S. Bennett

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Wm. S. Smith

M. J. Lee  
Commissioners.