

Decision No. 23137.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

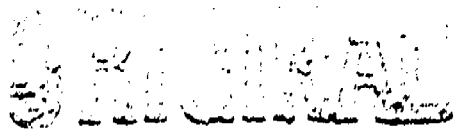
WARR & MCCOMB CORPORATION, a corporation,

Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY,

Defendant.



Case No. 2835.

THE ST. HELENS PETROLEUM COMPANY, LTD.,
& corporation, and
BERNARD F. ALPS and ROSE E. ALPS as co-
partners, doing business as such
under the firm name and style of
CRESCENT REFINING & OIL CO.,

Complainants,

vs.

LOS ANGELES & SALT LAKE RAILROAD COMPANY,
PACIFIC ELECTRIC RAILWAY COMPANY,

Defendants.

Case No. 2893.

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

C. W. Cornell, for Pacific Electric Railway Company,
defendant.

E. E. Bennett and E. B. Ellison, for Los Angeles &
Salt Lake Railroad Company, defendant in Case
2893.

BY THE COMMISSION:

O P I N I O N

These two cases were heard together and will be dis-
posed of in one decision. Complainants are engaged in produc-
ing, refining or marketing petroleum and petroleum products. By
complaint in Case No. 2835 filed March 1, 1930, it is alleged

that the rates assessed and collected on numerous carloads of fuel oil from Los Angeles, Signal Hill, East Long Beach, Long Beach and North Long Beach to Soldiers' Home were during the two years immediately preceding the filing of the complaint, are now and for the future will be unjust and unreasonable, in violation of Section 13 of the Public Utilities Act. The same allegation was made in Case No. 2893 filed July 21, 1930, with respect to shipments of fuel oil from Los Angeles, St. Helens Spur, Rioco and Pico to Soldiers' Home. Reparation and rates for the future are sought. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles September 11, 1930, and the cases having been submitted are now ready for an opinion and order.

Signal Hill, East Long Beach, Long Beach and North Long Beach are on the Pacific Electric Railway Company, hereinafter referred to as the Pacific Electric, 18, 19, 20 and 16 miles respectively south of Los Angeles. St. Helens Spur, Rioco and Pico are on the Los Angeles & Salt Lake Railroad Company, hereinafter referred to as the Salt Lake Line, 11, 13 and 10 miles south of Los Angeles. Soldiers' Home is on a branch line of the Pacific Electric 2.3 miles north of Home Junction and 15 miles east of Los Angeles. Complainants' shipments from Los Angeles, Signal Hill, East Long Beach and North Long Beach to Soldiers' Home moved locally via the Pacific Electric. Those from Rioco and St. Helens Spur moved jointly via the Salt Lake Line to Los Angeles, thence Pacific Electric. Their average weight was 96,656 pounds.

Charges were assessed and collected at the applicable rates of 5 cents from Los Angeles and 6 cents from the other points. These rates were and are higher than the rates on fuel

oil and other petroleum products generally in effect in Southern California in the territory contiguous to Los Angeles. Complainants rest their case upon this fact, together with a showing of lower per-car and per-car-mile earnings obtained by defendants for the movement of other commodities such as clay and clay products, lumber, scrap iron, sand, plaster, acid and fertilizer, applicable in the same general territory for comparable distances. Complainants ask for a rate of 3 cents from Los Angeles to Soldiers' Home and $4\frac{1}{2}$ cents from the other points of origin.

Complainants' showing with respect to the lower rates on petroleum products (including asphalt) consist of 53 comparisons, of which 43 are local rates and 10 joint rates. Of the 43 local rates 29 apply between El Segundo, Redondo Beach, Los Angeles Harbor, Long Beach and points intermediate thereto on the one hand, and Los Angeles and intermediate points on the other hand. The latter rates, defendants contend, apply in the territory where truck and pipe line competition is particularly acute, requiring a somewhat depressed basis of rates to meet this competition and that many of the other rates on petroleum products used by complainants, while possibly not directly affected by pipe line and motor truck competition to the same extent as the other rates, have nevertheless been established on a low basis to place these points on a commercially competitive basis with other producing, refining and consuming points. Likewise defendants assert the rates on commodities other than petroleum products used for comparative purposes apply generally in the territory where they have been required to meet competition of truck lines. Moreover, with one or two exceptions these rates apply on commodities which from a transportation standpoint are not analogous to fuel oil in that they move in ordinary equipment,

while complainants' shipments were transported in tank cars upon which there is obviously a greater empty car haul than in the case of ordinary equipment.

As previously stated, Soldiers' Home is on a branch line 2.3 miles north of Home Junction. The record shows that the haul from Los Angeles necessitates passing over 58 street and highway crossings at grade, creating a hazard which compels the operation of trains at a speed of approximately $3\frac{1}{2}$ miles per hour. Practically the entire freight movement to Soldiers' Home consists of fuel oil, and while these shipments originate at various points in the Los Angeles district, by far the greater volume originates at Los Angeles. Defendant Pacific Electric stated that no fuel oil is loaded on its line at Los Angeles but is loaded on the tracks of its connections, the cars delivered to its Butte Street yard, from there hauled in trains to Sentous, Culver Junction or Home Junction, and subsequently handled in another train to Soldiers' Home. Moreover it is contended the Pacific Electric is dependent upon short haul traffic for the major portion of its tonnage and that a comparison of its rates with those of steam roads which also obtain a large proportion of long haul traffic, is not proper. The Pacific Electric has endeavored to maintain rates to points not competitive with steam roads on a somewhat higher basis than between competitive points. At the present time the class rates of the Pacific Electric and numerous commodity rates from and to Soldiers' Home are on a somewhat higher basis than between points competitive with the steam railroads. In re Application of Pacific Electric Railway, etc., 31 C.R.C. 454, in holding that the Pacific Electric was entitled to a rate of return somewhat in excess of the 5.75% allowed the steam railroad carriers by the Interstate Commerce Commission, we

stated:

"Applicant is classified as an interstate carrier and its business to a large extent is comparable to that of the steam carrier. However, its revenues are greatly affected by local conditions, whereas with a steam carrier operating through large and diversified areas the revenues are usually balanced to a certain extent by varying conditions along its lines."

We believe from the facts of record here disclosed that defendants are justified in maintaining rates to Soldiers' Home on a somewhat higher basis than generally applicable between other points in Southern California. However, the rates assessed on complainants' shipments were somewhat in excess of maximum reasonable rates for fuel oil. In Pan-American Petroleum Company vs. Pacific Electric, 29 C.R.C. 303, we found upon defendant's admission that a rate on crude oil from Sentous to Watson for a distance of 25 miles was unjust and unreasonable to the extent it exceeded $4\frac{1}{2}$ cents. Sentous is situated on the line of the Pacific Electric extending from Los Angeles to Soldiers' Home. It is not served by a steam railroad.

After consideration of all the facts of record we are of the opinion and so find that the rates assailed were in the past unreasonable to the extent they exceeded $4\frac{1}{2}$ cents from Los Angeles to Soldiers' Home and $5\frac{1}{2}$ cents from Signal Hill, East Long Beach, Long Beach, North Long Beach, St. Helens Spur, Rioco and Pico to Soldiers' Home, and that for the future they will be unreasonable to the extent they exceed $4\frac{1}{2}$ cents from Los Angeles and $5\frac{1}{2}$ cents from St. Helens Spur, Rioco and Pico to Soldiers' Home. It will not be necessary to make a finding with respect to rates for the future from Signal Hill, East Long Beach, Long Beach and North Long Beach, as the present rate is 5 cents, established effective September 1, 1929, following a reduction in the refined oil rates of the Pacific Electric to meet motor truck competition on gasoline.

We are of the further opinion and so find that complainants made certain shipments from Los Angeles, Signal Hill, East Long Beach, North Long Beach, St. Helens Spur and Pico, paid and bore the charges thereon, and have been damaged to the extent of the difference between the rates assessed and collected and the rates herein found reasonable, and that they are entitled to reparation with interest at 6 per cent. per annum.

The exact amount of reparation due is not of 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.

O R D E R

These cases having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing the order on the findings of fact and the conclusions contained in the opinion which precedes this order,

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 within thirty (30) days from the effective date of this order, and thereafter abstain from applying, demanding, receiving or collecting for the transportation of fuel oil in carloads rates which shall exceed $4\frac{1}{2}$ cents per 100 pounds from Los Angeles to Soldiers' Home and $5\frac{1}{2}$ cents per 100 pounds from St. Helens Spur, Pico and Pico to Soldiers' Home.

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 ordered 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 apply to transportation of fuel oil, in carloads, rates not to exceed $4\frac{1}{2}$ cents per 100 pounds from Los Angeles to Soldiers' Home and $5\frac{1}{2}$ cents per 100 pounds from St. Helens Spur, Rioco and Pico to Soldiers' Home.

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 required to refund with interest at six (6) per cent. per annum to complainants, Tarr & McComb Corporation, The St. Helens Petroleum Company, Limited, and Bernard F. Alfs and Rose E. Alfs, according as their interests may appear, all charges collected for the transportation of the shipments of fuel oil involved in this proceeding, in excess of $4\frac{1}{2}$ cents per 100 pounds from Los Angeles to Soldiers' Home and $5\frac{1}{2}$ cents per 100 pounds from Signal Hill, East Long Beach, North Long Beach, St. Helens Spur and Rioco to Soldiers' Home.

Dated at San Francisco, California, this 2nd day
of December, 1930.

C. L. ...
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Leon ...
...

Commissioners.