

Decision No. 23694.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 F. W. COMPH, Agent, for and on behalf
 of: THE ATCHISON, TOPEKA AND SANTA FE
 RAILWAY COMPANY, CENTRAL CALIFORNIA
 TRACTION COMPANY, HOLTON INTER-URBAN
 RAILWAY COMPANY, INDIAN VALLEY RAILROAD
 COMPANY, LOS ANGELES & SALT LAKE RAIL-
 ROAD COMPANY, LOS ANGELES JUNCTION RAIL-
 WAY COMPANY, NORTHWESTERN PACIFIC RAIL-
 ROAD COMPANY, PACIFIC ELECTRIC RAILWAY
 COMPANY, PENINSULA RAILWAY COMPANY,
 PETALUMA AND SANTA ROSA RAILROAD COM-
 PANY, SACRAMENTO NORTHERN RAILWAY, SAN
 DIEGO AND ARIZONA RAILWAY COMPANY, SAN-
 TA MARIA VALLEY RAILROAD COMPANY, SOUTH-
 ERN PACIFIC COMPANY, STOCKTON TERMINAL
 AND EASTERN RAILROAD, SUNSET RAILWAY
 COMPANY, TIDEWATER SOUTHERN RAILWAY
 COMPANY, TONOPAH AND TIDEWATER RAIL-
 ROAD COMPANY, VISALIA ELECTRIC RAIL-
 ROAD COMPANY, THE WESTERN PACIFIC RAIL-
 ROAD COMPANY, YOSEMITE VALLEY RAILROAD
 COMPANY, AMADOR CENTRAL RAILROAD COM-
 PANY, CALIFORNIA WESTERN RAILROAD AND
 NAVIGATION COMPANY, NEVADA COUNTY NAR-
 ROW GAUGE RAILROAD COMPANY, SAN JOAQUIN
 AND EASTERN RAILROAD COMPANY, CALIFORNIA
 CENTRAL RAILROAD COMPANY, SIERRA RAILWAY
 COMPANY OF CALIFORNIA, for authority un-
 der Section 63 of the Public Utilities
 Act to establish increased rates, etc.,
 and to establish amended classifica-
 tions, practices, rules and regulations,
 resulting in increased rates, etc.

Application No. 16850.

- F. W. Comph, in propria persona, and Berne Levy, Gerald
 E. Duffy, E. E. Bennett, Frank Karr, R. E. Wedekind,
 J. E. Lyons and A. Burton Mason, for applicants.
 B. E. Carmichael and F. W. Turcotte, for Hercules Gaso-
 line Company, St. Helens Petroleum Company, Limited,
 United States Refining Company, Edington Gasoline and
 Refining Company, and Petrol Corporation, protestants.
 Robert Hutcherson, for Associated Oil Company, as their
 interest may appear.
 J. D. Rearden, for Union Oil Company of California, as
 their interest may appear.
 C. E. Donaldson, for Shell Oil Company, as their inter-
 est may appear.

BY THE COMMISSION:

O P I N I O N

This is an application filed by F. W. Gompf, Agent for and on behalf of The Atchison, Topeka and Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Company, The Western Pacific Railroad Company and other rail lines named in the application, for authority to place in effect on California intrastate traffic Pacific Freight Tariff Bureau Circular No. 19, containing rules, regulations and practices setting forth methods for determining the character and description of petroleum products.

A public hearing was held before Examiner Geary at Los Angeles and the application submitted on briefs.

Circular No. 19 provides two standard methods for, and describes the equipment to be used in, testing by means of distillation, engine (naphtha) distillate, untreated petroleum distillate, petroleum gas oil and petroleum diesel oil. Engine (naphtha) distillate is defined as a refined petroleum having an initial boiling point of not less than 131° Fahrenheit, and an end point not less than 450° Fahrenheit, as determined by distillation method 100.23, published in Technical Paper 323B, U.S. Government Specification No. 2d, issued by the Department of Commerce, Bureau of Mines, and reproduced in the Circular. Untreated petroleum distillate, tested by the same process, is defined as first-run tops not further refined or treated, containing fractions of crude oil, with an end point not less than 550° Fahrenheit. Petroleum gas oil and petroleum diesel oil are classified as untreated petroleum distillate with an initial boiling point of not less than 250° Fahrenheit and an end point

not less than 570° Fahrenheit, as determined by the distillation method approved by the American Society for Testing Materials, Serial Designation D-158-25-T, Revised 1925. Both methods of classifying petroleum products are recognized as standard tests throughout the industry. The Circular has been in effect on interstate traffic since April 26, 1928, and was published following an extensive investigation by representatives of the applicants, the Interstate Commerce Commission, the Bureau of Mines of the Department of Commerce and some of the larger oil companies to determine practical methods for testing petroleum products. It also conforms to recommendations made by the Interstate Commerce Commission in Commodity Specifications on Petroleum Products from California, 113 I.C.C. 707.

Applicants state that it is not their purpose to bring about any substantial increases in rates or charges by the use of the Circular but that to avoid confusion some way should be provided for determining and distinguishing for purposes of transportation between the petroleum products heretofore referred to. In this the major oil companies concur. Some of the smaller oil companies however object to that portion of the Circular which would have the effect of classifying refinery tops as engine (naphtha) distillate. Generally the engine (naphtha) distillate rates are higher than those on refinery tops.

The term "refinery tops" is a rather loose designation of a petroleum product containing the higher fractioned oils and obtained when crude oil is subjected to a distillation process. The first distillation consists of so-called first run tops, consisting principally of gasoline, engine (naphtha) distillate, and kerosene, which require a further distillation

before they are commercially usable. From the second distillation is obtained a kerosene stock or kerosene distillate. Until recently the smaller oil companies maintained topping plants adjacent to the oil fields for the purpose of extracting first-run tops, which were subsequently transported to the refineries for further manufacturing. But due to changed methods of operation these plants have been abandoned, with the result that there is now practically no rail movement of first-run tops. However, there is still a substantial movement of kerosene stock obtained from the second distillation, and it is with respect to this commodity that protestants object to any increase in the rates or charges brought about by including it in the description of engine (naphtha) distillate. They do not object to grouping first-run tops with engine distillate. From kerosene distillate, kerosene is manufactured, and it is also used as an absorption oil in the manufacture of casinghead gasoline. The value of kerosene distillate is lower than that of many crude oils of a fairly high gravity.

Protestants point to the fact that for a number of years refinery tops in California, including kerosene distillate, have been transported at the gas oil rates, which generally are the same as those on crude oil. However in the petroleum industry refinery tops and gas oil are entirely dissimilar products. The latter is the residue of the crude oil after the higher fractioned oils are extracted. It was originally used in the manufacture of illuminating gas but is now chiefly used as a fuel oil or as charging stock in the production of gasoline by the cracking process. When refinery tops first started to move in California the carriers transported them at the gas oil rates, due possibly to an original misconception of what was

meant by the term "gas oil" in the tariffs. However they knowingly continued this practice for a number of years before requesting authority of the Commission to classify refinery tops with engine (naphtha) distillate on the grounds that they had been incorrectly transported as gas oil and should properly take higher rates, inasmuch as they were a manufactured article with a value in excess of other commodities in the crude oil group. (Application of F. W. Gompf, etc., 4 C.R.C. 261.) The authority was denied for two reasons: first, that the carriers had for a matter of seven years knowingly transported refinery tops under the gas oil rates; and second, the value of tops was not sufficiently in excess of the commodities grouped with crude oil to warrant a different classification. Since then we have held that refinery tops should move under the gas oil rates. (Richfield Oil Company vs. Sunset Railway, 25 C.R.C. 619. Gilmore Oil Co. vs. Santa Fe, 28 C.R.C. 878. Hercules Gasoline Company et al. vs. Santa Fe et al., 30 C.R.C. 574. Hercules Gasoline Company et al. vs. Santa Fe et al., 32 C.R.C. 164. Hercules Gasoline Company et al. vs. Santa Fe et al., 34 C.R.C. 112. Pan-Pacific Oil Co. vs. P.E.Ry., 34 C.R.C. 569.)

However, in Gilmore Oil Co. vs. A.T. & S.F. Ry., supra, we suggested that inasmuch as gas oil and refinery tops were considered different commodities in the petroleum industry, defendants in order to avoid confusion should endeavor to arrive at a comprehensive description of the latter commodity. Defendant in the Gilmore case suggested this could be done by limiting refinery tops to a petroleum product having a specific gravity of from 40° to 50° A.P.I. (American Petroleum Institute scale) and a flash point below 60°. This method of classifying refinery tops was found by the Commission to be too indefinite for

practical purposes, due principally to the fact that the flash point of tops varied widely according to the gasoline content. Circular No. 19 however is not subject to this criticism. The weight of the evidence and testimony shows that it embodies a practical method of determining the various petroleum products.

However, as protestants contend, in some instances it will have the effect in its present form of increasing the charges on kerosene distillate by removing them from the gas oil basis and re-classifying them as engine (naphtha) distillate, as the proposed description of gas oil would include only untreated petroleum distillate having an initial boiling point not less than 250° Fahrenheit and an end point of 570° Fahrenheit or over. Some of the kerosene distillates manufactured by protestants now come within the definition of gas oil, but there is also a substantial production of kerosene distillates having an end point below 570° Fahrenheit. At the present time the latter would be transported at the gas oil rates. Applicants have presented nothing in this record which would justify any increase in the rates or charges on kerosene distillate.

After consideration of all the facts of record we are of the opinion and so find that applicants have justified Pacific Freight Tariff Bureau Circular No. 19 for California intrastate traffic, subject to the condition that the definition of petroleum gas oil appearing on page 7 of the Circular be amended to include kerosene distillates which may be offered for shipment by protestants but which are not now included therein.

O R D E R

This application 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 and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that applicants be and they are hereby authorized to establish for California intrastate traffic, on not less than ten (10) days' notice to the Commission and to the public, Pacific Freight Tariff Bureau Circular No. 19, subject to the condition that the definition of petroleum gas oil appearing on page 7 of the circular be amended to include kerosene distillates which may be offered for shipment by protestants but which are not now included therein.

Dated at San Francisco, California, this 18th day of May, 1931.

C. A. Sawyer
Leon Whitney
W. P. Carr
M. B. Lavin
Fred G. Stewart
Commissioners.