

Decision No. 24211.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE TEXAS COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY and  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,

Defendants.

**ORIGINAL**

Case No. 2769.

B. W. Max, for complainant.

H. E. McElroy, for defendant Southern Pacific  
Company.

G. E. Duffy, for defendant The Atchison,  
Topeka and Santa Fe Railway Company.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the business of producing, buying, selling, marketing and shipping of petroleum and other products used in connection therewith. By complaint seasonably filed it is alleged that the rates assessed and collected on numerous carloads of gasoline from Thenard to Los Angeles and on sulphuric acid from Los Angeles to Thenard shipped prior to May 18, 1928, by the California Petroleum Company (name changed to The Texas Company by decree of the Superior Court of Los Angeles County dated May 18, 1928) and subsequent thereto by The Texas Company were, during the two-year

period immediately preceding the filing of the complaint and during the pendency of this proceeding unjust, unreasonable, inapplicable, 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 Section 24(a) of the act.

Reparation only is sought.

A public hearing was held before Examiner Geary at Los Angeles September 29, 1931, and the case submitted.

Complainant's shipments of gasoline, consisting of 430 cars, originated at Thenard, were line-hauled by the Southern Pacific Company to Los Angeles and there switched by The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Santa Fe) to an industry track on its line. Complainant's shipments of sulphuric acid, consisting of 317 cars, originated on an industry track of the Santa Fe at Los Angeles and were line-hauled by the Southern Pacific Company to Thenard. In both instances defendants assessed and collected a line-haul rate of 4 cents per 100 pounds, plus a charge of \$2.70 per car for switching at Los Angeles.

At the time the shipments moved defendant Southern Pacific Company maintained the same line-haul rates on gasoline from Wilmington to Los Angeles and on sulphuric acid from Los Angeles to Wilmington as in effect from or to Thenard. Thenard is a directly intermediate local point via the line of the Southern Pacific Company between Wilmington and Los Angeles. Under the provision of defendant's terminal tariff the charge of \$2.70 per car made by the Santa Fe for switching at Los Angeles is absorbed on competitive traffic. Both Wilmington and Los Angeles are competitive points as that term is defined in defendant's tariff, therefore on such traffic the switching charge of the Santa Fe at Los

Angeles is absorbed. This absorption results in lower charges on traffic from or to Wilmington than were assessed on complainant's shipments from or to Thenard, a directly intermediate point. Defendant Southern Pacific Company admits that its failure to absorb the switching charge of the Santa Fe at Los Angeles on complainant's shipments from or to Thenard, while at the same time absorbing this charge on like traffic from and to the more distant competitive point of Wilmington, resulted in departures from the long and short haul provisions of Section 24(a) of the Public Utilities Act for which no authority had been granted by this Commission prior to July 11, 1930 (See Application No. 16179, In the Matter of F. W. Gomp et al., 35 C.R.C. 46), and has signified its willingness to make a reparation adjustment on shipments moved prior to that date and within the two-year period immediately preceding the filing of the complaint. By stipulation complainant withdrew its allegations that the charges collected were in violation of Sections 13, 17 and 19 of the Public Utilities Act.

Upon consideration of all the facts of record we are of the opinion and find that the charges on complainant's shipments were assessed and collected in violation of Section 24(a) of the Public Utilities Act. We further find that complainant paid and bore the charges on the shipments in question, that it has been damaged to the extent of the difference between the charges paid and those in effect from the more distant point, and that it is entitled to reparation with interest at 6% per annum.

The exact amount of reparation due is not of record. Complainant will submit to defendant for verification a statement of the shipments made and upon payment of the reparation defendant will notify the Commission 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.

ORDER

This case being at issue upon complaint and answer on file, 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 opinion which precedes this order,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, The Texas Company, together with interest at six (6) per cent. per annum, all charges collected in excess of 4 cents per 100 pounds for the transportation from Thenard to Los Angeles of the shipments of gasoline, and from Los Angeles to Thenard of the shipments of sulphuric acid involved in this proceeding.

Dated at San Francisco, California, this 9<sup>th</sup> day of November, 1931.

C. C. Sawyer  
Leon A. White  
M. J. Lee  
W. B. Harris  
Fred G. Stevens  
Commissioners.