

In the matter of the application of F. W. GOMPH, agent for Pacific Freight Tariff Bureau, for an order granting permission to change Items 90-C and 91-A, as shown in Exception Sheet No. 1-C, CRC No. 70, referring to the rates on Crude Oil and products thereof.

ORIGINAL

Application No. 317.

Decision No. 1298

George D. Squires for applicant.
E. W. Camp for Atchison, Topeka & Santa Fe Railway Co.
F. P. Gregson for Associated Jobbers of Los Angeles
and Independent Refineries of California.
F. M. Hill for Fresno Traffic Association.

THELEN, Commissioner.

OPINION.

This is an application for authority to make certain changes in Item No. 90-C and also in Item No. 91-A of Bureau Exception Sheet No. 1-C, C.R.C. No. 70, referring to rates of transportation for crude oil and certain products thereof. Item No. 90-C at present provides for Class "D" rating on petroleum crude oil and the other oils named therein, in carload lots. Item No. 91-A provides for a rating of 80% of 5th Class on petroleum engine (naptha) distillate, carloads.

It is now proposed to change these two items so as to read as follows:

Item No. 90-C:

Petroleum crude oil, petroleum road oil, petroleum fuel oil, viz: refinery residuum, petroleum gas oil (See x below), petroleum stove oil (See x below) and refinery tops (See x below) in barrels, carloads, minimum weight 26,000 lbs., or in tank cars, subject to minimum carload weight as provided by current Western Classification.

When shipped in tank cars, weight will be computed at an estimated weight of 7 3/4 lbs. per gallon.

Note: Will not apply on petroleum refined oil (illuminating or

burning), engine (naptha) distillate, gasoline, benzine or naptha.
x means gravity under 40 degrees Baume scale.

Item No. 91-A:

Petroleum engine (naptha) distillate and refinery tops, gravity 40 degrees to 51 degrees, inclusive, Baume scale.

Note: Will not apply on petroleum refined oil (illuminating or burning), gasoline, benzine or naptha.

Applicant asks that tariffs naming commodity rates on the articles specified in Items 90-C and 91-A be similarly amended.

The changes for which applicant asks are to be brought about by the application to petroleum gas oil, petroleum stove oil and refinery tops of what is known as the Baume scale. These commodities, when having a gravity under 40 degrees Baume scale, are to take Item No. 90-C rating, while if they run between 40 degrees and 51 degrees, inclusive, Baume scale, they, together with petroleum engine (naptha) distillate under the same condition, are to take Item No. 91-A rating.

The most important practical effect of this change would be to give to the commodity known as "refinery tops", Item No. 91-A rating, which takes 80% of 5th Class and not Item No. 90-C rating, which takes the lower Class "D" rating. The carriers contend that refinery tops should at the present time properly take 80% of 5th Class, while the protestants contend that the proper rating is Class "D" and object vigorously to an increase to 80% of 5th Class.

Refinery tops are the first product of crude oil from distillation. They are used to a considerable extent for refining into gasoline, benzine and engine distillate and to some extent directly for use as fuel in internal combustion engines. Refinery tops are manufactured in some dozen or so topping plants in this State, as well as in some of the larger refineries, such as those of the Standard Oil Company and the Associated Oil Company. The topping plants, and also to some extent the Associated Oil Company, sell these tops to small refineries located in various portions of the State,

which refineries then refine the tops principally for the purpose of securing therefrom gasoline for sale in the surrounding territory in competition with gasoline refined by the larger refineries owned by the Standard Oil Company, the Associated Oil Company and the Union Oil Company.

The carriers claim that refinery tops are an engine distillate and that hence the proper rating is 80% of 5th Class. The protestants, being the independent refineries of this State, claim that refinery tops are a petroleum gas oil and that hence the proper rating is the crude oil rating, which is Class "D" or corresponding commodity rate for crude oil. The testimony shows that during the last few months the carriers have billed this commodity at the higher rate, which rate the independent refineries have refused to pay, but that ^{some} for seven years prior thereto this commodity has never paid anything other than the lower Class "D" rate. Among the plants manufacturing refinery tops and shipping them at the crude oil rate, was one plant in the West Side fields controlled by the Atchison, Topeka & Santa Fe Railway Company and another at Gaviotta, owned by the Associated Oil Company. The Associated Oil Company has for several years been controlled by the Southern Pacific Company and prior thereto the Southern Pacific Company had a large interest therein. We accordingly find that the principal carriers here involved have during the last few years themselves either owned or controlled plants from which refinery tops were shipped at the crude oil rate. If there is any reasonable doubt in this case as to whether refinery tops at the present time properly take 80% of 5th Class or Class "D", the doubt must be resolved in favor of the uniform practice of the carriers during the last seven years, both as carriers for others and as carriers of this product manufactured in plants owned or controlled by them. The claim of the carriers that they only recently found out that there was such a commodity and that it was being shipped at the crude oil rate is not borne out by the evidence.

I find that refinery tops at the present time come under Item No. 90-C and that the proper rating is Class "D".

The question now to be considered is whether the rate on refinery tops shall be raised, as proposed by the carriers. The carriers argue in support of their contention that refinery tops are a manufactured product, that their value is greater than that of other commodities in crude oil classification, that greater risk is attendant upon their transportation and that it would be more accurate and scientific to apply to the products of crude oil, in order to ascertain their proper rating, the Baume test. The carriers claim that value follows gravity and that gravity can be easily and accurately ascertained by the use of the Baume test.

The protestants claim that refinery tops are not a manufactured product, that their value is but slightly greater than that of other products which are included under Item No. 90-C, that there is no greater risk in transporting refinery tops than any other items grouped under Item No. 90-C, that the equipment used to transport refinery tops, except such tops as are destined directly for use in internal combustion engines, is the crude oil equipment and not the cleaner equipment necessary to transport petroleum engine distillate, and that if the rate on refinery tops is increased, the result will be to put out of business most of the independent refineries of the State, to the advantage of the large refineries owned by the Standard Oil Company, the Associated Oil Company and the Union Oil Company.

The evidence shows that refinery tops are the product of the first distillation from crude oil and that they can not be used commercially, except to a limited extent for internal combustion engines, until they have been refined. The independent refineries are at the present time paying \$2.63 per barrel for No. 1 tops and 64¢ per barrel for No. 2 tops, ^{f.o.b. Mojave.} The chief engineer of the Associated Oil Company testified that crude oil is selling in the field at an average of between 50¢ and 85¢ per barrel, that the price of petroleum road oil has been approximately 85¢ per barrel and that the petroleum stove oil sells for about \$1.00 per barrel. These products all pay Class "D"

rating. He also testified that the price of engine naphtha distillate, which takes 80% of 5th Class, is between 6¢ and 7¢ per gallon at the refinery. At 42 gallons to the barrel, the price would be between \$2.52 and \$2.94 per barrel. While it is thus true that the average value of refinery tops is in excess of the average value of the other items which are included in Item No. 90-C, it is equally true that the average value of refinery tops is less than the value of petroleum engine distillate, contained in Item No. 91-A. It is clear that even if value be taken as the sole test of the rate in this case, it is not feasible to establish a separate classification for each separate value. Otherwise it would be necessary to establish ten or twelve classifications for crude oil and the products thereof. The mere fact that refinery tops are now found with other items whose average value is somewhat less than that of refinery tops is by no means a conclusive argument in favor of placing refinery tops with petroleum engine distillate, whose average value is in excess of that of refinery tops.

There is no satisfactory evidence that the risk of transporting refinery tops is appreciably greater than the risk of transporting the other items which appear in the crude oil classification. While refinery tops are used principally for distillation into gasoline, benzine and engine distillate, they are also used to some extent directly for consumption in internal combustion engines, and when so used they compete with certain items in the crude oil group as well as with petroleum engine distillate.

The protestants earnestly contend that if the rate on refinery tops is now increased it will seriously cripple the independent refineries. Several of the owners of these refineries appeared at the hearing and testified that they would be put entirely out of business. The extent of the proposed increase is shown by the following table showing the present and proposed rate per hundred weight on the basis of 7½ pounds per gallon, 10,500 gallons to the car, with a weight of 81,375 pounds per car:

	<u>Present Rate in cents per Cwt.</u>	<u>Proposed rate in cents per Cwt.</u>
Mojave to Los Angeles	11½	24
Monarch to Visalia	9	24
Monarch to Hanford	9	22.4
Monarch to Fresno	9	25.6

In order that this table should represent the situation accurately, it must be borne in mind that the crude oils are figured at 7½ pounds per gallon, while the distillates are figured at 6 6/10 pounds per gallon, so that the real increase in the rate would be somewhat less than that indicated in the foregoing table.

Referring specifically to the claim that the independent refineries would be crippled or entirely put out of business, the evidence shows that these refineries are located at Fruitvale, Martinez, Fresno, Bakersfield, Hanford, Visalia, Tulare, Los Angeles, and possibly one or two other places. They buy their tops from the topping plants to which reference has heretofore been made, and in each case a freight rate must be paid on the tops to get them to the refinery. The gasoline and other products secured from these tops are sold by the independent refineries in competition with similar products manufactured by the Standard Oil Company, the Associated Oil Company and the Union Oil Company. These companies have large pipe lines leading to nearly all of their refineries and transport the crude oil through these pipe lines without being obliged to pay a freight rate thereon. The independent refineries claim that as a result of their activities the price of gasoline in the territory in which they compete with the large companies has been reduced from 18¢ to 20¢ to about 13¢ per gallon and the price of engine distillate from about 12¢ to 6 or 6½¢ per gallon. They claim that if the freight rate on tops is increased as now desired by the carriers, they will not be able to compete and they also urge that the price paid by the public for gasoline and engine distillate will go up again as soon as they have been put out of business.

The evidence shows that the application in this proceeding was made by the carriers after conference and agreement with representatives of the Standard Oil Company, Associated Oil Company and Union Oil Company. The carriers, however, state that this application was not made at the request of these companies, but simply in the interest of a more scientific classification. Representatives of these three large companies appeared at the hearing, testified in favor of the granting of the application and stated that their companies were in favor of a higher classification of the refinery tops. The attorney for the Standard Oil Company, however, later appeared at the hearing and stated that he desired to modify the position of his company as testified to by its traffic manager, and stated that his company was simply interested in having refinery tops and petroleum engine distillate take the same rate and that it was immaterial to his company whether this result was accomplished by increasing the rate on refinery tops or decreasing the rate on petroleum engine distillate.

While the decision on this application is not based on the effect which the proposed increase would have on the independent refineries in this State and on the price which the public pays for their products, I nevertheless have thought it proper to refer to this matter as showing the practical effect which the granting of the application would have in these respects.

As hereinbefore stated the carriers ~~xxx~~ have for seven years and more carried refinery tops at the crude oil rating. In order now to justify an increase in the rate, good and sufficient reasons therefor must be shown. I find that such reasons have not been shown and accordingly recommend that this application be denied.

I submit herewith the following form of order:

O R D E R .

F. W. GOMPH, Agent for the Pacific Freight Tariff Bureau, having made his application for authority to change Items 90-C and 91-A shown in Exception Sheet No. 1-C, C.R.C. No. 70, referring to the rate on petroleum crude oil and certain products thereof, and a public hearing having been held upon said application, and this application having been submitted and being now ready for decision, and the Commission finding that no good and sufficient reason for such change has been shown,

IT IS HEREBY ORDERED that such application be and the same is hereby denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 25th day of February, 1914.

Attest
Chas. Gordon
Max Thelen

Commissioners.