

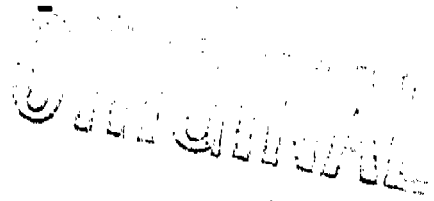
BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

VENTURA REFINING COMPANY,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
ATCHISON, TOPEKA & SANTA FE RY. CO.
LOS ANGELES & SALT LAKE RAILROAD CO.)
PACIFIC ELECTRIC RAILWAY COMPANY,
Defendants.

CASE NO. 1189.



Sanborn & Roehl, for the Complainant,
E.C. Booth, for Southern Pacific Company,
E.W. Camp and A.M. Reinhardt, for The Atchison, Topeka
& Santa Fe Railway Company,
Frank Karr, for Pacific Electric Railway Company.

LOVELAND, COMMISSIONER:

O P I N I O N

This complaint filed December 31, 1917, alleges that the rates on petroleum refined oils from Fillmore to local points on the lines of Southern Pacific Company are excessive, unjust, unreasonable, discriminatory and unlawful; that local rates of Southern Pacific Company, from San Pedro to points on its line, subject complainant to undue and unreasonable prejudice and disadvantage, and confer undue and unreasonable preference and advantages upon shippers from San Pedro; that the defendants maintain joint rates and through routes from East San Pedro, El Segundo, Stewart, Colegrove and other points to various points of destination on the lines of the several defendants, which joint rates confer undue and unreasonable preferences and advantages upon shippers and manufacturers of refined oils at those points; that defendants failed and refused to publish reasonable joint rates or any joint rates from Fillmore to the same destinations, to which joint rates are published from other refineries and shipping points, and that such refusal subjects complainant to undue and unreasonable prejudice and disadvantage; that for two years prior to filing of complaint, complain-

ant has paid Southern Pacific Company excessive, unreasonable and discriminatory freight rates for the transportation of oil from Fillmore to Los Angeles and Colton, and had during the same period paid to the defendants, Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company, excessive, unreasonable and discriminatory rates for the transportation of oil from Fillmore, on the Southern Pacific lines, to Slauson, a point on the Santa Fe.

The Commission is asked to establish just and reasonable rates for the transportation of oil from Fillmore to points on the lines of Southern Pacific Company in California, and joint rates from Fillmore to points on lines of other defendants. Reparation is asked on shipments moving from Fillmore to Los Angeles, Colton and Slauson for the period January 1, 1916 to December 27, 1917, inclusive, based 8 cents per 100 pounds from Fillmore to Los Angeles and Slauson, and 15 cents per 100 pounds from Fillmore to Colton, together with interest at rate of 7% per annum. Carload rates only are involved.

All of the defendants filed answers, in effect denying the various allegations of the complaint and praying that the proceeding be dismissed. In a supplemental answer, filed May 13, 1918, the Southern Pacific Company denies the jurisdiction of this Commission to hear and determine this case, by virtue of the proclamation of the President of the United States, under which the federal government assumed control of the railroad lines of the defendant for war purposes on December 28, 1917, and also under the provisions of the Federal Control Act, passed by Congress March 21, 1918.

Public hearings were held at Los Angeles May 23, 1919, and at San Francisco on June 11, 1919. Final briefs were submitted

August 14, 1919, and the case is now ready for determination.

Complainant amended its pleadings at the first hearing by eliminating that part of the prayer asking this Commission to prescribe just, reasonable and non-discriminatory rates; therefore, there remains for consideration only the question of an award of reparation against shipments transported January 1, 1916 to but not including December 28, 1917, this latter date being the day the federal government assumed control of the railroads for war purposes under the President's proclamation.

Counsel for defendants did not seriously urge, either at the hearings or in his brief, that this Commission had no jurisdiction to award reparation against these shipments.

I am of the opinion jurisdiction over reparation adjustments involving traffic moved prior to December 28, 1917 is with the Commission and will, therefore, decide the case on its merits.

Petroleum and petroleum products to a large extent move under commodity rates in the State of California, but where no commodity rates are published, the charges are based on the 5th Class rates for gasoline and refined oils, as per Western Classification, and on 80% of the 5th Class for engine distillate, as per Pacific Freight Tariff Bureau Exception Sheet. On account of this differentiation between engine distillate and other refined products of petroleum, the former, when hereinafter alluded to, will for more convenient discussion be termed distillate, while gasoline, kerosene, lubricating oil and other refined products will be referred to as refined products.

The following table sets forth the mileage, the rates in effect at the time shipments moved, also the 5th Class rates between the points in question :

From Fillmore	Miles	Rate per Ton of 2000 Pounds		
		Refined Products	Distillate	5th Class Rate
Los Angeles	55	\$3.00	\$2.40	\$3.00
Colton	113	A 6.20	B 5.10	6.40
Slauson	62	C 3.40	D 2.80	3.80

- A - 5th Class of \$3.00 Fillmore to Los Angeles plus commodity rate of \$3.20 thence to Riverside as maximum.
- B - 80% of 5th Class, or \$2.40, Fillmore to Los Angeles, plus San Pedro commodity rate of \$2.70.
- C - 5th Class of \$3.00, Fillmore to Los Angeles plus Atchison, Topeka & Santa Fe commodity rate of 40 cents thence.
- D - 80% of 5th Class or \$2.40 Fillmore to Los Angeles plus Atchison, Topeka & Santa Fe commodity rate of 40 cents thence.

It is to be noted that no through commodity rates are in effect to either of these three points. To Los Angeles the class rates govern while the rates to Colton and Slauson are made up of a combination of the class and commodity rates over Los Angeles, the rate from latter point to Colton being the San Pedro to Colton rate held as a maximum.

The complainant has for some years been shipping distillate and refined products to points in Southern California and elsewhere, but principally to Los Angeles, Colton and Slauson.

Fillmore is located on the main line of the Southern Pacific Company, between Montalvo and Saugus, and, as the preceding table shows, is 55 miles from Los Angeles, Colton is on the main line of the Southern Pacific 58 miles east of Los Angeles, or 113 miles from Fillmore. Slauson is a point on the Redondo Branch of the Santa Fe, 7 miles from Los Angeles, or 62 miles from Fillmore.

Considering first the rates from Fillmore to Los Angeles; the rate on Refined Products is \$3.00 per ton for a distance of 55 miles, the rate per ton per mile 5.45 cents and the earnings per car mile based on 67,000 pounds, which is the average loading of equipment of complainant, is \$1.83.

To market its products successfully, complainant was obliged to meet the competition of the Standard Oil Company shipping from El Segundo, the Union Oil Company shipping from Stewart, and such shippers who brought oil to San Pedro and other coast ports by vessel and reshipped by rail to Los Angeles.

All of the defendants maintain a rate of 40 cents per ton to Los Angeles from producing and shipping points on their respective lines. The defendant, Southern Pacific Company, published this rate from San Pedro, a distance of 25 miles, which yields the carrier 1.6 cents per ton per mile, or 55 cents per car mile, based on loading of 67,000 pounds.

If defendant accorded complainant the same rate per ton per mile from Fillmore to Los Angeles as it published from San Pedro, the complainant would be entitled to a rate of about 90 cents per ton. Defendant contended that a rate of 40 cents per ton from San Pedro to Los Angeles is unduly low and should not be used as a measure of comparison to establish reasonable rates from Fillmore.

For some time prior to the establishment of the 40 cent rate from the different shipping points mentioned a rate of 60 cents had been in force. The evidence shows there was considerable rivalry between some of the defendants to locate the refinery of the Standard Oil Company on their respective rails and that the plant was finally located at El Segundo, served by the Santa Fe and Pacific Electric Railways, the latter road being virtually owned by the Southern Pacific Company.

The record clearly indicates that the Santa Fe succeeded in securing the location of the plant at El Segundo by offering the same rate inducements as were tendered by the Southern Pacific Company and it is quite apparent that the rate of 40 cents per ton granted complainant's competitors was the result of efforts of the various carriers to locate the Standard Oil Company's plant on their rails and cannot be considered as a forced or compelled rate.

However, notwithstanding the circumstances surrounding establishment of the 40 cent rate, the presumption should not be indulged that this rate is in and of itself reasonable, although there can be no doubt it creates an unjust discrimination against complainant. In the determination of just and reasonable rates this Commission must, in making rate comparisons, consider rates that are just and reasonable in character which brings us to a consideration of rates for approximately equi-distant points maintained by defendant Southern Pacific Company either locally or jointly with other defendant carriers.

The following table will be helpful in this connection.

DISTILLATE AND REFINED PRODUCTS

From	To	Miles	Rate Per Ton	Rate Per Ton Mile	Rate per car mile based 67,000 pounds load- ing.
Fillmore	Los Angeles	55	(\$3.00 A 2.40 B)	\$.0545 .0436	\$1.83 1.46
San Pedro	Pomona	57	1.40	.0245	.82
Stewart	Ward (Via Pacific Elec. and) (Southern Pacific.)	58	1.40	.0241	.81
El Segundo	Chino (Via Pacific Elec. and) (Southern Pacific.)	55	1.40	.0254	.85

A - Refined Products.

B - Distillate.

The above table indicates that for a main line movement Fillmore to Los Angeles, defendant, Southern Pacific Company, charges rates per ton and per ton mile over twice as high as it charges complainant's competitors for similar distances, where the hauls involve branch line service or two-line movements which admittedly are more expensive than a main line movement over a single road, and which the carriers have always urged should carry higher rates.

Defendants failed to show that these rates were less than just and reasonable or that they were not fully remunerative and in the absence of such showing it must be assumed that the rates were fully compensatory for the service performed.

Numerous other comparisons could be cited but the rates quoted are sufficient for the purposes of this case.

Before considering the rates to the other points involved, it may be well to point out that defendants have followed no uniform or consistent basis in adjusting oil rates in Southern California. In some cases the straight 5th Class rate applying from Los Angeles to destination is published as a commodity rate on refined products and extended to apply from San Pedro, El Segundo, East San Pedro, Wilmington, Redondo and Stewart.

In other cases, commodity rates are published from these points which are even less than the 5th class rate from Los Angeles. There are instances where the rates on refined products and distillate are the same, while in other cases distillate takes much lower rates than refined products. Again, rates are blanketed for considerable distances. The result is that the ordinary rules of rate construction are absent from practically the entire oil rate adjustment in Southern California, and if the Commission were called upon to adjust these inconsistencies, it would probably be necessary to make a general revision of rates from the various shipping points in that section.

From Fillmore to Colton complainant was charged a rate of \$6.20 per ton on refined products and rate of \$5.10 per ton on distillate. These rates, as has heretofore been shown, are a full combination of locals over Los Angeles.

Complainant's competitors do not pay a full combination of locals over Los Angeles to reach this same territory; in fact they pay no charge whatever over the Los Angeles rate. Complainant was required to pay the full local rate from Los Angeles to destination and in addition thereto the full 5th Class rate, Fillmore to Los Angeles, while its competitors, even though the oil may be hauled into Los Angeles by another or the same line, pay only the Los Angeles rate to destination.

The practice of making rates for a one line movement by a full combination of locals is not only contrary to well established principles of rate making, but in view of defendants' practices in constructing rates from refineries of complainant's competitors, the imposition on complainant's shipments of a full combination of locals is wholly unjustified.

The testimony discloses that it was the general practice of defendant carriers to extend the Los Angeles rates to apply from San Pedro, El Segundo, Redondo and Stewart, thus creating a blanket of all the oil shipping territory in this district, entirely disregarding the additional distance of approximately 25 miles. The creation of this oil center zone and the arbitrary publication of rates in which the Southern Pacific, Santa Fe, Los Angeles & Salt Lake Road and Pacific Electric Railway participated appears to have developed without any consideration of the effect it would have upon the movement of oil from producing points not within the zone.

Defendant, Southern Pacific Company, publishes in connection with the Pacific Electric Railway, from Stewart to Carpenteria, for a distance of 114 miles, rates on refined products of \$4.00 per ton, and distillate of \$3.20 per ton. From El Segundo to Nordhoff, a distance of 108 miles, involving a two-line haul as well as a branch line haul of 15 miles, the defendant Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, and the Pacific Electric Railway Company, jointly, maintain rates on refined products of \$4.20 per ton, and \$3.36 per ton on distillate.

The same rates were maintained by Southern Pacific Company from San Pedro to Carpenteria, and Nordhoff, for distances of 116 miles and 115 miles, respectively. Against these rates defendant Southern Pacific Company charged complainant \$6.20 per ton on Refined Products and \$5.10 per ton on distillate from Fillmore to Colton, a one-line movement of substantially similar distance.

Complainant referred to a great many rates in Northern California, for distances substantially similar as from Fillmore to Colton, which rates ranged from \$3.20 to \$3.60 per ton.

Defendant maintained that the rate adjustment in Northern California should not be used as a criterion for rates in Southern California as the Northern California rates were as a general rule below normal on account of competitive influences surrounding their establishment.

Upon cross examination, however, defendants' witness was unable to satisfactorily explain the competitive conditions which it is claimed were responsible for the lower rate structure in the northern part of the state, the principle point developed indicating that the reductions were the result of an attempt to place the different competing points around the bay on an equality.

It is unnecessary, however, to go into this question at length as a comparison of the Fillmore rates with those in Southern California will suffice to show the handicap under which Fillmore is laboring.

A witness for defendant, The Atchison, Topeka & Santa Fe Railway Company, testified that rates of \$3.00 per ton from Redondo to Fallbrook, 121 miles, and Redondo to Escondido, 129 miles, both movements involving two-branch line hauls, were presumptively reasonable.

Complainant presented as its Exhibit No.1 a statement showing tonnage and earnings of all refined oils transported by the Southern Pacific Company for the year 1914 as reported to this Commission in compliance with General Order No.29. This exhibit shows that for distances 51 to 100 miles, the tonnage was carried an average distance of 75 miles at an average rate of \$1.87 per ton, an average rate per ton mile of 2.58 cents and an average earning per car mile of 72 cents, as compared with the rates against refined oils of \$3.00 per ton from Fillmore to Los Angeles, a distance of 55 miles, and rate of \$3.40 per ton from Fillmore to Slauson, a distance of 62 miles. The same exhibit shows that for distances 101 to 150 miles, the average distance carried is 116 miles, the average rate on refined oils is \$3.89 per ton, the average rate per ton mile 3.36 cents and the average revenue per car mile 88 cents, as compared with the rate on refined products from Fillmore to Colton of \$5.20 a ton for a distance of 113 miles. While these average rates, taking the Southern Pacific oil tonnage as a whole, are not determining factors of what a rate should be between certain specified points, yet it does illustrate the fact that the Fillmore rates are much higher than the average rate for the entire Southern Pacific System.

There remains for consideration the rates from Fillmore to Slauson, involving a joint movement over the Southern Pacific, Fillmore to Los Angeles, and Santa Fe, Los Angeles to Slauson. The rates collected were based on the Southern Pacific local rates Fillmore to Los Angeles of \$3.00 per ton, on refined products, and \$2.40 per ton on distillate plus the Santa Fe local, Los Angeles to Slauson, of 40 cents per ton on both commodities.

Inasmuch as shipments from San Pedro, Stewart and other shipping points located on lines other than The Atchison, Topeka & Santa Fe Railway paid the local over Los Angeles for the additional service rendered by the Santa Fe from Los Angeles to Slauson, there would seem to be no good reason why the same basis should not obtain in making rates from Fillmore.

The oil rates from Fillmore were increased June 25, 1918, as per Director General of Railroad's Order No. 28 and Supplement thereto by approximately 25%, but not to exceed 4½ cents per 100 pounds. Under date of April 5, 1919 a reduction in the rates was made upon recommendation of the San Francisco District Freight Traffic Committee.

The following table gives the rates from Fillmore to Los Angeles, Slauson and Colton before the increased rates were established and those in effect thereafter:

From Fillmore to	Rates per Ton of 2000 Pounds		
	Los Angeles	Slauson	Colton
<u>Refined Products</u>			
June 24, 1918	\$3.00	\$3.40	\$6.20
Increased by G.O. No. 28	3.80	4.30	7.10
Present rate - established by District Freight Committee April 5, 1919.	2.60	3.00	5.40
<u>Distillate</u>			
June 24, 1918	2.40	2.80	5.10
Increased by G.O. No. 28	3.30	3.70	6.00
Present rate - established by District Freight Committee April 5, 1919.	2.60	3.00	4.90

It will be noted that the San Francisco District Freight Traffic Committee by its action April 5, 1919, reduced the rates on refined products, Fillmore to Los Angeles from \$3.00 in effect prior to June 24, 1918 to \$2.60 and increased the distillate rate from \$2.40 to \$2.60.

From Fillmore to Slauson the rate on refined products was reduced from \$3.40 to \$3.00 and on distillate increased from \$2.80 to \$3.00; from Fillmore to Colton the refined product rate was reduced from \$6.20 to \$5.40 and the distillate from \$5.10 to \$4.90.

The rates established by the District Freight Committee no doubt took into consideration the conditions existing April 5, 1919 and therefore gave thought to the 90 cent increase placed in effect by General Order No.28.

If this 90 cent increase had been deducted from the rates published April 5, 1919, upon recommendation of the San Francisco Committee, the rates would then have been on refined products, Fillmore to Los Angeles \$1.70, to Slauson \$2.10 and to Colton \$4.50. On distillate, to Los Angeles \$1.70, to Slauson \$2.10 and to Colton \$4.00. Complainant contends that these rates should be considered as the maximum rates for the service when rendered, they being the conclusions of the Federal Traffic Committee, a majority of whose members were formerly in the employ of the Southern Pacific, Western Pacific and Atchison, Topeka & Santa Fe Railways.

Before concluding it is well to call attention to the general adjustment of oil rates from Fillmore at the time of filing of this complaint and which were under investigation by the Commission at the time its jurisdiction over intrastate carriers under federal control ceased. Although these rates are not now in issue, a brief reference to them will be enlightening by way of showing the general prejudicial position in which

complainant was placed. From Fillmore to Mojave and the territory north thereof the rates on distillate and refined products were based straight 5th Class and 80% of 5th Class, respectively, whereas commodity rates were concurrently in effect from San Pedro and other Southern California shipping plants to same points of destination which were uniformly lower. For instance, the rate on refined oils from Fillmore to Mojave, 94 miles, is \$8.80 per ton while from San Pedro to Mojave, 126 miles, the rate is \$6.00 per ton. This difference is reflected at all points north. Owing to the absence of through rates from Fillmore, it is necessary to combine on Saugus, the junction point for the line running north through the San Joaquin Valley and south to Southern California. There is no commodity rate between these points, the 5th Class rate being \$2.80 per ton for haul of 24 miles, whereas for a similar distance from San Pedro to Los Angeles rate of 40 cents per ton obtains. A commodity rate from Fillmore to Saugus more in line with those prevailing between points of equal distance would place Fillmore in a better position on tonnage moving to points beyond Saugus under a combination of rates on this junction.

Traffic from San Pedro passes through the expensive terminals at Los Angeles and over the San Fernando range of mountains, thus involving much greater transportation costs than on the tonnage moving from Fillmore to the same territory. If cost of service and the length of haul only were considered, it is very apparent that rates from Fillmore to Mojave and points north should be lower than rates from San Pedro but for some unexplained reason defendant, Southern Pacific Company, has constructed its rates on an exactly opposite basis, charging the lower rates from San Pedro where a longer and more expensive service is involved. This discriminatory and unreasonable condition exists to almost as great an extent at points east of Los Angeles.

As an example, the rate San Pedro to Imperial, 238 miles, is \$9.60 on refined products. From Fillmore to Niland, a haul of approximately equal distance, the rate is \$12.20. Not only has San Pedro and points similarly situated been given the Los Angeles rate, which has the theoretical effect of placing such refineries at Los Angeles some 25 miles closer to destinations, but distance has again been disregarded by establishment of commodity rates from the Southern California refineries to points in this territory lower than from Fillmore to equi-distant points, as evidenced in the instance just cited. A more aggravated case of prejudicial and unreasonable treatment would be difficult to find.

On considering all of the evidence, the conclusion is irresistible that rates assessed at time shipments moved from Fillmore were excessive and unreasonable. There appears to be no good reason why complainant should not at all times have been given reasonable rates which would insure it against discrimination and prejudice when compared with rates given its competitors in the same general territory.

I am of the opinion and find as a fact that on shipments made by complainant from January 1, 1916 to December 27, 1917, incl., from Fillmore to Los Angeles, Colton and Slauson, complainant was charged excessive, unreasonable, discriminatory and unlawful rates for the transportation of refined products and distillate and that just and reasonable rates should not have exceeded the following:

<u>FROM</u>	<u>TO</u>	<u>Refined Products Including Gasoline, Kerosene and Lubricating Oil - Rate per Ton</u>	<u>Distillate - Rate per Ton</u>
Fillmore	Los Angeles	\$1.40	\$1.40
"	Slauson	1.80	1.80
"	Colton	4.00	3.20

I further find that complainant paid and bore the charges at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest at rate of 7% per annum.

The following form of order is submitted:

O R D E R

Complaint and answer having been filed in the above entitled proceeding, a public hearing having been held, the Commission being fully apprised in the premises, and basing its order on the findings of fact which appear in the foregoing opinion,

IT IS HEREBY ORDERED that Southern Pacific Company and The Atchison, Topoka & Santa Fe Railway Company be, and the same are hereby authorized and directed to pay unto complainant, Ventura Refining Company on or before December 31st, 1919, a sum equal to the difference between the charges paid and those that would have accrued at the rate herein found reasonable, with interest thereon at the rate of 7% per annum from date of collection, as reparation on account of unreasonable charges assessed on carload shipments of petroleum refined products including gasoline, kerosene, lubricating oil and engine distillate moving from Fillmore to Los Angeles, Slauson and Colton during the period January 1, 1916 to December 27, 1917, inclusive.

IS IS HEREBY FURTHER ORDERED that if an agreement cannot be reached as to the exact amount of reparation due, complete data be submitted to this Commission when a supplementary order fixing amount of reparation will be entered.

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 3^d day of October 1919.

Edwin A. Edgerton
H. H. Boardman
Frank R. Perkins
H. W. Brundage
Dwight Martin
COMMISSIONERS.