

Decision No. 9422

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

Producers Refining Company,  
Complainant,

vs.

Southern Pacific Company, and  
Atchison, Topeka & Santa Fe  
Railway Company,  
Defendants.

CASE NO. 1534.

Walter Osborn, for Complainant,  
E. W. Camp and G. E. Baker, for Defendants.

BY THE COMMISSION:

O P I N I O N

Complainant, the Producers Refining Company, is a corporation engaged in the business of refining crude petroleum, having a plant at Waits, on the Oil City-Porque Branch, which branch line is operated jointly by the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company.

By the complaint, filed February 15, 1921, it is alleged that the rates charged by defendants for the transportation of crude oil in tank cars between points on the Oil City Branch Line, particularly from Oil City and Airoff to Waits, are excessive, exorbitant and discriminatory against the complainant and in favor of the

large oil companies, who by use of privately owned pipe lines are not required to use the railroads. Complainant prays for a rate of  $37\frac{1}{2}$  cents per ton, minimum \$12.00 per car, on crude petroleum and its products from shipping points on the Oil City Branch to Waits. It also seeks reparation on shipments moved between March 22 and November 30, 1920.

A hearing was held May 18, 1921 at Bakersfield before Examiner Geary, and the matter is now ready for a decision.

Prior to June 25, 1918 the rate on crude petroleum in tank cars between the points in question was \$10.00 per car; on June 25, 1918 the rate was increased to \$15.00 per car in compliance with General Order No. 28 of the Director General of Railroads; on August 9, 1918 the rate was increased to  $4\frac{1}{2}$  cents per 100 pounds, or to 90 cents per ton, plus \$10.00 per car, as per Freight Order No. 96, and on August 26, 1920 the rate was further increased to  $5\frac{1}{2}$  cents per 100 pounds, or \$1.10 per ton, plus \$12.50 per car, as per Application No. 5728. The successive increases in rates, with the exception of the last, on August 26, 1920, were established during the period of Federal control.

The railroad over which the traffic moves is owned jointly by the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway and is known as the Oil City Branch, extending from Oil Junction on the Southern Pacific to Linroff on one side and to Portage on the other, the distance from Oil Junction to Linroff being 5.7 miles and from Oil Junction to Portage 6.7 miles, forming a letter "Y". The tonnage covered by this complaint moved from Oil City, six-tenths of a mile south of Linroff, to complainant's refinery, located at a point north of and adjacent to Waits, the

movement involving a haul of approximately three miles. In its petition complainant asks for a rate of 37½ cents per ton contemporaneously in effect at stations having switching limits, as per Item No. 1110-B, Southern Pacific Terminal Tariff No. 230-E. C.R.C. No. 2477, the contention being that the service is performed by a Bakersfield switch engine; that the Oil City Branch is operated as a part of the Bakersfield yard limits and that, therefore, regular switching charges should apply.

The rates complained of and those formerly in effect are contained in Southern Pacific Company's Tariffs No. 333-E, C.R.C. No. 1718, and No. 333-F, C.R.C. No. 2395, and cover movements between all points Alford to Boaz. Originally the charge was \$10.00 per car regardless of weight. The changes during Federal control and the Federal guaranty periods increased this charge, based on net weight of 100,000 pounds, to \$57.50 per car. The records disclose that complainant's crude oil shipments moved in tank cars and could be made empty, including the time of movement, within 24 hours after the loading commenced. Only 23 cars were forwarded March 22 to November 30, 1920, inclusive, no cars having moved since November, for the reason that the existing charge is prohibitive. At the present time the oil is being hauled by auto trucks at a charge of 12½ cents per barrel, or approximately \$37.50 per car of 300 barrels. This cost is approximately 50 per cent less than the rail rate, and 100 per cent higher than the rate the Commission is asked to establish.

Defendants do not seriously attempt to justify the rate charged, but contend that a rate less than \$1.00 per ton would be low and point particularly to the fact that operating conditions

in this territory are unfavorable. It is claimed there are now no rates for the movement of oil on line-haul traffic of less than \$1.00 per ton. As a matter of operating convenience the Bakersfield switching engine performs the service on the branch under regular main-line train orders and brings the loaded cars destined to points beyond Oil Junction into the Bakersfield yards, there to be placed in through trains. This branch line is not given a regular freight service and no passengers at all are handled.

The fact that defendants elected to handle this branch line traffic with the Bakersfield switch engines does not change the service rendered, which is a branch-line and not a switching service. Switching charges generally contemplate a movement of cars at stations within defined switching limits and the charges are published in what are known as Terminal Tariffs. Defendants pointed out that the traffic density at the large terminals - San Francisco, Oakland and Los Angeles - is greatly in excess of that on the Oil City Branch and, in consequence, the unit cost per car handled is lower.

Because of the dissimilarity in conditions and the complete blanketing of the switching rate within switching limits, whether the movement be only a few hundred feet or a number of miles, makes the comparison of rates brought forth by the complainant as immaterial and not pertinent in this proceeding.

The testimony of complainant further indicates that practically all other oil producers on the Oil City Branch of these defendants transport crude oil to the refineries by privately owned pipe lines and that the refinery of the Producers Refining Company at Waits is the only company which at this time is moving the crude oil from the wells to the refinery by means other than

pipe lines. In this situation, as heretofore stated, the crude oil is now being transported to the Waits Refinery by automobile trucks, for the reason that the automobile costs are lower than the present rail charges. It is also in evidence that the oil after having been processed at the Waits Refinery is forwarded to consuming markets by defendants' railroads.

In the light of the various rate comparisons, the incidents of the transportation and the earnings per car, we are of the opinion that the rate now in effect, of 5½ cents per 100 pounds, plus a charge of \$12.50 a car, a total charge of \$67.50 for a car of 100,000 pounds, is excessive and unreasonable and that a just and reasonable rate for the transportation of petroleum crude oil, in tank cars, from Alnrof and Oil City to Waits, is 3 cents per 100 pounds, with a minimum charge of \$15.00 per car.

Reparation is sought in connection with shipments moved between March 22 and November 30, 1920. Under the provisions of Section 208-a of the Transportation Act 1920 the federal government guaranteed a fixed rate of return to the carriers, and the rates in effect on February 29, 1920 were to remain in effect until September 1, 1920 unless the changes bringing about reductions were first approved by the Interstate Commerce Commission. It is, therefore, the contention that this Commission is without authority to award reparation on shipments moved prior to September 1, 1920. Subsequent to September 1, 1920 these defendants transported but 13 carloads of oil upon which reparation is claimed. No testimony was offered with reference to the reparation and there is no proof as to who paid the freight charges. The mere finding of unreasonableness as to a freight rate for the future affords no basis for reparation award, and in view of the fact that the rates paid were those legally established, and made to

meet war conditions rather than upon a reasonable rate-making basis, we are of the opinion that award of reparation should not be made.

O R D E R

This case being at issue upon complaint and answer on file and having been duly heard and submitted by the parties, and full investigation of the matters involved having been had, and basing its order on the foregoing findings of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the defendants, the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company according as they participate in the transportation be, and they are hereby notified to publish and make effective on or before November 1, 1921 a rate of three (3¢) cents per 100 pounds, with a minimum of \$15.00 for the transportation of petroleum crude oil in tank cars from Alroff and Oil City to Wails, which rate this Commission finds to be just and reasonable.

Dated at San Francisco, California, this 25<sup>th</sup> day of August, 1921.

H. B. Prudie  
H. D. Loveland  
James Martin  
Chas. P. Rice  
J. J. Pender