

Decision No. 26028.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ASSOCIATED OIL COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

Case No. 3574.

ORIGINAL

BY THE COMMISSION:

O P I N I O N

By complaint filed April 28, 1933, it is alleged that the charges assessed and collected on two tank carloads of fish oil transported from Pittsburg to Avon on November 3 and 5, 1930, were excessive and unreasonable in violation of Section 13 of the Public Utilities Act.

Reparation only is sought. Rates are stated in cents per 100 pounds.

Pittsburg and Avon are on the Southern Pacific Company 45 miles and 34 miles respectively east of Oakland. Charges were originally assessed on complainant's shipments on basis of a rate of 5 cents published in Item 6520-B of defendant's Tariff 730-D. C.R.C. 3353, applying only when tank cars are furnished by the shipper. Complainant's shipments were not transported in equipment furnished by it and were for that reason subject to the minimum fifth class rate of 11 cents. On June 10, 1932, defendant

collected charges on basis of a rate of 7 cents, which is the actual fifth class rate from Pittsburg to Avon, and on January 30, 1933, made further collection on basis of the applicable rate of 11 cents. Effective December 30, 1931, defendant cancelled the restriction requiring that tank cars must be furnished by shipper.

Complainant alleges that the applicable rate was unreasonable to the extent it exceeded 7 cents and seeks reparation on that basis.

Defendant admits the allegation of the complaint and has signified its willingness to make a reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate was unreasonable to the extent it exceeded 7 cents. We further find that complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

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 the payment of 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.

O R D E R

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 defendant Southern Pacific Company be and it is hereby authorized and directed to refund without interest to complainant Associated Oil Company all charges collected in excess of 7 cents per 100 pounds for the transportation from Pittsburg to Avon of the shipments of fish oil involved in this proceeding.

Dated at San Francisco, California, this 5th day of June, 1933.

O. C. Cleary
Leon A. Whelan
W. H. C. C.
W. B. Harris
W. H. C. C.
Commissioners.