

Decision No. 31137

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

KRIEGER OIL COMPANY OF CALIFORNIA,
a copartnership, and RIVERSIDE
CEMENT COMPANY, a corporation,

Complainants,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY
and UNION PACIFIC RAILROAD COMPANY,

Defendants.

Case No. 4289

ORIGINAL

Jules J. Covey, for complainants.
E.L.H. Bissinger, for Pacific Electric Railway
Company, defendant.
E. C. Renwick and Wade H. Love, for Union
Pacific Railroad Company, defendant.

BY THE COMMISSION:

O P I N I O N

Complainants allege that the freight charges assessed and collected by defendants for the transportation of 27 tank carloads of fuel oil shipped from Crutcher to Crestmore during the period May 11 to May 21, 1937, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. Reparation only is sought. Rates are stated in cents per 100 pounds.

A public hearing was had before Examiner Bryant at Los Angeles on June 28, 1938, and the matter taken under submission.

The shipments moved via Pacific Electric Railway Company from Crutcher to Los Angeles, thence via Union Pacific Railroad Company to Crestmore. Charges were assessed upon the basis of lawfully applicable combinations which resulted in a rate of 12 cents on the 15 carloads which moved prior to May 15, 1937, and 9 cents on 12 carloads which moved thereafter. Complainants allege that these charges were unreasonable to the extent they exceeded charges based

on a joint through rate of 6 cents, established May 22, 1937.¹

Defendant carriers admit the principal allegations of the complaint.

The record shows that the shipments originated on a spur track which had recently been constructed, and that at the time shipments were made the subsequently established 6-cent rate was being negotiated but had not been made effective. The oil was apparently sold and shipped on the basis of complainants' understanding that the 6-cent rate applicable from other Los Angeles Basin points would be protected.

The evidence adduced at the public hearing dealt with the number of cars shipped and the amount of reparation due under the sought basis, and with details of the negotiations for construction of the spur track and for establishment of joint rates. No attempt was made, by means of rate comparisons or otherwise, to show the sought rate to be a maximum reasonable rate; and no evidence was offered to establish the unreasonableness of the charges assessed. In this proceeding complainants rely upon defendants' admission of unreasonableness, and upon the allegation that defendants had agreed to publish the sought rate.

When a carrier voluntarily reduces a rate it does not necessarily follow that reparation is proper against shipments moving before the lower rates become effective, nor is the admission by a carrier that a rate was unreasonable sufficient grounds upon which to base an award of reparation. This is a salutary principle long followed by this Commission, by other regulatory bodies, and by the courts. While there may be no issue as between the actual parties

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Published in Supplement No. 38 to Pacific Freight Tariff Bureau Tariff No. 167-L, C.R.C. No. 586 of L. F. Potter, Alternate Agent, on one (1) day's notice.

it is essential that the Commission carefully scrutinize the proofs in support of the complaint, lest by granting a petition it lends its sanction and approval to what in substance and in effect is a rebate, and what may well result in unlawful discrimination and the disruption of a rate structure. The proof necessary to justify reparation should measure up to that which would be required had defendants opposed the relief sought. (Salinas Valley Ice Co. vs. W.P. R.R. and S.P.Co., 41 C.R.C. 79)

Complainant has failed to assume the burden of proving that the charges under attack were unreasonable, and in the absence of affirmative proof the complaint must be dismissed. (Nestles Food Company, Inc. vs. N.W.P. R.R. Co. and S. P. Co., 33 C.R.C. 430)

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 the Commission being fully advised,

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 1st day of August, 1938.

Rafaela
Leon
Francis
Ray & Riley
COMMISSIONERS