

Decision No. 22222

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

The Caminol Company, Ltd.,
a corporation,

Complainant,

vs.

The Atchison, Topeka & Santa Fe
Railway Company and Southern
Pacific Company,

Defendants.

Case No. 4492

ORIGINAL

Appearances

F. W. Turcotte, for complainant.

R. E. Wedekind, for Southern Pacific Company,
defendant.

Gerald E. Duffy and George T. Hurst, for The
Atchison, Topeka and Santa Fe Railway Com-
pany, defendant.

W. E. Paul, for Union Oil Company of California,
as its interests may appear.

R. T. Potts, for Shell Oil Company, Inc., as its
interests may appear.

BY THE COMMISSION:

O P I N I O N

Complainant, The Caminol Company, Ltd., alleges that the rates published and maintained by defendants for the transportation of petroleum fuel oil in tank carloads from Hanford to Diamond Springs are relatively unreasonable, unjustly discriminatory, unduly preferential of complainant's competitors, and unduly prejudicial to

complainant, in violation of the provisions of Sections 13 and 19 of the Public Utilities Act.¹ It prays that defendants be required to establish and apply just, reasonable and nondiscriminatory rates for this transportation in the future. Reparation is not sought. Defendants deny the material allegations of the complaint, and ask that it be dismissed.

Public hearing was had before Examiner Bryant at Los Angeles on June 25, 1940, and the matter is now ready for decision.

The record shows that complainant is engaged in the business of refining and distributing petroleum products through its refineries situated at Santa Fe Springs and Hanford. Hanford, the point of origin here involved, is located in Kings County in the San Joaquin Valley, some 80 rail miles north of Bakersfield. The refinery at that point is served directly by an industrial spur track of The Atchison, Topeka and Santa Fe Railway Company, and indirectly by trackage of Southern Pacific Company through means of a pipeline, approximately one quarter of a mile in length, owned by complainant. There is no physical interchange between the two rail lines at Hanford. Diamond Springs, the destination involved in this complaint, is situated in Eldorado County approximately 56 miles east of Sacramento on the Placerville branch of the Southern Pacific; it is not served by the Santa Fe.

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Although the formal complaint alleges unreasonableness in violation of the provisions of Section 13, complainant's counsel stated: "There is no contention on the part of the complainant that the rates are per se unreasonable. It is merely a question of relative unreasonableness, and preference of competitors and prejudice to complainant's plant."

Complainant's sales manager testified that his company produces at its Hanford refinery from 25,000 to 35,000 barrels of fuel oil monthly, the greater part of which is disposed of at points in California north of Hanford. This oil is sold in direct and active competition with oil shipped from other refineries located in the vicinities of Coalinga, Bakersfield and Taft, and from the non-refinery shipping points of Lyoth and Tracy.² His testimony indicates that the Caminol company has sold fuel oil at Diamond Springs continuously since March, 1939, but has encountered some difficulty in retaining the business, due principally to the necessity of meeting prices quoted by a competitor shipping from Lyoth. It appears that the Diamond Springs consignee has contracted with complainant for the purchase of fuel oil until March, 1941, but the price paid under the contract fluctuates with changes in the selling price of the commodity, so that complainant is at all times required to meet delivered prices quoted by its competitors.

The witness attributed the difficulties of his company in retaining the Diamond Springs business at an attractive price largely to the fact that competitors could ship from Lyoth and Tracy to that point at rail rates considerably lower than those prevailing from Hanford to the same destination, but conceded that other factors also entered into the fixing of delivered fuel oil prices. From his testimony it appears that perhaps the principal objection on the part of complainant to the rail rates now in effect lies in the fact that the differential in rates to Diamond Springs as between Hanford on the one hand and Lyoth and Tracy on the other hand is materially greater

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The witness explained that the fuel oil reaches Lyoth and Tracy by pipeline, and possibly also by barge.

than that which was maintained by defendants in the past. ³

A rate and tariff expert called by complainant introduced and explained several exhibits comparing the rail rates from Hanford and from other shipping points to Diamond Springs and other California destinations. These exhibits were all offered for the purpose of showing that the rates from Hanford are generally higher, distances considered, than the rates maintained by defendants from other petroleum shipping points in California, and that the Hanford refinery is thus deprived of the advantage of its geographical location. The rate comparisons will be further discussed hereinafter.

The Commerce Agent of Southern Pacific Company, testifying for defendants as an expert witness in rate and tariff matters, stated that in his opinion the assailed rates were neither unreasonable nor discriminatory. He offered exhibits showing the history of fuel oil rates from Hanford and competing points to Diamond Springs from July, 1922, to June, 1940; exhibits comparing the rates assailed with those currently maintained from other shipping points; and exhibits showing the percentage relationship between such rates and those prescribed for the same distances under several rate scales adopted in the past by this Commission and by the Interstate Commerce Commission. He described in some detail the reasons for the various rate changes which affected the amount of the Hanford-Lyoth differential chronologically, explaining that the changes

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An exhibit introduced by complainant indicates that the differential via the single-line route was $4\frac{1}{2}$ cents per 100 pounds on April 10, 1933; on February 10, 1936, it was 6 cents; on April 8, 1938, it was $6\frac{1}{2}$ cents; on May 13, 1939, it was 11 cents, and since June 30, 1939, it has been 9 cents. The differential via the joint-line route was one-half cent greater until April 8, 1938, and one cent greater thereafter.

had been brought about by many different conditions which arose from time to time, and reflected various competitive influences such as the presence of barge competition on San Francisco Bay and its tributaries, and the availability of natural gas as a substitute for fuel oil. He declared that the presence of truck competition precluded an increase in the current rates from Lyoth and Tracy to Diamond Springs, and asserted that under present conditions defendants considered the prevailing differential to be normal.

The rates here complained of are 20 cents for the single-line movement via Southern Pacific Company, and 21 cents for the joint-line movement via Santa Fe and Southern Pacific.⁴ The rate sought is 16 cents via either route. The rail distances, rates and ton-mile earnings from Hanford and the principal competing origins to Diamond Springs, as shown in complainant's exhibits, are set forth in the following table:⁵

<u>To</u> <u>Diamond Springs</u> <u>From</u>	<u>Miles</u>	<u>Rate</u>	<u>Revenue per</u> <u>Ton Mile</u>
Lyoth	112.5	11	\$.0195
Tracy	112.7	11	.0195
Richmond	133.1	15	.0225
Hanford	243.6	(1) 20	.0164
		(2) 21	.0172
Coalinga	299.9	21	.0140
Bakersfield	319.6	21	.0131
Taft	365.8	21	.0114

(1) Single-line rate
(2) Joint-line rate

It will be observed that the comparisons reproduced in the table lend little support to complainant's contention that the rates from Hanford are relatively unreasonable and discriminatory. When

⁴ Rates are stated herein in cents per 100 pounds.

⁵ Distances are via short-line rail routes; earnings per ton mile are in each case based on 94,226 pounds per car, which is shown to be the average weight of 121 cars shipped from Hanford to Diamond Springs in 1939.

measured by the single test of distance as translated into comparative earnings per ton mile, it does not appear from these comparisons that the rates from the various refineries to Diamond Springs are mal-adjusted to the disadvantage of Hanford. The comparisons show that the rates to Diamond Springs from the various shipping points are, in a general way at least, related to the rail distances involved, and that the revenues per ton mile, except as to Richmond, follow the normal and natural pattern by being decreased as the distance is increased. The rate sought, on the other hand, would not fall within the normal pattern in this regard. It would produce earnings per ton mile less than those which accrue under the rate in effect for the haul from Coalinga to Diamond Springs, which is 57 miles longer than that from Hanford, and would produce earnings per ton mile the same as those which accrue under the rate from Bakersfield to Diamond Springs, which involves a haul 76 miles longer than that from Hanford. ⁶

Both complainant and the defendants offered numerous other comparisons, involving rates from the several shipping points to various destinations in California other than Diamond Springs. These comparisons, however, were not accompanied by a showing of similarity of circumstances and conditions such as is essential to give them probative value.

The fact that the differential in rates to Diamond Springs as between Hanford on the one hand and Lyoth and Tracy on the other hand is greater under current rates than it was under previous rates, as shown by complainant, does not serve to show that the present differential is such as to make the Hanford rates relatively unreasonable or otherwise unlawful. The record indicates that defendants'

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Earnings per ton mile under the sought rate of 16 cents per 100 pounds from Hanford to Diamond Springs would be \$.0131. Earnings under the present rates from Coalinga and Bakersfield are shown in the table hereinbefore supplied.

current rates for the shorter distances are predicated upon minimum rates established by this Commission, effective December 7, 1938, for the transportation of fuel oil in tank truck equipment by motor carriers,⁷ and for longer distances are maintained somewhat below this truck scale. The rail rates from Lyoth and Tracy to Diamond Springs are the same as these truck rates, and the rail rates from Hanford to Diamond Springs are below the truck rates. The minimum truck rates, it may be observed, are directly related to the length of haul as measured via shortest constructive highway routes.

There are, of course, many factors which must be considered in judging whether a rate is relatively unreasonable, discriminatory or prejudicial, and rates which appear to be improper when judged only by one test may sometimes be shown by other tests to be nevertheless not unlawful. In the instant case, however, the rates complained of do not appear to be unlawful when judged by the tests upon which complainant relies.

Upon consideration of all the facts and circumstances of record, we are of the opinion and find that complainant has failed to show that the rates under attack are relatively unreasonable, unjustly discriminatory, or unduly preferential or prejudicial as alleged. The complaint will therefore be dismissed.

O R D E R

This case being at issue upon complaint and answers on file, full investigation of the matters and things involved having been had, and the Commission being fully advised,

⁷ The minimum truck rates were established by Decision No. 31469 of November 10, 1938, as amended, in Case No. 4249. Under this decision highway carriers are permitted to apply the rail rates when the latter result in lower charges for the same transportation.

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

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 17th day of September, 1940.

Ray L. Riley
Frank R. L. ...
Robert ...
W. Baker
Justin J. ...
Commissioners