Decision No. 37418

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GENERAL CHEMICAL COMPANY Complainant,	)	
vs.	)	Case No. 4614
PACIFIC ELECTRIC RAILWAY COMPANY AND SOUTHERN PACIFIC COMPANY, Defendants.	)	

ORIGINAL

BY THE COMMISSION:

O P I N I O N

Complainant alleges that the charges assessed and collected by defendants for the transportation of 50 carloads of sulphuric acid in tank cars from El Segundo to Oleum, Richmond and Stege during the period December 4, to December 23, 1939, were unjust, unreasonable and unduly prejudicial, in violation of Sections 13 and 19 of the Public Utilities Act. Reparation only is sought.

The matter has been submitted on written statements of fact and argument filed by complainant. Defendants filed no answer either to the formal complaint or to complainant's written statements. They have, however, expressed their willingness to satisfy the complaint, stating that they do not desire to raise any issue concerning the matter.

El Segundo is a point on the Pacific Electric Railway Company's lines, 17 miles south of Los Angeles. Oleum, Richmond and Stege are points on the Southern Pacific Company's lines, 28, 16 and 15 miles, respectively, north of San Francisco. Charges were assessed and collected on the basis of a 30 3/4-cent rate on the 5 cars shipped to Oleum and a 31-cent rate on the 45 cars shipped to Richmond

and Stege.[1] Subsequent to the movement of these shipments, defendants voluntarily established a nonintermediate rate of 28 cents between the points involved.[2] This is the basis on which reparation is sought.

Complainant contends that the assailed rates were excessive and unreasonable as measured by comparisons with other rates; that the relative rather than the intrinsic unreasonableness of rates is the important consideration when a rate adjustment "is the outcome of competition and strain and stress through long periods of development"; that, although the rate on basis of which reparation is sought is nonintermediate in application, any presumption of unreasonableness on that account is unwarranted; and that, in relation to its competitor's rates from Los Angeles (Vernon), the rates from El Segundo were unjustly discriminatory.

Allegedly, it has been defendants' practice to seek authority to establish certain of their rates nonintermediate in application "on the basis of a predisposition of opinion or precedented caution rather than because they desired to maintain higher charges at intermediate points." This, it is claimed, is illustrated by the

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[1] Throughout this opinion rates are stated in cents per 100 pounds. The rate to Oleum is made by combining defendants' joint rate of 28 cents from El Segundo to Martinez with Southern Pacific's local rate of 2 3/4 cents from Martinez to destination; the rate to Richmond and Stege by combining defendants' local rates of 3 and 28 cents from El Segundo to Los Angeles, and from Los Angeles to destination, respectively.

[2] In establishing rates nonintermediate in application common carriers are required by the provisions of Section 24(a) of the Public Utilities Act to first apply for and secure the Commission's authorization. The restricted applicability of the 28-cent rate was authorized by the Commission's 24th Section Authority No. 4629 of December 19, 1939.

fact that various rates on acids between the San Francisco and Los Angeles areas are restricted in their application while others are not. It has been defendants' further practice, complainant alleges, to publish rates no higher than 28 cents for any movement of sulphuric acid which developed to an intermediate point. Complainant points out, moreover, that various rates applicable to carload shipments of other commodities in tank cars between these areas apply at intermediate points.

For more than 30 years, however, there have been two rates for carload shipments of sulphuric acid in tank cars between San Francisco and Los Angeles and points grouped with those cities; one rate nonintermediate in application and the other intermediate. In 1916, and as a result of a statewide investigation of the rail lines' long and short haul departures, the Commission, by Decision No. 3440 (10 C.R.C. 387), found that water competition justified the maintenance of a 17½-cent nonintermediate rate on sulphuric acid between San Francisco and Los Angeles and related points. A 20-cent intermediate rate was contemporaneously maintained between these points. By operation of various general increases and reductions, these rates have become the 28-cent and 31-cent rates which are in effect today. It is thus apparent that the 28-cent rate has developed from and is primarily founded on the meeting of water competition. Rates of this character are not a proper or controlling measure of maximum reasonable rates (Pocahontas Operators Association et al., v. Norfolk & Western Railway Company et al., 243 I.C.C. 731; John I. Haas Incorporated v. Oregon Electric Railway Company et al., 237 I.C.C. 432).

In decision No. 3440, supra, as well as in other decisions in the Commission's general investigation of long and short haul departures, it was held that both class and commodity rates between San

Francisco and Los Angeles were based upon water competition between points on San Francisco Bay on the one hand and San Pedro on the other and that market competition and other circumstances justified the extension of the water-compelled rates to points not embraced by the vessel lines' rates. (See Decisions Nos. 3436, 10 C.R.C. 354; 3437, 10 C.R.C. 368; and 3441, 10 C.R.C. 396.)

In these circumstances, complainant's comparison of the 28-cent rate sought with other commodity rates between the San Francisco and Los Angeles areas has little evidentiary value. It is well established that where rate comparisons are submitted in complaint proceedings it is incumbent upon the party offering the comparison to show that they are a fair measure of the reasonableness of the rates in issue (Em. H. Mettler v. S. P. Co., 43 C.R.C. 469; Salinas Valley Ice Co. v. W.P.R.R. and S.P. Co., 41 C.R.C. 79).

Complainant's rate comparisons involving traffic from and to points which do not appear to be influenced by water competition, similarly, lend little if any support to its contention that the assailed rates were unreasonable. For example, while for the 469-mile haul from San Francisco to Los Angeles defendant Southern Pacific Company maintains a 28-cent rate on sulphuric acid in tank cars, its rate on that commodity from San Francisco to Bakersfield, 303 miles, is 25 cents. From San Francisco to Colusa, Hamilton and Marysville distances of 137, 174 and 145 miles, respectively, the tank car rate on sulphuric acid is likewise 25 cents. For 158 miles, San Francisco to Chowchilla the rate is 20 cents.

With respect to complainant's allegations of undue prejudice, it is sufficient to point out that it has consistently been held that in reparation proceedings based on discrimination the damages suffered, if any, are not necessarily an amount equal to the difference

in rates and that the fact of damage and the amount thereof must be definitely established (Pa. R.R. Co. v. International Coal Co., 230 U.S. 184; Calif. P.C. Co. v. S. P. Co., 39 C.R.C. 17). Here, complainant has not undertaken to establish that it has been damaged except by pointing out that there was competition between users of the sulphuric acid rates from El Segundo and Vernon.

As has previously been stated herein, defendants have signified their willingness to satisfy the complaint and have not raised any issue in the matter. It has repeatedly been pointed out by the Commission that the proof necessary to justify reparation in instances where there is no issue between the actual parties must measure up to that required had defendants opposed the sought award (Rosenberg Bros. & Co. v. S. P. Co., 43 C.R.C. 301; Krieger Oil Co. and Riverside Cement Co. v. P. E. Ry. Co. and U. P. R. R., 41 C.R.C. 521).

Upon consideration of all the facts of record, we are of the opinion and find that it has not been shown that the rates assessed and collected were unjust or unreasonable or that the complainant suffered any damage because of undue discrimination or prejudice. The complaint will be dismissed.

O R D E R

This case being at issue upon complaint, full investigation of the matters and things involved having been had, and basing this order upon the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that the above entitled complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 24th day of October, 1944.

Commissioners.