

Decision No. 45964

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE NORWALK COMPANY, a corporation,)
Complainant,)

vs.)

THE ATCHISON, TOPEKA AND SANTA FE)
RAILWAY COMPANY, SOUTHERN PACIFIC)
COMPANY AND TRONA RAILWAY COMPANY,)
Defendants.)

ORIGINAL

Case No. 5242

Appearances

F. W. Turcotte, for complainant.
C. W. Burkett, Jr., and James M. Souby, Jr.,
for defendants.

O P I N I O N

Complainant, The Norwalk Company, alleges that the existing joint through rate published and maintained by defendant railroads for transportation of petroleum fuel oil in carloads from Mopeco to Trona, is relatively unjust and unreasonable in violation of Section 13, and preferential and prejudicial in violation of Section 19, of the Public Utilities Act. It seeks an order directing defendants to establish for the future a rate no higher than that concurrently maintained for transportation to the same destination from certain other shipping points in the vicinity of Mopeco. Complainant does not seek reparation. Defendants deny the essential allegations of the complaint.

Public hearing was held before Examiner Bryant at Los Angeles on March 13, 1951. Briefs have been filed, and the matter is ready for decision.

The president of The Norwalk Company testified that his company is engaged in the refining of crude oil and the distribution and sale of petroleum products. In September, 1949, it acquired a refinery at Mopeco, located on the main line of The Atchison, Topeka and Santa Fe Railway, approximately one-half mile west of the Bakersfield switching limits. On January 1, 1950, it entered into a contract with the American Potash and Chemical Company under which it agreed to deliver to the latter company, at Trona, 50,000 barrels of fuel oil a month from March 1, 1950 through December 31, 1952. The Mopeco plant was placed in operation in December, 1950, after necessary improvements had been completed. At the time of the hearing in March, 1951, complainant¹ was shipping about 120 carloads a month from Mopeco to Trona. The shipments move via The Atchison, Topeka and Santa Fe Railway Company to Bakersfield, thence Southern Pacific Company to Searles, and Trona Railway Company from Searles to Trona.

When complainant began negotiations for purchase of the Mopeco refinery it ascertained that the rate on petroleum fuel oil from Mopeco to Trona was then the same as the rate contemporaneously maintained from Bakersfield to Trona. On September 18, 1949, the rail rates were revised with the result that thereafter the rates from Mopeco were and are higher than the rates applying from Bakersfield and other points grouped therewith. Under the contract with American Potash and Chemical Company, that company pays transportation charges applicable from "Bakersfield Group 9" points and complainant pays "any amount in excess thereof." As a result, according to the evidence, complainant must absorb an amount equal to the difference in rates.

¹ Equivalent to approximately 30,000 barrels. Complainant operates another refinery, not herein involved, in the vicinity of Maricopa.

The assailed rate from Mopeco to Trona is 17 cents per 100 pounds. The rate from Bakersfield Group 9 points and Harpertown Group 12 points to Trona is 16 cents per 100 pounds.² Complainant's president testified that his company, in selling petroleum fuel oil at Trona, is in competition with other refiners shipping from Harpertown, Maltha, Seguro and Oil Junction. Harpertown is about 13 miles southeast of Bakersfield; the other points are five or six miles north of Bakersfield. The witness said that his company, in order to market its product at Trona, must necessarily absorb one cent per 100 pounds, representing the difference in freight rates now existing between Mopeco on the one hand and the aforesaid competitive shipping points on the other.

Complainant, through a rate and traffic consultant, introduced evidence to show that the rail mileage from Mopeco to Trona is less than the mileages to the same destination from other points which are accorded the 16-cent rate. The record shows that the short-line rail distance from Mopeco to Trona is 150.2 miles. The average distances from the Bakersfield Group 9 and Harpertown Group 12 shipping points are 152.7 and 149.3 miles, respectively. Addition of Mopeco to Group 9 would not increase the average distance from Group 9 points to Trona. The consultant stated that for hauls of approximately 150 miles, as herein involved, the California rail lines usually publish on petroleum products blanket rates which apply equally from all producing points in the same general area. He offered numerous examples of rates published between points in

2

The rate groups are described in Pacific Southcoast Freight Bureau Tariff No. 252-B, Cal. P.U.C. No. 96 of J. P. Haynes, Agent. Group 9 points are Bakersfield, Oil City, Maltha, Seguro and Oil Junction. Group 12 points are Ribier, Arvin, Lamont, Harpertown, Algaso, Magunden, Edison and Griffin.

California from origin groups considerably more extensive than Groups 9 and 12, and cited several such instances where three-carrier hauls were involved.³ This witness showed also that while Mopeco is subjected to a rate differential over the competing points in connection with shipments to Trona, it is not accorded a corresponding rate advantage on shipments to San Joaquin Valley destinations which lie in the opposite direction.

An assistant freight traffic manager of Southern Pacific Company, testifying on behalf of defendants, introduced a chronological history of carload rates on petroleum fuel oil in tank cars from representative shipping points in the Bakersfield area to Trona. During the period from 1932 to 1939 as now, the rates from Mopeco to Trona were higher than those from Bakersfield, Maltha and Harperton. During the ten-year period from May 27, 1939, to September 16, 1949, Mopeco was accorded a rate parity with Bakersfield and Maltha.⁴ On the latter date the rates from Bakersfield, Harperton and Maltha were reduced about 35 percent. This reduction, according to testimony of the rail witness, was made "to forestall the movement of petroleum fuel oil in proprietary trucks of the Union Oil Company, movement to be principally from Maltha." No change was made at that time in the one-factor rate from Mopeco to Trona. Thereupon the present complainant, through informal negotiations with the carriers, sought a corresponding reduction from Mopeco. The carriers concluded that a rate one cent higher than the rate from Bakersfield was "fair and proper" because "the revenue out of a 16-cent rate for a three-line haul was too slim." On March 3, 1950, they reduced the Mopeco

³ As hereinbefore indicated, shipments from Mopeco to Trona move over the lines of the three defendant railroads.

⁴ In this period a lower rate was maintained from Harperton.

rate sufficiently to establish the one-cent difference now existing.

Defendants' witness also introduced a number of rate statements to show that the assailed rate is relatively low when compared with other rates on the same and related commodities, and is substantially lower than various rates which have been established or approved in the past by this Commission and by the Interstate Commerce Commission for comparable distances. The witness pointed out further that the compared rates generally cover single-line hauls only, whereas the assailed rate is for a three-line haul.

It is complainant's position that, under all of the circumstances, the assailed 17-cent rate is relatively unreasonable and should be condemned to the extent that it exceeds or may exceed 16 cents. Complainant urges that if the Commission does not see fit to condemn the 17-cent rate as relatively unreasonable, it should then find the rate to be unduly preferential of the shipping points of Bakersfield, Seguro, Maltha, Oil Junction, Oil City and Harpertown, and of complainant's competitors shipping petroleum fuel oil from said points, and unduly prejudicial to complainant and its shipping point of Mopeco. Complainant asks that the defendants be ordered to remove such preference and prejudice and to establish and maintain rates on petroleum fuel oil from Mopeco to Trona no higher than those contemporaneously maintained from the Bakersfield Group 9 points and Harpertown Group 12 points.

Defendants declare that the assailed rate is not unreasonable in violation of Section 13 of the Act because it is substantially less than the maximum reasonable level, whether measured by the historical showing or by the comparisons with other rates prescribed or approved by this Commission and the Interstate Commerce Commission. The allegation of preference and prejudice must be

considered as withdrawn, defendants contend, inasmuch as complainant's president testified that he would not be satisfied with an increase in the allegedly preferred rates. They argue that unlawful preference and prejudice cannot exist unless the injury will cease upon removal of the preference or prejudice, regardless of the manner of its removal.

The evidence offers little support for complainant's contention that the assailed rate is relatively unreasonable. Most of the compared rates were shown by defendants to be depressed below maximum reasonable levels. The 17-cent rate does not stand above the general rate level. It appears rather that the rate is on a lower basis than many of those which were cited for comparative purposes. It is substantially lower than the rates which were maintained by defendants until recently for the transportation service herein involved. Upon consideration of the evidence we conclude that the assailed rate has not been shown to be unjust or unreasonable within the prohibition of Section 13 of the Public Utilities Act.

The foregoing conclusion does not answer the question whether the one-cent difference between the assailed rate and the lower rate maintained by defendants for transportation of the same commodity to the same destination from various shipping points in the vicinity of Mopoco constitutes an unlawful preference and prejudice. Defendants' argument that the allegation of preference and prejudice must be considered as withdrawn is not persuasive. Complainant's president testified that his company would not wish to be instrumental in raising the rates of its competitors, and that he therefore could not admit that he would be satisfied by an increase in the competitive rates rather than a reduction in the

Mopeco rate. We do not agree with defendants that this testimony constitutes a refusal of the remedy of increasing the allegedly preferred rates, or that it is tantamount to a withdrawal of the allegation of undue prejudice.

The rail distance from Mopeco to Trona is comparable to, and in a number of cases less than, the distances from the other origins which enjoy a lower rate. The only justification offered by defendants for maintenance of a higher rate from Mopeco than from Bakersfield and other points taking the Bakersfield rate was that the Mopeco shipments move over the lines of three carriers, whereas the compared movements involve two carriers only. Defendants did not contend, nor offer evidence to show, that the three-line movement from Mopeco involves an increased cost of service as compared with the two-line hauls from Bakersfield, Harpertown, Maltha, Seguro and Oil Junction. The circumstance that an additional carrier participates in the transportation does not of itself justify maintenance of the higher rate.⁵ The record is convincing that complainant is required to pay charges higher than those maintained from adjacent competitive shipping points for a transportation service which is essentially the same.

Upon careful consideration of all the facts and circumstances of record in this proceeding the Commission is of the opinion and finds as a fact that the assailed rate has not been shown to be unreasonable in violation of Section 13 of the Public Utilities Act, but that it has been shown to be preferential to competitors of complainant and prejudicial to complainant in violation of Section 19 of the Act. Defendants will be required to remove the undue discrimination.

⁵

The division of revenue between the carriers is not a matter in issue in this proceeding.

O R D E R

Public hearing having been held in the above-entitled proceeding, briefs having been filed, the evidence having been fully considered, and good cause appearing,

IT IS HEREBY ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, and Trona Railway Company, establish within forty-five (45) days after the effective date of this order, on not less than five (5) days' notice to the Commission and to the public, and thereafter maintain, for transportation of petroleum fuel oil in carloads from Mopeco to Trona, a rate no higher than the rate contemporaneously maintained for transportation of the same commodity to the same destination from Bakersfield and other points grouped therewith.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 17th day of July, 1951.

[Signature]
Justin J. Cassin
Harold H. Hill
Francis Patton
[Signature]
 Commissioners