

Decision No. 48133

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Norwalk Company,
a corporation,
Complainant,

vs.

Sunset Railway Company,
Southern Pacific Company, and
Trona Railway Company,
Defendants.

Case No. 5326

Appearances

Turcotte & Goldsmith, by F. W. Turcotte and
F. W. McDonald, for complainant.
J. E. Lyons and Charles W. Burkett, Jr., for
defendants.

O P I N I O N

The Norwalk Company alleges that the rates assessed and collected by Sunset Railway Company, Southern Pacific Company and Trona Railway Company for the transportation of certain shipments of fuel oil from Kerto to Trona were unjust and unreasonable in violation of Section 451 of the Public Utilities Code and preferential and prejudicial in violation of Section 453 of the Code. Complainant seeks reparation in connection with past shipments. It also seeks an order directing defendants to establish for the future a rate no higher than that concurrently maintained for transportation from Bakersfield and related points to Trona. Defendants deny the material allegations of the complaint.

Public hearings were held at Los Angeles before Examiner Lake. Briefs have been filed and the matter is ready for decision.

Complainant is engaged in the refining of crude oil and the distribution and sale of petroleum products. Its refineries

are located in Kern County at Kerto and Mopeco. The Kerto plant is located about 1-1/2 miles east of Maricopa and is on the line of the Sunset Railway Company.¹

The president of The Norwalk Company testified that his company has contracts to deliver between 40,000 and 60,000 barrels of fuel oil a month to the American Potash and Chemical Corporation at Trona. Under the terms of the contracts the consignee pays transportation charges applicable from Bakersfield. Charges in excess thereof are absorbed by complainant. The president stated that his company competes for this business with other refineries located at Seguro, Maltha and Harpertown.

During the period August 14, 1950 to and including February 26, 1951, complainant shipped from its plant at Kerto 1069 carloads of fuel oil to American Potash at Trona. The shipments moved via the Sunset Railway to Bakersfield, thence Southern Pacific Company to Searles and Trona Railway from Searles to Trona. For this transportation defendants assessed and collected charges based upon a rate of 24½ cents per 100 pounds, prior to September 22, 1950, and 20 cents per 100 pounds thereafter.² Concurrently, there was in effect a rate of 16 cents per 100 pounds to the same destination from Bakersfield, Seguro, Maltha, Oil Junction, Oil City, Harpertown and Arvin.³

¹ Mopeco is served by The Atchison, Topeka and Santa Fe Railway and lies within three miles of the City of Bakersfield.

² The 24½-cent rate was a combination of the local rates applicable from Kerto to Bakersfield and from Bakersfield to Trona of 8½ cents and 16 cents, respectively. The 20-cent rate is a single factor commodity rate. Effective January 14, 1952, charges under the 20-cent rate were increased 6 percent.

³ Except for Harpertown and Arvin, these points are located in the Bakersfield Group. Harpertown and Arvin are in the Harpertown Group. Kerto is in the Taft Group. Harpertown, Bakersfield and Taft Groups are more specifically described in Pacific Southcoast Freight Bureau Tariff No. 252-B, Cal. P.U.C. No. 96 of J. P. Haynes, Agent. Effective January 14, 1952, charges under the 16-cent rate were increased 6 percent. Except as otherwise indicated, rates stated herein, for convenience, are exclusive of general increases authorized during the period involved.

According to complainant's witness, operations at the Kerto refinery were discontinued in June of 1951 because of a rate differential over Bakersfield. The fuel oil for American Potash thereafter was supplied from the Mopeco plant. The witness testified that in addition to the Trona movement there is a potential movement to Kern, a point located about one mile from the Mopeco plant. Development of this movement, he said, is in the discussion stages and depends upon construction of additional facilities by the Pacific Gas & Electric Company. Should this business develop, the witness stated, the fuel oil would be supplied from the Mopeco plant. Because the facilities of this plant at the present time could not meet the additional requirements, the Kerto plant would be reopened to supply the needs of American Potash.

Complainant alleges that the rates assessed and collected by defendants from Kerto to Trona were, are and for the future will be unreasonable, preferential and prejudicial and that damages were sustained to the extent that such rates exceeded the 16-cent rate applicable from Bakersfield and related points. Reparation is sought in an amount equal to the difference between the amount collected and the amount which would have accrued under the 16-cent rate. The record shows that reparation would amount to approximately \$47,837.

The traffic consultant retained by complainant submitted a rate statement showing the fuel oil carload rates in tank cars from Kerto (Taft Group) and Bakersfield Group to Trona from January 1, 1930 to the present time. The statement shows that the Kerto rates have been and are today maintained on a higher level than rates from the Bakersfield Group. Prior to July 1946, the differentials ranged from one-half cent to 13 cents per 100 pounds. For the period July 1, 1946 to May 2, 1949 inclusive the differential was two cents, from September 18, 1949 eight cents, from March 6, 1950 to September 22, 1950 eight and one-half cents, and on and after September 22, 1950 four cents.

The consultant also introduced an exhibit comparing distances, rates and earnings from points in the Taft, Bakersfield and Harperton Groups to Trona. The average short-line distance from the Taft Group to Trona is shown as 183 miles and from Bakersfield and Harperton Groups as 151 miles in each instance. Between Kerto and Trona the short-line distance is 187 miles, between Bakersfield and Trona 147 miles, and between Harperton and Trona 146 miles. From the Bakersfield and Harperton Groups to Trona the rates are maintained on the same level. Examples of the per-car and per-ton mile earnings as submitted by the witness under the assailed rates and under rates from producing points in the Bakersfield and Harperton Groups are shown in the table which follows:

Table No. 1

| TO TRONA | Short- Line Mileage | Rate (In Cents per 100 Pounds) | Revenue | | | |
|---------------|---------------------------|--------------------------------------|--------------------|----------------------------|----------------------------|------|
| | | | Per Car Dollars | Per Car Mile (Cents) | Per Ton Mile (Mills) | |
| FROM | | | | | | |
| (a) Taft | 194 | (1) 24½ | \$222.45 | 1.147 | 25.3 | |
| | | (2) 20 | 181.59 | .936 | 20.6 | |
| | | (3) 20 | (4) 192.49 | .992 | 21.9 | |
| | Kerto | 187 | (1) 24½ | 222.45 | 1.189 | 26.2 |
| | | | (2) 20 | 181.59 | .971 | 21.4 |
| | | | (3) 20 | (4) 192.49 | 1.029 | 22.7 |
| | (b) Bakers- field | 147 | (1) 16 | 145.27 | .988 | 21.8 |
| | | | (3) 16 | (4) 153.99 | 1.048 | 23.1 |
| | | | | | | |
| Seguro | 155 | (1) 16 | 145.27 | .937 | 20.6 | |
| | | (3) 16 | (4) 153.99 | .994 | 21.9 | |
| (b) Harperton | 146 | (1) 16 | 145.27 | .995 | 21.9 | |
| | | (3) 16 | (4) 153.99 | 1.055 | 23.2 | |

(a) The average short-line distance from the Taft Group is 183 miles.

(b) The average short-line distance from the Bakersfield and Harperton Groups is 151 miles.

- (1) Effective August 14, 1950.
 (2) Effective September 22, 1950.
 (3) Effective January 14, 1952.
 (4) Includes 6 percent increase effective January 1, 1952.

Complainant's rate witness also submitted data showing rate differentials maintained by the rail carriers from other producing points to various destinations, certain fuel oil rates published from Kerto and Bakersfield to San Joaquin Valley and other points and fuel oil rates involving one or more line-haul carriers between various points for various distances. One of the studies shows points within a radius of 188 miles from Kerto and Bakersfield to which the rates from Kerto are the same as or do not exceed by more than two cents per 100 pounds, the rates from Bakersfield to the same points.

Defendants, through an engineer and an assistant freight traffic manager, submitted cost and rate data on petroleum fuel oil in tank cars between various points. The engineer introduced an exhibit showing the estimated out-of-pocket costs for transporting fuel oil in tank cars from Kerto, Seguro and Harperton to Bakersfield. The costs developed by the engineer are \$0.0267 per 100 pounds from Kerto, \$0.00938 from Seguro and \$0.0162 from Harperton. The estimated full costs expanded for profit developed by the witness are \$0.0440, \$0.0155 and \$0.0267, respectively. According to the witness, cost data for movements from Bakersfield to Trona were not submitted because all of the operations from the time the car is received at the Bakersfield yard until it reaches its destination and the empty car is returned are identical regardless of the origin of the shipment.

The assistant freight traffic manager submitted a statement showing rates maintained since May 1, 1932 on petroleum fuel oil in tank cars from Kerto and from points in the Bakersfield and Harperton Groups and from Mojave to Trona. The witness explained that the rates maintained from Mojave were included because the

numerous adjustments made therein have affected the rates maintained from the Bakersfield Group. From time to time, he said, the Bakersfield and Mojave rates were reduced to meet proprietary, for-hire truck and pipe-line competition. He stated that adjustments were not made in every instance in the Kerto rate because that point was not directly involved at that time.

Defendant's witness also submitted rate comparisons involving hauls from Kerto, Santa Fe Springs and El Segundo to Trona. The ton-mile earnings under the assailed rate of 20 cents are 21.4 mills for a distance of 187 miles. Under the 24½-cent rate the ton-mile earnings are 26.2 mills. For distances of 194 and 198 miles from Santa Fe Springs and El Segundo, respectively, to Trona the exhibit shows ton-mile earnings of 23.7 and 23.2 mills, respectively. The witness also submitted rate statements showing that the assailed rates produce lower ton-mile earnings than rates involving single-line hauls for movements of fuel oil from Mojave to Cartago and Bartlett 118 and 130 miles, respectively, and from Bakersfield to Bartlett involving a single-line haul for a distance of 198 miles.⁵ The ton-mile earnings under the rates from Mojave to Cartago and Bartlett, and from Bakersfield to Bartlett are shown to be 57.5, 53.6 and 49.3 mills, respectively. Other statements show that the assailed rates are lower than rates prescribed by the Interstate Commerce Commission for equi-distant hauls in the Mountain-Pacific Territory and by this Commission as minimum for application by highway carriers.

Regarding complainant's comparisons involving San Joaquin Valley points and comparisons of rates from Kerto and Bakersfield,

⁵ Cartago and Bartlett are both located on Owenyo Branch of the Southern Pacific as is Searles, the interchange point between the Southern Pacific and Trona Railway. Rates from Mojave and Cartago and Bartlett were not shown to be unreasonable in Inyo Chemical Co., David B. Scott vs. Southern Pacific Company, 33 CRC 353 (1928). The rate from Bakersfield to Bartlett was not shown to be unreasonable in Clark Chemical Co., Inc. vs. Southern Pacific Company, 33 CRC 353 (1928).

defendant's witness asserted that it is improper to compare those rates on a distance basis because distance was not the controlling factor in establishment of those rates. The witness said that this is evidenced by the fact that complainant's statement contains rates which are higher for shorter than for longer distances. For example, he pointed out that the rate from Hanford to Biola, a distance of 61 miles, is 11 cents while from Coalinga to Biola, a distance of 104 miles, the rate is 10½ cents. Furthermore, he testified, keen carrier competition for San Joaquin Valley business requires that a parity of rates be maintained. In addition, he pointed out that these rates, where three-line hauls were not involved, are not proper comparisons with rates to Trona.

Complainant's comparisons of rates relied upon to establish the unreasonableness of the assailed rates were not supported with evidence showing that similar circumstances or conditions prevailed or that the compared rates are of themselves a fair measure of reasonableness. In other words, comparability was not shown. It is well-settled with respect to rate comparisons generally that, when they are submitted in complaint proceedings, it is incumbent upon the party offering the comparisons to make such a showing (Southern Pipe & Casing Co. v. Southern Pacific Co., et al., 49 Cal. P.U.C. 567 (1950), and cases cited therein). Defendants, on the other hand, offered evidence showing that the assailed rates were below a maximum reasonable level. Complainant has not substantiated the contention that the assailed rates were, are, or for the future will be unreasonable.

We turn now to complainant's contention that unlawful discrimination results because differentials were and are maintained between the rates to Trona from Kerto and points in the Bakersfield and Harpertown Groups. Complainant was required to pay higher charges for the transportation of the same commodity from Kerto than those currently applicable from competing points.

The record shows that the competing points enjoy a geographical advantage over Kerto. Moreover, from Kerto to Bakersfield the out-of-pocket cost is \$0.0139 per 100 pounds higher than the average of the costs from the competitive points of Seguro and Harpertown. The full cost, including profit as estimated by defendant's witness, is shown to be \$0.0229 per 100 pounds higher from Kerto to Bakersfield than the average of the costs from Seguro and Harpertown to that same point.

It is clear from the record that transportation conditions from Kerto and from points in the Bakersfield and Harpertown Groups to Trona are dissimilar and that, therefore, rate equality between these points is not warranted. However, it has been shown that the differences between the operations involved are not sufficient to justify such a substantial difference in the charges. The record shows and we hereby find that the assailed rates will unduly prefer complainant's competitors and will unduly prejudice complainant to the extent that they exceed the rates from points in the Bakersfield and Harpertown Groups by more than two cents per 100 pounds exclusive of general increases.

Reparation, however, may not be awarded on the present record. In cases involving violation of Section 453 of the Public Utilities Code, the measure of damages is not necessarily the difference between one rate and another but is the amount of damage suffered. Complainant must prove that it has been injured, the amount of damage suffered by it, if any, and that the damage suffered was the proximate result of the difference in rates. Southern Pipe and Casing Co. vs. Southern Pacific Co., et al., supra.

While the degree of proof varies according to the special facts of each case, here complainant has failed to make such a showing.

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 rates have not been shown to be unreasonable in violation of Section 451 of the Public Utilities Code; that the assailed rates for the future will be unduly preferential to complainant's competitors and unduly prejudicial to complainant, as indicated herein, in violation of Section 453 of the Public Utilities Code which will result in unlawful discrimination, and that complainant has not shown that it has suffered damages as a result of the difference between the rates in issue. Defendants will be required to remove the undue discrimination.

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 Sunset Railway Company, the Southern Pacific Company and the 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, a differential not to exceed two cents (2 cents) per 100 pounds, exclusive of general increases,

between the rates maintained for transportation of the same commodity from Kerto and Bakersfield, and points grouped therein, to Trona.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

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

Dated at San Francisco, California, this 6th day of January, 1953.

A. J. [Signature]
President

Justice F. Green

Harold P. Hula

Kenneth Patten
Robert L. [Signature]
Commissioners