

ORIGINAL

Decision No. 49559

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UNION OIL COMPANY OF CALIFORNIA,)
 a corporation,)
)
 Complainant,)
)
 vs.)
)
 SOUTHERN PACIFIC COMPANY, THE)
 ATCHISON, TOPEKA & SANTA FE)
 RAILWAY COMPANY, PACIFIC ELECTRIC)
 RAILWAY COMPANY, and UNION PACIFIC)
 RAILROAD COMPANY,)
)
 Defendants.)

Case No. 5474

Appearances

James A. Gayle, John Ennis and L. C. Monroe,
for complainant.

James E. Lyons for Southern Pacific Company,
defendant.

Frederick G. Pfommer for The Atchison, Topeka
and Santa Fe Railway Company, defendant.

Donald M. Ladd, Jr. for Union Pacific Railroad
Company, defendant.

R. M. McMichael for Pacific Electric Railway
Company, defendant.

O P I N I O N

By its complaint in this proceeding, Union Oil Company of California alleges that the defendant railroad corporations assessed and collected for the transportation of numerous

carloads of refined petroleum products in bulk charges higher than those specified in the applicable tariffs, and greater than those authorized by the Commission under Section 454 of the Public Utilities Code. The defendants deny the essential allegations of the complaint.

A public hearing was held before Examiner Bryant at Los Angeles on October 21, 1953. The matter is ready for decision.

Complainant introduced evidence through the testimony of a transportation rate analyst. An assistant to the freight traffic manager of Southern Pacific Company testified on behalf of the defendant railroads. The applicable tariffs were received in evidence by reference.

The dispute in this proceeding relates to a surcharge of six per cent which was established by the railroads on much of their California traffic, effective January 14, 1952. The surcharge was not made applicable to commodity rates for the transportation of refined petroleum products in bulk in tank cars. However, the defendants did apply the surcharge to the carload petroleum shipments whenever the minimum charge per car came into play. It is the application of the surcharge to the minimum charge per car which is in issue.

It is the complainant's position (1) that the terms "rates" and "charges" are synonymous so far as the issues in this proceeding are concerned, (2) that in their application to this Commission for authority to establish the surcharge, the carriers neither intended to nor were authorized to make it applicable upon refined petroleum products in bulk, (3) that

the surcharge provisions in the defendants' tariffs excluded refined petroleum products in bulk within California, (4) that the governing classification provisions (which include the minimum charge per car) are subordinate to more specific provisions in the rate tariffs, and (5) that any ambiguity in the tariff provisions must resolve against the carriers.

It is the defendants' position that, although no increase was contemplated or authorized in the rates for the transportation of refined petroleum products in bulk, the general authority sought and granted did not except the minimum charge per car. The defendants contend that there is no ambiguity in the published tariffs and that the surcharge is clearly applicable to the minimum charge per car.

The questions in this proceeding are solely ones of interpretation, first, of the tariffs and classification, and second, of this Commission's decision authorizing the surcharge.¹ Numerous and various subordinate facts and circumstances were advanced by both sides in support of their divergent contentions, but virtually all of the contentions revolve in one way or another around the question whether the terms "rates" and "charges" are synonymous so far as the issues in this proceeding are concerned. It is clear that the defendants did not intend to, were not authorized to, and did not by tariff publication, increase the commodity "rates" for the transportation of refined petroleum products in bulk. If by

¹ Decision No. 46572, dated December 18, 1951, in Application No. 32219 (51 Cal. P.U.C. 341).

reason of these facts alone it may be concluded that no surcharge was made, nor was authorized to be made, on the minimum "charge" per car for transportation of refined petroleum products, then complainant's basic contentions are correct. On the other hand, if the exclusion of "rates" on refined petroleum products from the authority and from the surcharge tariff items did not have the effect of excluding from application of the surcharge the minimum "charge" on the petroleum cars, then the basic contentions of the defendants are valid.

All of the evidence has been carefully reviewed. It is unnecessary to recite herein the language of the various pertinent tariff and classification items, of the opinions advanced by the witnesses and other parties, or of Decision No. 46572, supra. Application No. 32219, supra, sought authority to establish increased "freight rates and charges." The application specified that the increases would apply on, among other things, "minimum charges per car applicable to line-haul carload rates." The exception herein in question, as proposed by the carriers, as authorized by this Commission, and as subsequently published by the carriers, ran only to "carload commodity rates for refined petroleum products in bulk."

It is concluded that the defendants were authorized to, and in fact did by tariff publication, establish the disputed surcharge as an addition to the minimum charge per car. We do not find that the defendants' tariffs in this respect are ambiguous.

Upon careful consideration of all of the facts and circumstances of record, it is concluded that the assailed charges have not been shown to be higher than those specified in the applicable tariffs, nor greater than those authorized

by the Commission under Section 454 of the Public Utilities Code.
The complaint will be dismissed.

O R D E R

Based upon the evidence of record and upon the conclusions
and findings contained in the preceding opinion,

IT IS HEREBY ORDERED that the above-entitled complaint of
Union Oil Company of California be and it is hereby dismissed.

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

Dated at San Francisco, California, this 12th
day of January, 1954.

[Signature]
President
Justice J. Colwell
[Signature]
[Signature]
[Signature]
Commissioners