Decision No. 15745

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Union Rock Company,
Complainant,

vs.

The Atchison, Topeka & Santa Fe Railway Company,
Southern Pacific Company,
Pacific Electric Railway Company,
Defendants.

CASE NO. 2087.

Hugh Gordon and B. H. Carmichael, for Union Rock Company, Complainant,
B.Levy, Charles K.Adams and E.W.Camp, for Atchison, Topeka & Santa Fe Railway Company, Defendant,
L.C.Zimmerman and F.W.Mielke, for Southern Pacific Company, Defendant,
Frank Karr and C.W.Cornell, for Pacific Electric Railway Company, Defendant,
O.T.Helpling and P.H.Campbell, for Orange County Rock Company and Saticoy Rock Company, Intervener,
W.J.Valkenburg and W.T.Stoops, for Blue Diamond Company, Intervener,
D.DeCostei, for County of Los Angeles, Intervener,
Hugh Gordon, for American Crushed Rock Company, Intervener,
Fred W. Heatherly, for Consumers Rock & Gravel Company, Intervener.

SQUIRES, Commissioner:

O P I N I O N

The complainant in this proceeding is a corporation organized and existing under the laws of the State of Delaware and is engaged in the production and distribution of crushed rock, sand and gravel for use in building and general construction work in the

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City of Los Angeles, its adjacent territory, and in other parts of Southern California.

The complaint, filed January 8,1925, alleges that the rates assessed by defendants for the transportation of crushed rock, sand and gravel between points in Southern California, involving a one line haul, have been in the past and are now unjust and unreasonable, unduly discriminatory and prejudicial to complainant and unduly preferential and advantageous to complainant's competitors who are situated in Northern California where they are served by the rails of defendants, Atchison,Topeka & Santa Fe Railway Company and Southern Pacific Company.

The County of Los Angeles and the American Crushed Rock Company intervened in behalf of complainant. The Orange County Rock Company, Saticoy Rock Company, Consumers Rock & Gravel Company and Blue Diamond Company intervened in opposition to complainant, with the proviso that if the Commission should make any adjustment in the rates from the shipping points utilized by complainant similar adjustments should be made from the shipping stations utilized by interveners.

Reparation and rates for the future are sought by complainant.

The defendants, Atchison,Topeka & Santa Fe Railway Company, Southern Pacific Company and Pacific Electric Railway Company, will hereinafter be referred to as the Santa Fe, Southern Pacific and Pacific Electric, respectively. The term "Southern California" as used herein will mean the territory south of the Tehachapi mountains and Santa Barbara to the boundary line between the United States and Mexico and east to the California-Arizona State line. The term "Northern California" as used herein will mean all of the California

territory north of Bakersfield and Santa Barbara. Rates will be stated in cents per ton of 2000 pounds unless otherwise noted.

Public hearings were held at Los Angeles on April 21 to 23,1925,inclusive, and on May 20 to 23,1925,inclusive, and the case having been duly submitted and briefs filed by counsel, is now ready for an opinion and order.

The rates sought by complainant, with a few exceptions, are based on the mileage scale applicable in Northern California as published in Southern Pacific Tariff 330-F, C.R.C. 3112, and Santa Fe Tariff 9788-I, C.R.C.535. This scale, hereinafter discussed in detail, will be referred to as the Northern California Scale. The exceptions requested by complainant, predicated on 10 cents lower than the Northern California Scale, are intended to apply from Puente Largo to Wilmington, San Pedro, Long Beach, East Long Beach, Balboa, Redondo Beach and Hollywood; from Kincaid to Redondo Beach and from Crushton to Mojave, Saugus, Wilmington, San Pedro, Long Beach, Huntington Beach, Newport Beach, San Bernardino and Santa Barbara.

The rates under attack are based on the so-called Southern California Mileage Scale, hereinafter referred to as the Commercial Scale. This scale is unpublished, but is used by defendants as a means of arriving at the specific point to point rates. The rates on crushed rock and gravel are established on an equal basis, but on sand the rates are 10 cents lower than the rates on crushed rock and gravel. There are, however, a few exceptions to this general basis, but for the most part complainant's shipments moved under rates established by the use of this scale. For distances under 25 miles the rate on crushed rock and

gravel is set at 60 cents and on sand at 50 cents. For 35 miles and over 25 miles the rate is 70 cents on crushed rock and gravel and 60 cents on sand, 10 cents being added to the latter rates for each additional block of 20 miles up to and including 75 miles, then 10 cents for each block of 25 miles until 175 miles is reached, then 10 cents for the next block of 50 miles. For distances over 225 miles, but not over 250 miles, the latter distance being the maximum limit of the scale, an additional 30 cents is added.

From all of complainant's plants to Los Angeles the applicable rate on crushed rock and gravel is now 60 cents and on sand 50 cents. Prior to June 25,1918 the rate in effect on all three commodities was 35 cents. Effective June 25,1918, by General Order No. 28 of the Director General of Railroads, this rate was increased to 60 cents. Another increase to 75 cents was made August 26,1920 under authority of this Commission in Decision No.7983 (18 C.R.C.646) following similar action of the Interstate Commerce Commission in Ex Parte Order No.74. On December 17,1920 the latter rate was voluntarily reduced by defendants to 70 cents, and on July 1,1922 was further reduced to 60 cents, in harmony with the order of the Interstate Commerce Commission in Docket No.13293 (68 I.C.C.676). A still further reduction to 50 cents was made in the rate, on sand only, effective July 31,1922. Since the latter date the volume of the rates has not been changed. The present rates are the same as were in effect following the first general war increases effective June 25,1918, with the exception that the rate on sand is now 10 cents lower than was in effect on June 25,1918.

This historical data of the rate situation from complainant's plants to Los Angeles may be taken as fairly representative of the other rates herein under attack.

Defendants also maintain, but not in a tariff filed

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with this Commission, for application within the counties of Los Angeles, Orange, Riverside and San Bernardino, rates on crushed rock, sand and gravel known as the "Municipal Scale", which scale applies only when the shipments are consigned to counties or to the municipal governments located therein, to the State of California when the traffic moves wholly within the counties named above, or when consigned to either the county, municipal or state governments in care of contractors in charge of the work. This "Municipal Scale" is lower than the Commercial Scale and is published under authority of Section 17(a), paragraph 4, of the Public Utilities Act, which reads:

> "Every common carrier subject to the provisions of this act may transport, free or at reduced rates, persons or property for the United States, State, County or Municipal Governments * * * ".

Under this scale the rates on crushed rock, sand and gravel are on a parity. For 40 miles or under the rate is 50 cents and for the next two blocks of ten miles each the rate is increased 10 cents for each block. For distances over 60 miles but not over 80 miles, the rate is set at 80 cents and an increase of 10 cents is made in that rate for each additional block of 20 miles until the maximum scale limit of 120 miles is reached.

Complainant is the largest producer and distributer of crushed rock, sand and gravel in Southern California. Its products are used in the construction of roads, highways, buildings, dams, railway ballasting and for practically all work requiring the use of crushed rock, sand and gravel. The territory served by complainant is roughly described as south of the Tehachapi Mountains and Santa Barbara, north of the boundary line between Mexico and the United States, and west of the California-Arizona State line. Six crushing plants, located within a radius of 25 miles of Los Angeles,

are maintained by the complainant, situated at Rivas, Baldwin Park, Crushton, Kincaid, Puente Largo and Brush Canyon. The first three points named are served by both the Southern Pacific and Pacific Electric; Kincaid is served by the Santa Fe, and Puente Largo is served by the Pacific Electric. The plant at Brush Canyon is not served by a rail carrier and its products are conveyed to the consuming centers by motor truck. The Kincaid and Puente Largo plants are connected by a track approximately five-eights of a mile long owned and maintained by the complainant and the movement of equipment over this track for shipment via either the Pacific Electric or Santa Fe, as complainant may elect, is made with the use of a locomotive owned by complainant. In addition to these six plants complainant controls, through stock ownership, the plant of intervener, American Crushed Rock Company located at Claremont, 36 miles east of Los Angeles. This plant is connected with the rails of the Pacific Electric and Santa Fe by a spur track constructed and maintained by and at the expense of the American Crushed Rock Company. Thus, with the exception of the plant at Brush Canyon, complainant's plants, owned or controlled, are each served, either directly or by track connections, by two rail carriers. The record shows that the original location of these plants was largely influenced by the desire of complainant to market its products via a one line haul, thus avoiding the higher freight rates for hauls involving two or more lines.

The combined capacity of complainant's plants, including that of the American Crushed Rock Company, is 22,000 tons per ten hour day. The individual capacity of each plant, with the exception of the Baldwin Park and Brush Canyon plants, is 3,000 tons per day, the latter two having capacities of 5,000 tons and 2,000 tons per day respectively. The actual production of all the plants of com-

plainant during 1924 was 3,500,000 tons and this is estimated as approximately 50 per cent of the total used in the Los Angeles district.

Complainant also maintains for the distribution and storage of its products nine bunkers having storage capacities ranging from 1,500 to 10,000 tons; four are in Los Angeles, situated at Sixteenth Street, Slauson Avenue, Merrill Avenue and Twentieth Street and one each at Long Beach, Home Junction, Sherman, Vineyard and Los Nietos. The construction of these bunkers is uniform, and all are equipped for unloading purposes with endless chain buckets and electric motors. About fifteen minutes is consumed in unloading a fifty-ton car and a motor truck can be loaded from the bins in about three minutes. Additional bunker facilities are proposed to be established at Pasadena, Shorb, Compton, Wilmington and El Segundo.

The operation of these properties gives employment to from 425 to 450 men and requires an investment estimated at $5,297,000. exclusive of the value of rock lands under lease.

Crushed rock, sand and gravel are, basically, commodities of low value, capable of heavy loading and subject to a minimum amount of loss and damage. Their ultimate cost to the consumer is laregly determined by the transportation and handling costs incidental to delivery. It is in evidence that the sale price f.o.b. at the crushers runs as low as 50 cents a ton for crushed rock and gravel and 5 cents a ton for sand. To these base prices must be added the freight charges, loading, unloading costs and the cost of hauling from the bunkers or from the cars, as the case may be, to the point of consumption. Practically all of this rock, sand and gravel tonnage is transported in gondola cars and is loaded to an average of about 55 tons per car.

The major portions of complainant's rail shipments are

moved to Los Angeles either for delivery or storage at that point, or for subsequent delivery to points beyond. The movement to Los Angeles is usually in train loads and the empty cars are returned to the crushers in the same manner. From Puente Largo and Rivas, on the Pacific Electric, the train loads consist of about eighteen cars; from Crushton and Baldwin Park, on the Pacific Electric, of about twenty cars, and from the plants served by the steam roads of about 40 to 45 cars. The method of loading and assembling the trains and the movement to Los Angeles is, with slight variation, practically the same from all crushers. Defendants spot the empty cars on complainant's spur tracks at the crushers for loading. As the cars are loaded they are moved by complainant with the aid of gravity or motive power from the crushers and set out on defendant's hold tracks to be consolidated into train loads. The cars so placed include those destined for points other than Los Angeles and also include cars which for various reasons are not intended for immediate billing. In the segregation of the cars not destined to Los Angeles and those not billed, from those destined to or via Los Angeles, defendants are required to perform a varying amount of switching before the trains are finally made up for movement to Los Angeles. The weighing of the cars is done by defendants at Puente Largo and Kincaid and by complainant at the other points. After reaching the terminal yards at Los Angeles the trains are broken up for delivery at that point or for delivery to points beyond, as the case may be. The delivery of these cars to the terminal yard of the Pacific Electric at Butte Street is made by the Southern Pacific, the Pacific Electric hauling this traffic only as far as its State Street yards.

The record indicates that the total tonnage moved via rail between points in Southern California during the twelve months' period immediately preceding the filing of this complaint was estimated to be 77,506 carloads, or about 67 per cent of the entire production in Southern California. The balance, thirty-three per cent, or about 38,754 carloads, moved via auto truck, making a total estimated production of 116,260 carloads. Complainant's shipments via rail during this period totaled about 46,504 carloads, or about 60 per cent of the entire rail movement. The average daily shipments from complainant's plants for December,1923 and for January, February, July, August and September,1924, these six months being selected as representative of the entire year, were 152 carloads.

The record does not indicate the total rail movement in Northern California during 1924; however, a witness for the Southern Pacific testified that during 1923 the movement totaled 50,943 carloads via that line, of which 11,533 were destined to San Francisco or Oakland.

Not all of the rail shipments made in Southern California moved under the rates complained of in this proceeding. Complainant estimated the tonnage transported under the regular published rates which are herein assailed at 20 per cent and defendants at 51 per cent of the total rail shipments. Both estimates are typical of the period for which taken, complainant's being predicated upon its rail shipments for the month of March,1925 and defendants for all shipments made during the entire year of 1924. The balance of the rail movements consisted of tonnage for use of County, State or Municipal governments and was moved under the so-called "Municipal Scale", to which reference has heretofore been made. If complainant's estimate is used, the total rail movement

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under commercial rates would amount to about 15,501 carloads and under the "Municipal Scale" 62,005 carloads. Defendants' estimate would place the total rail movement, under commercial rates, at 39,528 carloads, and under the Municipal Scale at 37,978 carloads.

The movement of rock, sand and gravel for municipal purposes obviously is subject to fluctuation and will vary according to the extent of the County, State or Municipal activities requiring the use of these commodities. Defendants' estimate covering the entire year of 1924 is more representative than complainant's and shows an extremely heavy movement under the "Municipal Scale".

Complainant argues that if the preponderance of movement is under the Municipal Scale, and defendants voluntarily continue that scale in effect, that fact should strongly indicate that the commercial rates are unreasonable, per se. On the other hand, defendants contend that when the "Municipal Scale" was established only twenty per cent of the total rail tonnage moved thereunder, and that had they anticipated the movement would ever amount to as much as 50 per cent of the total rail movement, the "Municipal Scale" would not have been established; in other words, they claim that the municipal rates are not fully remunerative.

Considering the circumstances under which these Municipal rates were authorized, complainant's contention cannot be sustained. It must be borne in mind that this so-called "Municipal Scale" was established under authority granted by Section 17 of the Public Utilities Act for the use only of a preferred class of shippers, viz., State, County and Municipal Governments. Defendants might, if they so desired, lawfully transport this tonnage free of charge, but they have elected to charge rates which provide some revenue. In so doing they have accorded the State, County and Municipal Governments a privilege which the spirit and wording of the law clearly encour-

ages them to give. To use these low rates as a measure for normal rates would be grossly unjust, and in the end discourage carriers from extending the privileges contemplated by the act.

Defendants maintain that the operating conditions in Southern California under which the rock, sand and gravel tonnage is handled are more severe than those encountered in Northern California. An operating witness for the Southern Pacific testified that in Northern California but 45 per cent of the total rock tonnage handled over that line receives a switching service in major terminals, while in Southern California 94 per cent of the total rock tonnage is handled through the busy Los Angeles terminal; that a switch engine operating in the major terminals of Northern California handles on an average of 73 cars a day at an average consumption of 6.70 gallons of fuel oil per car; that in the Los Angeles terminal, which is on a .6 per cent grade, an average of 51 cars per day are handled, with an average consumption of 8.61 gallons of fuel oil per car. Other evidence and testimony by Southern Pacific witnesses was to the effect that in Southern California there are .22 of a mile of curved track per mile of line, as compared with .14 of a mile in Northern California; that the curvature per mile of line is 26 degrees in Southern California and 19 degrees in Northern California, and the miles of grade over 1 per cent per mile of line was .37 of a mile in Southern California and .05 of a mile in Northern California. It was contended that as the curvature of the line and grades increases the operating expense likewise increases, which is undoubtedly a fact. This contention is supported by other figures. On the Los Angeles division of the Southern Pacific, where there are curves and grades, the transportation cost per thousand gross ton miles is $1.26, while on the Stockton division, where grades and curves are not encountered, the cost is 80 cents.

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The Assistant General Manager of the Santa Fe testified that the operating cost in Southern California on his line is approximately 50 per cent higher than in the San Joaquin Valley.

Defendant, Pacific Electric, placed great emphasis on the fact that in hauling the rock tonnage to Los Angeles severe grades are encountered at Baldwin Avenue and Oneonta in the movement from Puente Largo and Rivas; at Wilmar Hill when the traffic originates at Crushton or Baldwin Park, and these grades require either the help of an additional locomotive or the breaking up of the trains and movement over the grades in two or more sections.

Much evidence was presented dealing with the difficulties encountered in moving freight trains through the congested districts of Los Angeles, a situation more or less common to all large terminal centers, but claimed to be a greater burden in Los Angeles than at any other important terminal in the west. Especially, it was contended, is this true of the Pacific Electric, for many of its lines leading into Los Angeles are used almost solely for passenger traffic because of restrictions placed by the various municipalities against the movement of freight trains on certain thoroughfares. Defendants point out that this situation is aptly illustrated by the fact that the Pacific Electric, on account of these restrictions, is compelled to employ the Southern Pacific to act as a "bridge" carrier between the State Street and Butte Street yards. Another difficulty in reaching the terminals through the congested districts of Los Angeles, it was said, is the fact that numerous stops are necessary; therefore, in order to avoid blocking traffic trains are frequently split into as many as six sections in order to clear and keep open the grade

crossings. Thus, any advantage secured in moving the tonnage to Los Angeles in train loads is eliminated by the difficulties encountered in arriving at the terminals. All of which, it was averred, adds to the cost of moving this traffic.

Defendant, Pacific Electric, presented certain exhibits purporting to show the cost of handling over its lines carloads of crushed rock, sand and gravel. The average operating revenue per carload is therein given at $32.44 and the average operating expense per carload at $45.938, a net railway operating loss of $13.498 per car; or, stated another way, defendant claims that the operating revenue per ton mile is 1.792 cents and the operating expense per ton mile 2.538 cents, or a net operating loss per ton mile of .746 cents. Based upon these figures, it is claimed that for the year 1924 there was a net loss by the Pacific Electric from Railway operation in connection with the transportation of 39,553 carloads of rock, sand and gravel of $534,052.97. The witness who presented these exhibits did not claim that the figures reflected the exact cost of handling those commodities; in fact, he stated that at best they were an approximation, but that in his opinion they were within ten or fifteen per cent of the actual cost. A consulting engineer, witness for the complainant, while presenting no exhibits in contradiction of those prepared by the Pacific Electric, made an analysis of the claimed losses and reached the conclusion, by a different method of distributing the operating expenses, that the net cost per ton mile figure should be approximately 1.54 cents instead of 2.538 cents claimed by defendant's witness. Applying this net per ton mile cost of 1.54 cents to the average carload of 55.07 tons moved an average distance of 32.87 miles, and there is produced an operating expense of $27.88, to which should be added depreciation and taxes of

$3.09, making a total operating expense of $30.97 per car against the average operating revenue per carload of $32.44, a net operating profit of only $1.47 per car.

These cost figures, in a general way, may to some extent represent a more or less accurate estimate of the average cost of handling traffic, and a fluctuation in the total amount of business would bring about a substantial change in the estimates. The added cost of operating heavy traffic through difficult territory is not compensated for, as this record shows, by the additional revenue secured because of the increased traffic, especially when the service is performed at low rates. The result of these cost studies, however, does show that if the methods employed by the defendant, Pacific Electric, are to be taken as accurate that company is suffering a loss in the handling of this rock, sand and gravel tonnage. On the other hand, if I accept as accurate the conclusions arrived at by the engineer employed by complainant I must conclude that the revenue from this tonnage is but slightly in excess of the actual cost of handling the traffic and provides no return upon the invested capital.

Exhibit No.12 of the defendant, Pacific Electric, shows that the gross revenue per ton mile for all traffic in the month of January,1921 was .0674 cents and for the month of December,1924 .0365 cents, while the average for the year 1924 was .0352 cents. This would seem to indicate that following the great increase in the rock, sand and gravel tonnage as shown by the record, the gross revenue per ton mile has continually decreased.

The record is clear that the financial condition of the Pacific Electric, the defendant carrying the greatest amount of this

tonnage, is in far from a satisfactory condition. During the calendar year 1924 the total revenue received was $21,021,646., while the total expenses, including depreciation, taxes, interest on funded debt,etc., was $21,613,831.41, showing a corporate deficit for that year of $592,185.41. The total corporate deficit of this defendant as of December 31,1924 was $14,055,586.27.

The Vice President of the Pacific Electric testified that the operating expenses for 1924 were below normal, due to the fact that maintenance and improvement expenses during the year were considerably curtailed, beginning about the first of April, when it was apparent the revenue would be less than the expenses, and that had the maintenance work been up to normal the deficit would have been greater. Furthermore, he testified that had the Northern California Scale been in effect during 1924 the operating revenues of the Pacific Electric for that year would have been depleted by $177,397.37.

The Northern California Scale as published in Southern Pacific Tariff 330-F, C.R.C.3112 and Santa Fe Tariff 9788-I, C.R.C. 535, applies on the Southern Pacific in the territory north of Santa Margarita and Caliente, and on the Santa Fe in the territory north of Bakersfield. The crushed rock, sand and gravel rates under this scale are on the same basis. However, as in the case of the Commercial Scale in Southern California, there are certain exceptions to its general application to meet the varying competitive conditions. The rate under this scale for distances of forty miles or under is 50 cents and is increased 10 cents for the next two succeeding blocks of ten miles; then the progression is in blocks of twenty miles, 10 cents being added for

each additional block until the maximum distance of 500 miles is reached.

Complainant urges that the Northern California Scale is reasonable, per se, and that the operating conditions, cost of service and the volume and density of traffic prevailing in the South are comparable with those prevailing in the North, hence it contends there is no justification for maintaining rates higher in Southern than in Northern California.

Defendants, on the other hand, maintain that the Northern California Scale was and is predicated upon water competition and that this water competition was brought about by the operation of boats and barges on San Francisco, San Pablo and Suisun Bays and on the Sacramento, Yuba and San Joaquin Rivers and other streams as far north as Red Bluff in the Sacramento Valley and as far south as Herndon in the San Joaquin Valley. This competition, it is alleged,was active as far back as 1897, and although it is not now so keen as then, the influence of the water-borne tonnage still governs the Northern California rate adjustments on crushed rock, sand and gravel to a very large extent.

The record shows that at the time the rail carriers first felt the effects of this water competition they endeavored only to establish low rates at points where the competition was active and where it was necessary to go below the normal rates in order to secure to the rail carriers a portion of the water-borne traffic. But as additional plants were opened up at inland points the carriers were forced to establish rates whereby producers at those points could reach the consuming markets in competition with shippers enjoying the water-influenced rates.

Following the San Francisco fire and earthquake of 1906 an abnormal demand was created for building materials. This condition resulted in the development of many sand and gravel deposits, and in order to permit shippers at the new points to compete for San Francisco business rates were established comparable with the water-compelled rates. Thus the low basis of rates originally intended to apply only between points where there was actual water competition gradually extended to the inland points not served by water until the rates were practically uniform in Northern California. Defendants contend that the entire Northern California Scale reflects either water or market competition and is manifestly less than reasonable, per se.

Both the complainant and defendants presented exhibits showing comparisons of the rates on various commodities between points in Southern and Northern California for equal distance hauls, including such commodities as cement, lumber, fuel oil, beans, sugar beets, fruits, etc. In addition, defendants introduced an exhibit showing the distance rates of many States in the Middle West and East, and these scales for the most part show that rates on crushed rock, sand and gravel are higher than those now in effect in Southern California.

All of these exhibits have been given careful consideration and it may be said of them generally that their proponents neglected to study the circumstances and conditions under which such rates were established. The record shows that there are rates in effect in Southern California higher than the rates established on the same commodities for comparable distances in Northern California and conversely the opposite is shown. These exhibits are interesting and instructive, but under the law as frequently interpreted by the Commission they are not calculated to persuade me to conclude that the rates herein under attack

should be altered.

The record is replete with evidence relating to acute competition with Southern California railroads created by motor trucks, and by boats in a lesser degree, in conveying crushed rock, sand and gravel to consuming centers. That this competition exists, particularly in the short haul traffic by motor truck, and from Santa Catalina Island through the ports of Long Beach and San Pedro via barge, it seems to me is clearly established. One estimate was that the truck tonnage totaled about 7,250 tons and the water-borne tonnage 750 tons a day.

In this connection it is one of complainant's contentions that if the crushed rock, sand and gravel rates in Southern California were reduced to the level of the so-called "Municipal Rates", or to the Northern California Scale, a great deal of the tonnage now handled by motor trucks would be attracted to the rails of the carriers, resulting in an increase in their gross revenues without very materially increasing their fixed charges. With reference to this argument it may be said that if the assailed rates were reduced to a basis comparable with those in effect for motor truck hauls, it would perhaps follow that the rail carriers would secure a portion of that business, provided, of course, the motor trucks did not make lower rates; but this is not a lawful reason for granting the petition of the complainant. It is within the power of the carriers to meet competition and to initiate rates lower than this Commission could justly prescribe as reasonable, and such rates would be lawful so long as they provided sufficient revenue to cover out-of-pocket costs and did not burden other traffic. The Commission is empowered by law to establish reasonable rates. Such rates must allow for actual costs of service and compensation for the capital

invested in rendering that service. When rates are attacked it is our duty to see that they are not so high as to be oppressive upon the shipper. Between such rates and rates that cover something more than out-of-pocket costs there is a zone which should be free from judicial interference. The carriers have complete control over rates which fall within this zone, and it seems to me that the rates here attacked clearly come within such a zone. (City of Detroit v.Michigan Railroad Commission,209 Mich.395).

Complainant's allegation of undue discrimination and preference is founded upon the premise that there are lower rates on crushed rock, sand and gravel in Northern California than in Southern California; but there is no showing in this record that the crushed rock, sand and gravel producers in Northern California are in commercial competition with the producers in Southern California. Mere differences in the rates on these commodities, such as exist between the two districts referred to, do not authorize the Commission to condemn one schedule as unlawful when the record fails to show that the adjustment is a source of disadvantage to one party and of advantage to the other. In this situation there is no competition between the localities, the persons or the commodities. It is urged that the rates in Southern California have retarded industrial development, but the record does not contain any proof of that allegation. As a matter of fact, the exhibits introduced show that during the past five years building activities in the Los Angeles territory have more than doubled.

There is no evidence, in my opinion, therefore, that complainant has been subjected in any manner to unlawful discrimination, or that complainant's competitors in Northern California have been unduly preferred by reason of the existing rates in that

territory which, as has been heretofore pointed out, have been established to meet water competition.

This, I think, covers all the points made by complainant, and after carefully considering the exhibits, testimony and briefs, I am of the opinion and so find that the crushed rock, sand and gravel rates involved in this complaint have not been shown to be either excessive or unreasonable or that unlawful discrimination or prejudice exists.

I recommend that the complaint 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 on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that the complaint in this proceeding be and the same is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 11th day of December, 1925.

H. M. Bramhall

C. Lewis

George D. Squires

Commissioners.