

Decision No. 17031

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

The Vitrefrax Company,
Complainant,
vs.
Southern Pacific Company,
Defendant.

ORIGINAL

Case No. 2192

T. F. McCue and E. M. Bush, for Complainant.
J. E. Lyons, for defendant.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation, with its principal place of business at Los Angeles is engaged in the manufacture and sale of fire brick, refractories and fire clay products. They allege by complaint filed November 3, 1925 that the rates assessed on three carloads of a commodity claimed to be Silica rock moving March 13, 1925, June 11, 1925, and September 25, 1925, respectively, from Ogilby to Los Angeles were unjust and unreasonable to the extent they exceeded 10¢ per 100 pounds.

The rate charged and collected on the shipments moving March 13, 1925 and June 11, 1925 was 15½¢ per 100 pounds, and on the shipment moving September 25, 1925 12½¢ per 100 pounds. The former was the applicable rate on Talc and the latter the applicable rate on Silica rock. It is alleged that the first two carloads were incorrectly classified as Talc.

Reparation and a rate for the future are sought.

A public hearing was held before Examiner Geary at Los Angeles, March 30, 1926 and the case having been duly submitted is now ready for our opinion and order.

Ogilby is 236.8 miles east of Los Angeles on defendant's main line. Complainant has at this point ten mining claims acquired in the early part of 1925 and from these properties is mined a mineral commodity which when processed and mixed with crude clay at the Los Angeles factory forms a bonding material used to strengthen certain manufactured article. The complainant maintains that the crude commodity shipped from Ogilby is silica rock. Defendant holds it to be a crude clay and contends that the shipments were undercharged to the extent of the difference between the rates collected and the applicable class E rate of 24¢.

Complainant uses at its plant in Los Angeles a crude clay from deposits at Alberhill and San Juan Capistrano and the record indicates that the clay from those points and the so called silica rock from Ogilby have very much the same chemical constituents although differing in their physical form. The predominating element of both is silica. A chemical analysis of the three cars of rock from Ogilby shows an average content of silica of 62.03%, and of alumina 32.3%, while on two carloads of crude clay from San Juan Capistrano the chemical analysis shows an average silica content of 50.15% and of alumina 32.97%.

The chief chemist of complainant testified that although chemically these two commodities are similar, physically they are vastly different, clay being plastic, soft to the touch with a comparatively high loss on ignition while the rock commodity from Ogilby is not plastic, is hard to the touch and has a low loss on ignition. This witness was of the opinion that any commodity containing a silica content of over 50% and having the physical characteristics of the article shipped from Ogilby should be classified as silica rock.

The professor of chemistry at the University of Southern California, called as a witness on behalf of defendant, testified

that while there was no absolute or specific definition of commercial silica rock, an article to be so designated should contain not less than 90% of silica and in his opinion the commodity from Ogilby was related to the clays and was not a silica rock.

A specimen of the article from the mines at Ogilby, introduced as exhibit No. 6, indicates that it has all of the general characteristics of rock but whether it should be classified as silica rock or crude clay cannot, in view of the conflicting testimony, be determined on this record.

In the absence of a definite and specific name for the commodity it becomes incumbent upon the Commission to determine on the record what would be a reasonable charge for the transportation rendered, and to order reparation of the excess charges, if any. The shipments here at issue consisted of a comparatively low grade commodity having a value of approximately \$3.00 per ton F.O.B. cars at point of origin. The average loading was 91,653 pounds and for 237 miles produced a car mile revenue of 60 cents and per net mile revenue 13.08 mills, under the rate of 15½¢ and a per mile revenue of 48 cents and per ton mile revenue of 10.55 mills under the rate of 12½¢.

Complainant compares the assailed rates with the concurrently effective rate of 9¢ on clay from Alberhill to Los Angeles, 102 miles, and 5½¢ from San Juan Capistrano to Los Angeles, 56 miles. Based on the per car loading of the shipments the 9¢ rate would yield 80.8 cents per car mile and 17.64 mills per ton mile and under the 5½¢ rate would yield 90 cents per car mile and 19.64 mills per ton mile. Reference is also made by complainant to a rate of 11½¢ on silica sand from Lake Majella to Los Angeles, 381 miles, but the record shows that this rate is depressed by reason of a water competition through the port of Monterey, Lake Majella being located within a short distance of and easily accessible by auto truck.

Upon consideration of all the facts of record we are of the opinion and find that a reasonable rate for the transportation of the rock shipped by complainant from Ogilby to Los Angeles during the period here involved, and for the future, will be the same as the contemporaneously effective commodity rate of $12\frac{1}{2}$ cents applicable on silica rock from Ogilby to Los Angeles. We further find that the charges assessed and collected on the two shipments moving March 13, 1925 and June 11, 1925 were unreasonable to the extent they exceeded the charges that would have accrued at the rate herein found reasonable; that complainant paid and bore the charges on the shipments in question and has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable and is entitled to reparation with interest.

Defendant will be required to establish a rate of $12\frac{1}{2}$ cents Ogilby to Los Angeles for the future and in the event complainant and defendant cannot agree on the proper tariff designation of the commodity in question the matter may again be referred to the Commission.

ORDER

This case being at issue on complaint and answer on file, 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 is hereby referred to and made a part hereof.

IT IS HEREBY ORDERED, that defendant, Southern Pacific Company, be, and it is, hereby authorized and directed to refund, with interest, to complainant, Vitrefrax Company, a corporation, all charges it may have collected on the two carloads involved in this proceeding, moving March 13, 1925 and June 11, 1925 respec-

tively from Ogilby to Los Angeles in excess of those that would have accrued at a rate of $12\frac{1}{2}\%$ per 100 pounds.

IT IS FURTHER ORDERED, that defendant, Southern Pacific Company, be, and it is, hereby notified and required to cease and desist on or before August 25th, and thereafter to abstain from assessing, maintaining, or applying rates on the commodity here at issue, from Ogilby to Los Angeles, which shall exceed $12\frac{1}{2}\%$ per 100 pounds.

IT IS HEREBY FURTHER ORDERED, that defendant, Southern Pacific Company, be and it is, hereby notified and required to establish on or before August 25, 1926, upon notice to this Commission and to the general public of not less than five days' filing and posting in the manner prescribed in Section 14 of the Public Utilities Act, a rate on the commodity here at issue from Ogilby to Los Angeles which shall not exceed $12\frac{1}{2}\%$ per 100 pounds.

Dated at San Francisco, California this 24 day of

July 1926.

H. B. Rindge
C. L. Seaver
Emmerson

Commissioners.