

Decision No. 30326.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

UNION ROCK COMPANY, a corporation,  
Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation, and  
PACIFIC ELECTRIC RAILWAY COMPANY,  
a corporation,  
Defendants.

ORIGINAL

Case No. 2354.

Hugh Gordon, for the Complainant.  
E. W. Camp, Platt Kent and Berne Levy, for The  
Atchison, Topeka and Santa Fe Railway Com-  
pany, Defendant.  
Frank Karr and C. W. Cornell, for the Pacific  
Electric Railway Company, Defendant.  
Sanborn & Koehl, by Harvey Sanborn, and H. W.  
Keller, for Reliance Rock Company, Intervener.  
O. T. Helpling, for Blue Diamond Company, Inter-  
vener.  
Richard T. Eddy, for Imperial Rock Corporation,  
Intervener.

LOUTWIT, Commissioner:

O P I N I O N

Complainant is a corporation engaged in the production and sale of crushed rock, sand and gravel. By complaint filed April 22, 1927, it is alleged that the rates maintained by defendants for the transportation of crushed rock, sand and gravel from Corona, Kincaid, Claremont, Rivas, Gravel Pit, Crushton and Bowden to Los Angeles and adjacent points are preferential to Corona and prejudicial and discriminatory to the other named points of origin. The Commission is asked to remove the alleged preference,

prejudice and discrimination. Rates will be stated in cents per ton of 2000 pounds.

The Blue Diamond Company and the Reliance Rock Company intervened in behalf of defendants and in support of the present rate adjustment.

A public hearing was held at Los Angeles February 10, 1928, and the case having been duly submitted and briefs filed, is now ready for an opinion and order.

Corona is 47 miles southeast of Los Angeles, and Kincaid, Claremont, Rivas, Gravel Pit, Crushton and Bowden 22, 36, 22, 17, 20 and 34 miles respectively east of Los Angeles. Corona and Claremont are served by both the Pacific Electric Railway Company and The Atchison, Topeka and Santa Fe Railway Company, hereafter referred to as the Pacific Electric and Santa Fe respectively, Kincaid by the Santa Fe, and the other points of production by the Pacific Electric. The distances shown are all based on short line mileages.

Complainant maintains crushing plants at the points of origin heretofore named, with the exception of Corona. At Corona is located the rock crushing plant of intervenor, Blue Diamond Company, and both this company and complainant market their products in competition with each other in the Los Angeles territory. The present rate from complainant's plants at Kincaid, Rivas, Gravel Pit and Crushton to Los Angeles (as representative of the destination points) is 60 cents on crushed rock and gravel and 50 cents on sand, and from Claremont and Bowden 70 cents on crushed rock and gravel and 60 cents on sand. The applicable rate on all three commodities, crushed rock, sand and gravel, from Corona to Los Angeles, is 70 cents. These rates, except from Claremont and Corona, are based on the so-called Southern California scale, an

unpublished mileage basis generally employed by defendants in arriving at the specific point to point rates published in the tariffs. On crushed rock and gravel this scale provides 60 cents for 25 miles or less, 70 cents for 26 to 35 miles, 80 cents for 36 to 55 miles, and higher rates for longer distances. The rates on sand are 10 cents less than on rock and gravel.

The Claremont and Corona rates, at which points competing companies are located, are now 10 cents lower than the scale, and the former rate was established to equalize Claremont with Bowden, as the output from the crushers of the Union Rock Company at Claremont may be either transported by the Pacific Electric from Bowden or by the Santa Fe from Claremont. At Corona, where the protesting intervenor Blue Diamond Company has a plant, the rate was originally established in 1909, when this point and Kincaid were the only two rock shipping stations of any consequence served by the Santa Fe. Prior to June 25, 1913, the differential between Kincaid (location of the Reliance Rock Company) and Corona (location of the Blue Diamond Company) was 15 cents. It was narrowed to 10 cents on that date due to the disposition of fractions in increasing all rates under the provisions of General Order No. 28 of the Director General of Railroads, and this differential has remained at 10 cents.

It is complainant's contention, in view of the competitive situation, that there should be a strict adherence to a mileage scale except where carriers are required to deviate therefrom for the purpose of meeting the rates of their short line competitors between common points. Complainant takes the position that because the Corona rate is 10 cents lower than the mileage scale, it has been deprived of the advantages of its geographical location. The volume of the rates here at issue is

not attacked in this proceeding, hence the only question to determine is whether or not the maintenance of the present Corona rates creates unlawful preference to that point and undue and unlawful prejudice and discrimination to complainant's shipping points.

As previously stated, no mileage scale governing the rock rates in Southern California is filed with this Commission but such a scale appears to be employed by carriers solely as a working basis in arriving at the specifically published commodity rates, and it is ordinarily used only as a maximum scale and apparently was never intended to restrict the carriers from establishing lower rates to meet carrier or commercial competition. The Corona and Claremont rates to Los Angeles are only two of the many rates in Southern California that carriers have found it necessary to establish below the scale. Indeed, the record shows that complainant is accorded such depressed rates from Kincaid to Inglewood, from Urashton to Sherman, and from Rivas to Sawtelle, Sherman and Venice.

The present adjustment as between Corona and the other producing points here involved has been in effect for nearly 10 years and is no different in principle than that prevailing from other rock producing points, including complainant's plant, to many points of consumption. The Blue Diamond Company has been located at Corona since 1920, and has an investment in plant and facilities of approximately \$500,000.00, while the Reliance Rock Company located at Kincaid in 1925 with an investment of over \$1,000,000.00. The present plants have a large production of crushed rock per day, and afford employment to a great number of men. If the existing differential is increased to 20 cents, as it would be if the Corona rates were placed on the scale, the

ultimate result in all probability would be to seriously curtail the output of this plant, if not force it to discontinue operations entirely.

It clearly appears to me that rate adjustment of long standing, on the strength of which an industry has been established, should not be disturbed unless it is shown conclusively to be a positive source of undue and unlawful disadvantage to a complainant. Certainly the mere fact that the Corona rate is less than an unpublished mileage basis does not constitute a prima facie showing of undue prejudice. Complainant is now able to reach the competing markets at a freight rate 10 cents below its competitor, and while within reasonable limits it is entitled to the benefits of its geographical location, there is no evidence on this record that would justify condemning the existing differential between the competing points.

After consideration of all the facts of record I am of the opinion that the complaint should be dismissed. The following form of order is recommended:

#### O R D E R

This case having been duly heard and submitted, 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 precedes this order,

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 15<sup>th</sup> day  
of October, 1928.

Leon Whittell

E. J. Leary

W. M. H. H. H.

Thos. D. Loutch

W. J. Linn  
Commissioners.