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Decision No. 20327.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

UNION ROCK COMPANY, a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation, and PACIFIC ELECTRIC RAILWAY COMPANY, a corporation,

Defendants.

Case No. 2355.

Hugh Gordon, for the complainant.
James E. Lyons and F. W. Mielke, for Southern Pacific Company, defendant.
Frank Karr and C. W. Cornell, for Pacific Electric Railway Company, defendant.
Sanborn & Roehl, by Harvey Sanborn, and N. E. Keller, for Reliance Rock Company, intervener.
C. T. Helpling, for Blue Diamond Company, intervener.
Richard T. Eddy, for Imperial Rock Corporation, intervener.

LOUTTIT, 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 (a) that the failure of the Pacific Electric Railway Company to absorb the switching charges of $2.70 per car exacted by the Southern Pacific Company on shipments of crushed rock, sand and gravel moving from Gravel Pit to Los Angeles and adjacent points via the Pacific Electric Railway Company for delivery on industry tracks of the Southern Pacific Company within the switching limits of that company at Los Angeles

is contrary to the provisions of the tariffs lawfully on file with the Commission, and is discriminatory and prejudicial to complainant; and (b) that the line haul rates maintained by defendants from Gravel Pit and El Monte to Los Angeles and points south and west thereof are prejudicial and discriminatory to these producing points and preferential to other adjacent producing points. The Commission is asked to remove the alleged preference, prejudice and discrimination. Rates will be stated in cents per ton of 2000 pounds.

The Reliance Rock Company and Blue Diamond Company intervened on behalf of defendants.

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.

The first cause of action is purely one of tariff interpretation, in which the essential facts are not disputed. Complainant operates a rock crushing plant at Durbin, located about 17 miles east of Los Angeles in the San Gabriel Wash. This plant is not served directly by either the Pacific Electric Railway Company or the Southern Pacific Company, but is connected to their rails by complainant's own railroad, extending approximately one-half mile southerly to Gravel Pit on the Pacific Electric and 2.8 miles westerly to El Monte on the Southern Pacific. On shipments moving from Gravel Pit via the Pacific Electric to Los Angeles and other points for delivery to Southern Pacific industry tracks, there was assessed in addition to the line haul rates a switching charge of $2.70 per car, which accrues to the switching line. This switching charge complainant contends should be absorbed by the Pacific Electric under the provisions of its Terminal Tariff No. 2-G, C.R.C. 294. Briefly stated, the terminal tariff provides

for the absorption of the Southern Pacific switching charge of $2.70 per car on carload competitive traffic on which the Pacific Electric receives a line haul and destined to industry tracks located within the switching limits of the Southern Pacific at Los Angeles and other points. Competitive traffic is defined in Item 10 of the Terminal Tariff of the Pacific Electric as "traffic which at time of shipment may be handled at equal rates, exclusive of switching charge, from same point of origin to same destination via other carriers, one of which performs the switching service".

Complainant contends that since shipments originating at the Durbin rock plant may, by the use of its privately owned tracks, be transported to the junction points of either the Pacific Electric or the Southern Pacific, they have in effect extended the defendants' railroad facilities beyond Gravel Pit on the Pacific Electric and El Monte on the Southern Pacific, and thus created a "same point of origin" within the meaning of Item 10 of the Terminal Tariff. This to me however is a strained interpretation of the tariff, for Gravel Pit and El Monte are not located in close proximity to each other, are separate and distinct stations and on different lines of railroad. The mere fact that complainant has by the construction of its own railroad made it possible to transport the products of the Durbin plant through either Gravel Pit or El Monte, does not make these two points a common point of origin. Complainant's contention is analogous to that considered by this Commission in C. H. Turner Petroleum Company et al. vs. Pacific Electric Railway et al., 27 C.R.C. 404, wherein it was contended that Signal Hill on the Pacific Electric Railway and Burnett on the Los Angeles & Salt Lake Railroad were the "same point of origin" within the meaning of Item 10 of the Terminal Tariff by reason of the fact that complainant

maintained loading racks for the handling of oil at Signal Hill and could by the use of pipe lines load the cars either at that point or at Burnett. In disposing of that proceeding Commissioner Squires, speaking for the Commission, stated:

> "Complainants' position, it clearly appears to me, is not based on sound logic. The fact that Signal Hill and Burnett are located in the same oil producing field and have loading facilities served by the same pipe line does not make them common points. It would be just as logical to hold that if Los Angeles and Bakersfield, 169 miles apart, were connected by a pipe line and it were possible to pump oil from the pipe line to either place for loading into tank cars, then the two points and the stations intermediate thereto must be considered common railroad shipping points."

I conclude and find that under the published provisions of the Terminal Tariff defendants have lawfully assessed and collected the destination switching charge at Los Angeles and the adjacent points.

The second cause of action arises from the fact that certain commodity rates on rock do not strictly adhere to the so-called Southern California mileage rock scale. This scale is not published but is generally used by defendants as the basis upon which to establish in their tariffs the published point-to-point commodity rates for the transportation of crushed rock, sand and gravel. It provides a rate on crushed rock and gravel of 60 cents for 25 miles or less, 70 cents for 26 to 35 miles, 80 cents for 36 to 55 miles, 90 cents for 56 to 75 miles, and for distances over 75 miles 10 cents is added to the last-named rate for each additional 25 miles. The rates on sand are generally 10 cents less than on crushed rock. The Southern California scale has never been rigorously adhered to by defendants but has been used as a measure to establish the maximum rates in the absence of some compelling conditions requiring either a lower or higher rate.

Gravel Pit and El Monte are both on the western fringe of the San Gabriel Wash, 17 and 13 miles respectively east of Los Angeles, located in the largest rock and sand producing section of Southern California, and in addition to the Durbin properties there are crushing plants at or adjacent to Crushton and Rivas, 20 miles from Los Angeles; Kincaid, 22 miles from Los Angeles; and Azusa, 24 miles from Los Angeles. The first plant in the San Gabriel Wash was established in 1909 at Puente Largo (now Rivas), and as additional plants were subsequently opened at the other points defendants placed them on the same rate basis as Rivas, to allow all producers in this somewhat limited region to market their products on an equality, in so far as the freight rates were concerned. The present rates from Gravel Pit and El Monte to Los Angeles are in accordance with the Southern California rock scale, but the rates from Gravel Pit to Artesia, Whittier, Santa Monica and Venice, and from El Monte to Compton, Watson, Wilmington, Cudahy, Buena Park, Linwood, Vinvale and other points are deviations from the scale. This situation obviously results from the grouping of all points in the San Gabriel Wash by predicating the rates on the mileage from Rivas, a central point, rather than establishing the rates on a purely mileage basis. Complainant contends that the failure to observe the Southern California scale has deprived Gravel Pit and El Monte of their geographical location and has extended to the competing plants an undue preference.

The grouping for rate making purposes of points located in close proximity one to the other in a single producing section containing natural resources has long been recognized as proper by this Commission and the Interstate Commerce Commission provided the adjustment does not engender unlawful preference or discrimination. While Gravel Pit and El Monte are geographically nearer

Los Angeles than the other points in the same production group, this fact alone does not create unlawful preference or discrimination, for in the maintenance of every freight rate there must necessarily be considered factors other than distance alone. The record shows the present adjustment to be of long standing, having been consistently maintained by defendants since 1909 and on the strength of which crushing plants have been located in this field. This is particularly true of the intervener Reliance Rock Company, in locating its plant near Kincaid in the early part of 1925 at a cost of approximately $1,000,000. It would in my opinion be unjust both to the consuming public, who can now purchase from many plants at uniform freight rates, and to the competing plants themselves, to disrupt the group adjustment solely on the plea that the geographical location of complainant's plants has a slight advantage in mileage to the consuming points west of the San Gabriel Wash. The record is devoid of proof that the maintenance of these long standing group rates has worked any hardship to complainant in selling its rock in the common markets at the same freight rates as its competitors. Complainant's contention is similar to that considered by the Interstate Commerce Commission in Phelps Dodge Corporation vs. Director General, 57 I.C.C. 714-720, wherein it was concisely stated:

> "In all cases of blanket or group rates there is of necessity more or less disregard of distance and varying degrees of inequality, but such inequalities are not necessarily unreasonable or unjust when the situation is viewed from every standpoint and all the circumstances and conditions are taken into account. In the absence of tangible proof of tangible injury to complainants or of positive evidence that rates are unjustly discriminatory or unduly prejudicial a group adjustment should not be disturbed."

After careful consideration of all the facts of record I am of the opinion and so find that complainant has failed to

show the present adjustment unduly preferential, prejudicial or discriminatory. 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 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 15th day of October, 1928.

Leon O. Whitsell
C. L. Seavey
Edward Hart
Paul S. Leake
W. J. Carr
Commissioners.