

Decision No. 20398.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WEST END CHEMICAL COMPANY,
PHILADELPHIA QUARTZ COMPANY
OF CALIFORNIA,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,
TROMA RAILWAY COMPANY,

Defendants.

ORIGINAL

Case No. 2572.

E. W. Hollingsworth, R. T. Boyd, Bishop & Bahler,
by E. W. Hollingsworth and R. T. Boyd, for
complainants.

James E. Lyons, H. E. McElroy and C. N. Bell, by
H. E. McElroy and C. N. Bell, for defendant
Southern Pacific Company.

O. W. Tuckwood and A. J. Branscom, by A. J. Brans-
com, for American Potash and Chemical Corpora-
tion, intervener.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations organized under the laws of the State of California, and have offices in Oakland and Berkeley. By complaint filed July 5, 1928, they allege that the package requirements applying to soda ash, carloads, from West End on the Troma Railway to various destinations in California on the Southern Pacific, as published in Southern Pacific Company Joint and Proportional Freight Tariff No. 863-M, C.R.C. No. 3264, in Item 410-A First Revised Page 19, are unjust and

unreasonable, of no advantage either to the carriers or to the complainants, and result in economic waste. The complainants further allege that by the use of Consolidated Freight Classification No. 5 and Rule 5 Section 3 paragraphs (e), (f), (g) and (h) thereof the commodity rates named in Item 410 of Southern Pacific Tariff 863-M are now applicable to soda ash shipped in bulk. We are asked to require the defendants to cease and desist from the alleged violations of the Public Utilities Act and the Constitution of the State of California, and establish for the future a just and reasonable tariff publication permitting the transportation of bulk soda ash. The rates per se are not under attack. The American Potash and Chemical Company intervened on behalf of the complainants.

Public hearings were held before Examiner Geary at San Francisco September 25 and 26, 1928, and the matter having been submitted is now ready for our opinion and order.

The question of tariff interpretation will first be disposed of. Rule 5 paragraph (d) of the Classification provides in part as follows: "When articles have been accepted and come into the carriers' possession to be transported and are in containers of a kind, or a shipping form of a kind, which is not specially provided in the description for such articles, the rating on the articles in such unauthorized container or shipping form will be based on the ratings on the same articles in such other containers or shipping forms that have been authorized for such articles * * * " and this rule carries the caption, "Unless otherwise provided".

Southern Pacific Tariff No. 863, containing the rates on soda ash, provides by Item No. 40 on page 8 as follows:

"The ratings, rules and regulations, estimated and minimum weights, shipping and packing requirements, allowances and privileges, or other provisions

or conditions, shown in this Tariff abrogate and supersede those in current Western Classification and current Exception Sheet, in conflict."

The item further provides:

"When the ratings in this Tariff, are silent as to rules and regulations, estimated and minimum weights, shipping and packing requirements * * * * the ratings which are prescribed in such commodity items shall be subject to the terms prescribed therefor in connection with the ratings in the current Western Classification and current Exception Sheet on the same commodity."

From a careful study of this record and of the different governing tariff rules there appears to be no other conclusion possible than that the rates on soda ash in Item 410-A of Tariff No. 863 will only apply when the shipments are forwarded in packages and will not apply when in bulk.

West End is located on the Tirona Railway, and that defendant company admits all of the allegations of the complaint and asks that the tariff be amended as prayed for by complainants.

Soda ash is a by-product secured during the production of borax, and as shipped from West End it is in the form of small crystals, and loads heavily, averaging at the present time, in sacks, 40.8 tons per car. This soda ash has the appearance of and is very similar to a number of other commodities produced in the same plants, such as potash, borax and bi-carbonate. These last-named commodities have rates for transportation in bulk, and an exhibit shows that they load from 51 to 57 tons per car. In other words, bulk shipments of potash, borax, etc., furnish approximately 20 per cent. greater tonnage per car than does the soda ash. Complainants testified that exclusive of labor there was an expense of approximately \$2.00 per ton for the sacks, and these sacks being made of paper are practically worthless at the destination points. Shipments from West End are now averaging 100 tons per month. The principal consignees and the intervener

are equipped with the necessary facilities for loading and unloading soda ash in bulk, and there was testimony to the effect that when their plants commenced operations they were of the opinion bulk shipping would be permitted.

Soda ash is now being produced in California at Cartago, Keeler and West End, and a new plant to be established at Trona by the American Potash and Chemical Corporation, intervener, will produce a greater tonnage than the combined output of the three existing companies. There is practically no loss or damage to the commodity when in bulk, and the same is also true of shipments made in sacks.

A number of exhibits were introduced by complainants and the intervener. Exhibits Nos. 1 and 2 show that many commodities similar in character to soda ash, including crude chalk, waiting, gypsum, lime, potash, salt, sodium carbonate (soda ash), sulphur and borax, are given commodity rates for movement in bulk within California and between California and Pacific Coast points and transcontinental points; also these commodities and soda ash are rated fifth class in the Western Classification.

The intervener introduced a number of exhibits showing the movement of bulk potash and other similar commodities forwarded from Trona to points throughout the United States, and also statements showing the cost of loading and sacking the potash at Trona. Potash is very similar to soda ash in its physical characteristics, and exhibits show the average loading of the bulk potash to be 54.6 tons per car and of the sacked potash 51.2 tons per car. The total cost of loading bulk potash was approximately 5 cents per ton, while the cost of sacking and loading, including the cost of sacks, was \$2.53 per ton, representing a cost for the sacked commodity of \$2.48 per ton in excess of the

bulk commodity.

Defendants presented no exhibits but by the testimony of a witness gave the history of the establishment of rates on soda ash from points in the territory involved. The first rate was published from Keeler in the year 1914 and applied to soda ash in packages. As the other producing points commenced to ship, the Keeler rate was extended so that practically all of the soda ash producing points in the same general territory are now on a rate equality. Keeler involves 80 miles farther haul to the consuming points than does West End. It is also on a narrow gauge branch of the Southern Pacific, requiring the transferring from narrow to broad gauge cars at Owenyo at a cost of 65 cents per ton.

The record clearly proves that soda ash is being transported in bulk between practically all points in the United States and between a few points in California, and the territory involved in the instant proceeding represents the only district where bulk shipments are not permitted. It seems apparent that were it not for the fact that the rates from Keeler, a narrow gauge point, were originally published to apply when in packages, these defendants would have no objection to the commodity rates applying when in bulk. Testimony further shows that soda ash is now being delivered in California from plants located in Kansas and Michigan under bulk commodity rates.

Upon this record we conclude and find that the rates complained of, applying to soda ash from West End and Trona to points within the State of California as set forth in Item 410-A, First Revised Page 19, Southern Pacific Company Joint and Proportional Freight Tariff No. 863-M, C.R.C. No. 3264, are not excessive or unreasonable, and we further find that the failure of defendants to provide for the shipment of soda ash in bulk, car-loads, at the same rates and minimum weight as apply on the same

commodity when shipped in packages, is and for the future will be unreasonable and that a reasonable carload rating and minimum weight for this commodity in bulk will be the carload rating and minimum weight contemporaneously applicable to this commodity when shipped in packages.

O R D E R

This case having been 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 ORDERED that the above named defendants be and they are hereby notified and required to cease and desist on or before December first, 1928, and thereafter to abstain from publishing, maintaining or applying to the transportation of soda ash, in carloads, a rating which exceeds that prescribed in the next succeeding paragraph hereof.

IT IS FURTHER ORDERED that said defendants be and they are hereby notified and required to establish on or before December 1, 1928, upon notice to this Commission and to the general public by not less than five (5) days' filing and posting in the manner prescribed in Section 14 of the Public Utilities Act, and thereafter to maintain and apply to the transportation of soda ash in bulk, in carloads, the carload rating and minimum weight contemporaneously applicable to soda ash in packages.

Dated at San Francisco, California, this 29th day of October, 1928.

Leon Whitney
Chas. Seaver
Frank B. ...
Wm. ...
Commissioners.