

Decision No. 99722.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GENERAL CLAY COMPANY,
Complainant,
vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
LOS ANGELES & SALT LAKE RAILROAD
COMPANY,
TONOPAH AND TIDEWATER RAILROAD
COMPANY,
Defendants.

Case No. 2507.

PAN AMERICAN PETROLEUM COMPANY,
Complainant,
vs.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,
LOS ANGELES & SALT LAKE RAILROAD
COMPANY,
PACIFIC ELECTRIC RAILWAY COMPANY,
TONOPAH AND TIDEWATER RAILROAD
COMPANY,
Defendants.

Case No. 2569.

ORIGINAL

- F. A. Jones and L. E. Stewart, for General Clay Company, complainant in Case 2507 and intervener in Case 2569.
- L. R. Guerra, for Pan American Petroleum Company, complainant in Case 2569 and intervener in Case 2507.
- Platt Kent and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Company and other defendants not specifically represented.
- E. E. Bennett, for Los Angeles & Salt Lake Railroad Company, defendant.
- C. W. Cornell and W. J. Knoche, for Pacific Electric Railway Company, defendant.
- Frank F. Oster, for Tonopah and Tidewater Railroad Company, defendant.
- J. P. Porter, for Union Oil Company of California, intervener in Case 2507.

BY THE COMMISSION:

O P I N I O N

Complainant, General Clay Company, is a corporation engaged in mining, selling and shipping clay, and complainant

Pan American Petroleum Company is engaged in producing, refining and marketing petroleum oil and its products. In Case 2507, filed February 21, 1928, it is alleged that the rates assessed on numerous carloads of clay shipped by the General Clay Company from Bradford Siding to Los Angeles subsequent to February 19, 1926, were unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and unduly prejudicial and discriminatory to complainant and unduly preferential to shippers located at other points, in violation of Section 19 of the Act. The same allegations are made in Case 2569, filed June 27, 1928, with respect to shipments of clay made by the Pan American Petroleum Company subsequent to August 17, 1925, from Bradford Siding and Death Valley Junction to Los Angeles and Watson.

Informal complaints covering shipments made by the Pan American Petroleum Company more than two years prior to the filing of the complaint in Case 2569 were registered with the Commission within the two-year statutory period, under our File I. C. 37537 of August 17 and August 29, 1927.

We are asked to prescribe just, reasonable, nonprejudicial and nonpreferential rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

The Pan American Petroleum Company and Union Oil Company of California intervened on behalf of complainant in Case No. 2507. The latter company seeks reparation on shipments of clay transported from Bradford Siding to Los Angeles subsequent to September 9, 1926.

Public hearings were held at Los Angeles before Examiner Geary August 7, 8 and 9, 1928, and the proceedings having been duly submitted and briefs filed, are now ready for an opinion and order. By stipulation both cases were heard upon a common record and will be disposed of in one decision.

Bradford Siding and Death Valley Junction are located on the Tonopah and Tidewater Railway, hereafter referred to as the Tonopah and Tidewater, 102 miles and 96 miles respectively north of Crucero, the interchange point with the Los Angeles and Salt Lake Railroad and 128 and 122 miles respectively north of Ludlow, the junction point with The Atchison, Topeka and Santa Fe Railway. Crucero and Ludlow are situated 203 miles and 194 miles respectively east of Los Angeles. The total distance from Bradford Siding to Los Angeles is 305 miles via the Crucero gateway and 322 miles via the Ludlow gateway, while from Death Valley Junction the distance is 299 miles via Crucero and 316 miles via Ludlow. The haul to Watson involves an additional 16 miles from Los Angeles via the Pacific Electric Railway.

The commodity here at issue is a crude clay obtained from deposits situated about four miles east of Bradford Siding, in Nye County, Nevada. It is used as a bleaching, filtering and decolorizing agent in refining petroleum oils and contains a natural calcium and magnesium carbonate content which largely neutralizes the acids used in the refining process. The Nye County clay does not require a sulphuric acid treatment before using and for this reason has a somewhat higher value than other crude clays produced in California which cannot be used in refining petroleum products without the addition of acid.

At the present time the shipments are being made from Death Valley Junction, the clay being transported from the deposits over a privately owned narrow gauge railroad to the mill, where it is dried and ground before being shipped. Prior to the early part of 1927 the clay was hauled by auto truck to Bradford Siding and from there shipped to destination without drying or grinding. Shipments made from both points were loaded to an average of approximately 90,000 pounds per car.

Defendants have accorded Bradford Siding and Death Valley Junction the same rate adjustment. At the present time they maintain to Los Angeles a rate of $21\frac{1}{2}$ cents, minimum carload weight 60,000 pounds, and a rate of 19 cents minimum carload weight 80,000 pounds. The $21\frac{1}{2}$ -cent rate has been in effect for some number of years, while the 19-cent rate was established March 8, 1927. The present adjustment to Watson is 1 cent higher than to Los Angeles, with a minimum weight of 80,000 pounds. The Watson rate of 20 cents was made effective March 18, 1928, the applicable rate theretofore being 21 cents, established March 8, 1927, at the time defendants published the 19-cent rate to Los Angeles.

Due to the heavy loading of complainants' shipments they are not greatly concerned with the higher rates based on a minimum of 60,000 pounds. They contend however that the rates carrying the minimum of 80,000 pounds should not exceed 16 cents. This rate is predicated on a contemporaneously applicable rate of $16\frac{1}{2}$ cents on crude clay, minimum 60,000 pounds, maintained by defendants from Zabriskie to Los Angeles, 269 miles via the short route, yielding a per ton per mile revenue of 12.27 mills. Based on this per ton mile earning the Zabriskie to Los Angeles rate has been projected to the more distant point, Bradford Siding, resulting in a rate of $18\frac{1}{2}$ cents, from which complainants deduct $2\frac{1}{2}$ cents, the latter amount representing the present differential between the Los Angeles rates of $21\frac{1}{2}$ cents minimum 60,000 pounds, and 19 cents minimum 80,000 pounds.

Based on 305 miles, the short line via Crucero, the rate of $21\frac{1}{2}$ cents assessed on complainants' shipments to Los Angeles prior to March 8, 1928, yielded a ton-mile revenue of 14.10 mills, while the 19-cent rate, assessed subsequent there-

to, produced a ton-mile revenue of 12.46 mills. The ton-mile earnings under the rates to Watson for 321 miles were 13.39 mills prior to March 8, 1927, 13.08 mills during the period extending from March 8, 1927, to March 18, 1928, and 12.46 mills after the latter date. Complainants compare these earnings with ton-mile earnings ranging from 6.68 to 13.11 mills produced from contemporaneously applicable rates on clay, gypsum, lime, salt and other comparable commodities between various points in California for distances varying from 192 to 676 miles. Some of these low rates apply from points on the Tonopah and Tidewater to destinations on the lines of its connecting carriers and were established in an endeavor to meet the competition from producing points on other lines. The attempt to meet this competition was however unsuccessful and there has been practically no movement under the rates for a number of years. The other rate comparisons used by complainants apply between points not on the Tonopah and Tidewater and because of the unfavorable financial condition of this road, which will be more fully discussed hereafter, cannot be used as an exact gauge to measure the rates here at issue.

The Tonopah and Tidewater Railroad extends from Indlow north to Beatty, Nevada, a distance of 168 miles, and was originally constructed in 1907 to tap the borax deposits in Death Valley. It traverses a sparsely settled territory, with an exceptionally light density of traffic. The principal source of revenue in the past has been derived from the movement of borate, the crude rock from which borax is made, but within recent years this movement has practically ceased due to the abandonment of the borax mill at Death Valley Junction. The principal tonnage is now the clay here at issue, with occasional shipments of talc outbound and oil and the l.c.l. freight inbound.

The topography of the country traversed and the climatic conditions encountered in the desert regions make the cost of maintenance and operation of the Tonopah and Tidewater greater than that prevailing on most short-line railroads in California, and in addition, this line must rely for a large part of its revenue upon the movement of comparatively low grade commodities, inherently subject to a wide fluctuation in their movement. This is evidenced by the fact that the movement of the commodity for which the road was primarily constructed has almost entirely disappeared.

Defendants contend they have now voluntarily accorded complainants a low rate on clay to enable them to advantageously market their products and a further reduction would seriously affect the financial condition of the Tonopah and Tidewater. During 1927 the net railway operating income of this carrier was \$5,953.96, a return of .21% on the investment in road and equipment, based upon the Interstate Commerce Commission valuation as of June 30, 1915, plus net additions and betterments. In 1926 the rate of return was 4.60%, in 1925 2.55%, and in 1924 1.98%. The average rate of return for an 8-year period, extending from 1920 to 1927, both years inclusive, was 3.42%. In only two years during this period, viz., 1920 and 1925, did the Tonopah and Tidewater earn a return in excess of the 5 3/4% prescribed by the Interstate Commerce Commission as a reasonable rate of return for steam railroads, but in 1921 there was a deficit of \$74,229.96 in the road's operation.

Defendants maintain that notwithstanding the adverse financial condition of the Tonopah and Tidewater they have now accorded complainants a rate that compares favorably with rates on clay between points in California for varying distances. The

following, compiled from defendants' exhibits, is illustrative:

From	To	Miles	Rate	Minimum	Rate per ton per mile (mills)
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RATES ASSAILED

Bradford Siding	Los Angeles	305	21 ¹ / ₂ ¢	60000 lbs.	14.10
"	"	305	19¢	30000 "	12.46

COMPARISONS

Vidal	Los Angeles	307	20 ¹ / ₂ ¢	60000 "	13.36
Bradford Siding	Maltha	330	27¢	80000 "	16.36
Stockton	Redding	213	26 ¹ / ₂ ¢	40000 "	24.88
Ione	Los Angeles	446	27¢	30000 "	12.11
Stockton	Chico	139	24¢	40000 "	34.53
Los Angeles	Bakersfield	169	20¢	30000 "	23.67

The record shows that the rates maintained by defendants have permitted a free movement of the commodity here at issue. This is apparent from the fact that to Los Angeles and Watson in 1923 there were only 2 cars, while for the years 1924, 1925, 1926 and 1927 the movement increased to 13 cars, 216 cars, 361 cars and 553 cars respectively. Based on the number of cars shipped during the first six months of 1928 the total for this year will be approximately 650 cars.

While complainants allege that the adjustment from Bradford Siding and Death Valley Junction create undue prejudice to them and undue preference to other shippers, the record is lacking in proof to substantiate this claim.

After careful consideration of all the facts of record we are of the opinion and so find that the assailed rates are not unjust, unreasonable, unduly preferential, prejudicial or discriminatory. The complaints will be dismissed.

O R D E R

These cases 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 above entitled proceed-
ings be and the same are hereby dismissed.

Dated at San Francisco, California, this 25th day
of January, 1929.

Thos. J. Looney

C. Searcy

Wm. J. Conroy

Leon Whiteley

W. J. Carr
Commissioners.