

Decision No. 20725.

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GLADDING, McBEAN AND COMPANY,  
Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY and  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, COAST LINES,  
Defendants.**ORIGINAL**

Case No. 2590.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation organized under the laws of the State of California, having principal offices at 660 Market Street, San Francisco, is engaged in the manufacture and shipping of clay products, with one of its plants located at Santa Monica. By complaint filed August 23, 1928, it alleges that during the period August 30, 1926, to August 27, 1927, it caused to be shipped over defendants' lines from Alberhill to Santa Monica 110 cars containing crude clay, as per statement and freight bills submitted, on which the charges were collected at rate of 9½ cents to July 4, 1927, and 9 cents from July 5, 1927, to August 27, 1927. On August 27, 1927, the present rate of 8 cents became effective; this rate is not called into question, and the proceeding involves purely the payment of reparation. Rates will be stated in cents per 100 pounds.

The parties by stipulation having agreed to submit the case in writing under the shortened procedure method, with-

out a formal hearing, and the facts having been duly set forth through complainant's statement, defendants' reply and argument, and complainant's rebuttal memorandum, and said documents having been duly served and acknowledged by the parties, the proceeding is now ready for our opinion and order.

The rates assessed were determined under various combinations, including the Kelly Combination Rule, and the use of Pacific Electric's local rates as maximum. The minimum weight was different under the different rates, but since all of the cars loaded in excess of the tariff minimum, this feature is not of importance.

Complainant alleges that the rates assessed were unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, primarily upon the contention that the Santa Monica plant secures clay from Alberhill the same as do the competing plants at Los Angeles, and that the Santa Monica rates should have been adjusted when changes were made in the rates to Los Angeles. The record shows that the rate from Alberhill to Los Angeles prior to July 5, 1926, was 9 cents, to Santa Monica it was  $9\frac{1}{2}$  cents. July 5, 1926, the Los Angeles rate was reduced to  $7\frac{1}{2}$  cents, with no reduction to Santa Monica. March 10, 1927, the Los Angeles rate was reduced to 7 cents, the Santa Monica remaining at  $9\frac{1}{2}$  cents. July 5, 1927, the Los Angeles rate was reduced to  $6\frac{1}{2}$  cents and Santa Monica to 9 cents; and effective August 27, 1927, the Santa Monica rate was reduced to 8 cents, the 8-cent rate being  $1\frac{1}{2}$  cents higher than the Los Angeles, which rate complainant is not attacking.

Accompanying complainant's statement is an exhibit showing 18 single-line and joint-line rates on clay between points in California where there is claimed to be a movement. These rates average up fairly well with the 8-cent rate now in effect, although there are no supporting data to show the circumstances and

conditions under which they were established.

On March 7, 1927, defendant Santa Fe put into operation a new line of railroad between Alberhill and Corona which reduced the distance between Alberhill and Santa Monica from 118 miles to 81 miles. The rate of  $9\frac{1}{2}$  cents in effect via the original route for 118 miles produced 16.1 mills per ton mile and was not shown to have been either excessive or unreasonable during the period when a haul of 118 miles was necessary. Under the same rate,  $9\frac{1}{2}$  cents for the haul of 81 miles, the rate per ton per mile became 23.4 mills, an earning much higher than the clay rates between other points similarly located.

In Case No. 2495, American Refractories Company et al. vs. A.T. & S.F., Decision 20134, August 20, 1928, we found a rate of  $5\frac{1}{2}$  cents on clay for a one-line haul, San Juan Capistrano to Los Angeles, 56 miles, yielding 19.6 mills, a reasonable rate. The rate of 8 cents Alberhill to Santa Monica, 81 miles, yields 19.7 mills per ton mile for a two-line service.

It appears from this record that complainant, by correspondence with the interested defendants, endeavored to have the rates adjusted on a basis of  $1\frac{1}{2}$  cents higher than the Los Angeles rates, and it was not until August 27, 1927, that the carriers voluntarily published the present 8-cent rate, although the rate to Los Angeles was reduced on March 10, 1927, to 7 cents, and on July 5, 1927, to  $6\frac{1}{2}$  cents. It seems very apparent from this record that the rates charged became excessive when the new line, which cut out 37 miles of haul, was put into operation, March 7, 1927.

After careful consideration of all the facts we are of the opinion and so find that the assailed rates were unjust and unreasonable subsequent to March 7, 1927, to the extent they exceeded 8 cents per 100 pounds, minimum carload weight 80,000

pounds. We further find that complainant paid and bore the charges on the shipments in question, has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate found reasonable, and is entitled to reparation on movements subsequent to March 7, 1927, with interest at 6 per cent. per annum.

Complainants will submit statement to defendants for check. Should it not be possible to reach an agreement as to the amount of reparation, the matter may be referred to the Commission for further attention and the entry of a supplemental order should such be necessary.

O R D E R

This case, in accordance with stipulation in writing by the interests concerned, having been duly 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 defendants, Pacific Electric Railway Company and The Atchison, Topeka and Santa Fe Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund, with interest at 6 per cent. per annum, to complainant, Gladding, McBean and Company, according as said interests appear, all charges collected in excess of 8 cents per 100 pounds, minimum carload weight 80,000 pounds, for the transportation of the shipments of crude clay here involved moving from Alberhill to Santa Monica during the period subsequent to March 7, 1927.

Dated at San Francisco, California, this 25<sup>th</sup> day of January, 1929.

John D. Lewis  
Chairman  
Wm. J. East  
Leon Whitwell  
W. J. Cum  
Commissioners.