

Decision No. 20805.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PAYNE FURNACE & SUPPLY COMPANY, INC.,)

Complainant,)

vs.)

PACIFIC ELECTRIC RAILWAY COMPANY,
SOUTHERN PACIFIC COMPANY,

Defendants.)

Case No. 2563.

ORIGINAL

J. G. Beaver, for complainant.

W. G. Knoche, C. W. Bell and A. B. Mason,
for defendants.

BY THE COMMISSION:

O P I N I O N

Complainant, a corporation with its principal place of business at Beverly Hills, California, is engaged in the business of buying, manufacturing and selling house heating furnaces. By complaint filed June 21, 1928, as amended at the hearing, it is alleged that the rates assessed by defendants for the transportation of house heating furnaces, in carloads, from Beverly Hills to Oakland were during the two-year period immediately preceding the filing of this complaint, are now, and for the future will be, unreasonable in violation of Section 13 of the Public Utilities Act, and discriminatory in violation of Section 19 of the Act to the extent they exceeded, exceed or may exceed a commodity rate of 35½ cents per 100 pounds, minimum weight 30,000 pounds, or, as amended at the hearing, the fifth class rate of 38½ cents per 100 pounds, minimum weight 24,000 pounds.

Reparation and reasonable, nondiscriminatory rates for the future are sought. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles October 3, 1928, and the case having been submitted is now ready for an opinion and order.

Beverly Hills is located on the Pacific Electric Railway 16.6 miles west of Los Angeles. Complainant's shipments here at issue, consisting of 8 cars, moved via the Pacific Electric to Los Angeles, thence Southern Pacific Company to Oakland, a total distance of 479 miles.

Defendants assessed and collected the lawfully applicable fifth class rate of 43 cents, minimum weight 24,000 pounds, made combination over Sawtelle, the factor from Beverly Hills to Sawtelle being $4\frac{1}{2}$ cents as published in Pacific Electric Tariff 86-C, C.R.C. 259, and the factor from Sawtelle to Oakland being $38\frac{1}{2}$ cents as published in Pacific Freight Tariff Bureau Tariff 30-I, C.R.C. 397.

At the time these shipments moved defendants maintained a rate of $35\frac{1}{2}$ cents, minimum weight 30,000 pounds, on iron and steel articles from Los Angeles and the contiguous territory to San Francisco Bay points, and a fifth class rate of $38\frac{1}{2}$ cents, minimum weight 24,000 pounds, applicable on house heating furnaces from Sawtelle and Santa Monica to Oakland, and it is upon these bases that complainant seeks reparation and rates for the future.

Complainant compares the rate assailed with relatively lower rates applicable on roofing and building material, paper, sheet iron, gypsum, infusorial earth, and other low grade commodities from various points in California and Nevada to Beverly Hills and other points on the Pacific Electric Railway, but these rates apply on commodities of lower value, and capable of heavier load-

ing, than house heating furnaces and the comparisons are not, therefore, persuasive that the rate here under attack is unreasonable. Complainant also refers to the rate of 38 cents on house heating furnaces from Beverly Hills to Oakland, applicable via the Pacific Electric Railway in connection with the coast-wise steamer lines through the port of Los Angeles. However, as the greater portion of the haul is in connection with a water carrier, it cannot be used as a measure for a reasonable all-rail rate.

The record shows that the present combination fifth class rate of 43 cents from Beverly Hills to Oakland is depressed below a normal basis by reason of the influence of water competition upon the factor of 38½ cents from Sawtelle to Oakland. The latter rate was authorized by this Commission on a lower basis than applied to the intermediate points under the provision of Section 24(a) of the Public Utilities Act, to enable defendants to meet the competition of water carriers operating between the ports of San Francisco and Los Angeles. Defendants maintain that the combination of fifth class rates over Sawtelle is not unreasonable, as the car mile earnings thereunder are considerably less than for other commodities rated fifth class and moving between points where water competition is not prevalent. The record bears out this contention.

Complainant's allegation of discrimination rests primarily upon the fact that defendants maintain a fifth class rate of 38½ cents from Sawtelle, Soldiers' Home, Culver City, Palms, Santa Monica and Venice. This 38½ cents is the Los Angeles rate, nonintermediate in application, and held back as maximum for the points located between Los Angeles and the water's edge. Beverly Hills is to the northeast of Sawtelle, on the passenger short line of the Pacific Electric, reaching Los Angeles through Vineyard and West Sixth Street. Freight trains are not permitted to oper-

ate over this route. All freight traffic handled by the Pacific Electric to Beverly Hills and passing through Los Angeles must be moved via a circuitous route known as the old Santa Monica Air Line, operating through Culver City, Palms, Home Junction and Sawtelle.

The complainant has shown by Exhibit No. 4 that defendant carriers now maintain certain commodity rates to Beverly Hills in a blanket with Sawtelle and Los Angeles. The distance between Sawtelle and Beverly Hills is 3.1 miles, and while there must be a logical breaking point for blanketed rates it does not appear reasonable or just that a particular industrial district in Beverly Hills should be deprived of an opportunity to market its products in certain territory because of such a slight difference in the mileage.

After consideration of all the facts of record we are of the opinion and find that the rate assailed is unduly discriminatory to the extent that it exceeds the rate contemporaneously in effect from Sawtelle to Oakland. We do not find the rate assessed to be an unreasonable rate, and since there is no proof of damages the claim for reparation is denied.

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 defendants, Pacific Electric Railway Company and Southern Pacific Company, be and they are hereby notified and required to cease and desist on or before thirty (30) days from the effective date of this order and thereafter to abstain from applying, demanding, assessing or collecting

for the transportation of house heating furnaces, in carloads, from Beverly Hills to Oakland a rate in excess of the rate contemporaneously in effect on house heating furnaces from Sawtelle to Oakland.

IT IS HEREBY FURTHER ORDERED that defendants, Pacific Electric Railway Company and Southern Pacific Company, be and they are hereby notified and required to establish on or before thirty (30) days from the effective date of this order, on not less than five (5) days' notice to the Commission and the public, and thereafter to apply to the transportation of house heating furnaces, in carloads, from Beverly Hills to Oakland, a rate not to exceed the rate contemporaneously in effect from Sawtelle to Oakland.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and the same is hereby dismissed.

Dated at San Francisco, California, this 20th day of February, 1929.

Thos. J. Lewis

Chas. J. ...

Edward ...

Leon ...

W. A. ...
Commissioners.