

Decision No. 20836

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GOLDEN STATE MILK PRODUCTS COMPANY,  
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,  
a corporation,

Defendant.

ORIGINAL

Case No. 2543.

Frederick Hyde and L. H. Wolters, for complainant.

J. E. Lyons, C. W. Bell and H. H. McElroy, for  
defendant.

BY THE COMMISSION:

O P I N I O N

The complainant in this proceeding is a California corporation and primarily engaged in the manufacture of dairy products, distributed within the State of California and throughout the United States. It maintains manufacturing plants at several places in the San Joaquin Valley and one at El Centro in the Imperial Valley. At these plants there is a large production of powdered milk, which is forwarded in the wooden barrels secured in carload lots from both Los Angeles and San Francisco.

By complaint filed May 22, 1928, it is alleged that the carload commodity rate on new empty barrels of  $51\frac{1}{2}$  cents, minimum 16,800 pounds per 40 foot car, from Los Angeles to El Centro, in effect December 16, 1925, to November 22, 1927 inclusive, and  $51\frac{1}{2}$  cents, minimum 15,680 pounds per 40 foot car, subsequent to November 23, 1927, and the rate of \$1.31, minimum 11,200 pounds per 40 foot car, from San Francisco to El Centro, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act. There is the further allega-

tion that the rate of 51½ cents from Los Angeles to El Centro was and is discriminatory and prejudicial, in violation of Section 19 of the Public Utilities Act when compared with rates for like distance hauls from Los Angeles and San Francisco to points in the San Joaquin Valley.

Reparation and rates for the future are asked. The rates are stated in cents per 100 pounds, and except as otherwise noted the minimum weights are for cars 36 feet 6 inches in length, subject to the provisions of Rule 34 of Western Classification No. 60, C.R.C. No. 412, which provides for graduated minimum weights when cars over 36 feet 6 inches are used.

An informal complaint was filed with this Commission December 15, 1927, our I.C. No. 38164, and these shipments were registered for the purpose of tolling the Statute of Limitations.

A public hearing was held at San Francisco November 23, 1928, before Examiner Geary, and the case having been duly submitted and the briefs filed is now ready for our opinion and order.

Empty slack barrels, the commodity actually transported, are rated in Western Classification No. 60, C.R.C. 412, as third class, minimum 10,000 pounds. The history of the classification of barrels is of record from January 1, 1896, to the present time, and it will be unnecessary to review here all of the changes. Barrels were rated third class in Consolidated Classification No. 1, adopted December 30, 1919, minimum 10,000 pounds, subject to the graduated weight rule, and this rating is in effect at the present time. For many years prior to the publication of Classification No. 1, barrels within the State of California were classified "D" by authority of Pacific Freight Tariff Bureau Exception Sheet. The exception sheet item was cancelled April 10, 1915, when carriers published specific commodity rates, the equivalent of Class "D", from San Francisco and other points.

What complainant is actually requesting in this proceeding is an order establishing from Los Angeles to El Centro a rate of 31 cents, minimum 14,000 pounds, and from San Francisco to El Centro a rate of 61 cents, minimum 14,000 pounds. As a justification for the 31-cent rate from Los Angeles to El Centro complainant, by the testimony of its witnesses and its exhibits, shows that this is the rate from both San Francisco and Los Angeles to approximately equidistant points in the San Joaquin Valley. The tabulation of rates, per 100 pounds, set forth below are illustrative of this adjustment.

T O	: From San Francisco		: From Los Angeles	
	: Distance	: Rate	: Distance	: Rate
	: miles	: cents	: miles	: cents
Armona	217.7	27½	258.9	31
Hanford	221.1	27½	255.5	31
Visalia	235.3	29½	250.2	31
Tulare	238.7	30½	231.8	31
Tipton	249.1	35	221.4	31
Pixley	255.5	35	209.4	31
Exeter	245.3	29½	240.5	31
Lindsay	252.2	31½	233.6	31
Porterville	262.7	32	223.1	31

It will be noted that the rate of 31 cents from Los Angeles covers a blanketed territory extending from Pixley, 209.4 miles, to Armona, 258.9 miles, or a spread of approximately 49 miles. From San Francisco the rate is graded: at Armona, 217.7 miles, it is 27½ cents, while at Porterville, 262.7 miles, it is 32 cents. These rates are to be contrasted with the rate of 51½ cents from Los Angeles to El Centro, for 217.8 miles.

Defendant's witness testified that the rates to the San Joaquin Valley points were first established from San Francisco when the Class "D" ratings of the Pacific Freight Tariff Bureau Exception Sheet governed, and that these rates were influenced and depressed by reason of the water competition from San Francisco

to Stockton and in some cases at points south thereof, where at certain times of the year the water conditions permitted vessels to operate. Following the establishment of barrel factories at Los Angeles rates were made from Los Angeles to San Joaquin Valley points on practically the same basis as the rates from San Francisco to these consuming points in order to permit Los Angeles manufacturers to do business on a freight rate equality. Barrels moving from the Los Angeles territory to El Centro were originally manufactured at Tropic, a point located a few miles north of Los Angeles, and the rate was a combination of the Class "D" rates on Los Angeles. The Los Angeles rate today of  $51\frac{1}{2}$  cents is this "D" combination, published as a specific commodity rate, with the war-time increases and reductions. If the freight rate were the complete controlling factor, it is very easy to understand why a manufacturer using these barrels would find it to his advantage to locate where the rate was 31 cents instead of  $51\frac{1}{2}$  cents. It is clearly apparent that the rates under similar circumstances and conditions from the several barrel manufacturing points to the factory where the milk is produced should be related; a proper relationship between competing manufacturers is more often of greater importance than the volume of the rate itself.

The rate from San Francisco to El Centro is the Classification 3d class of \$1.31, minimum weight 10,000 pounds, as per Southern Pacific Tariff 711-C, C.R.C. 2843, and the Western Classification. There is also in effect at the present time a third class rate of 60 cents from San Francisco to Los Angeles (non-intermediate in application), which when added to the commodity rate of  $51\frac{1}{2}$  cents from Los Angeles to El Centro, makes a rate of  $\$1.11\frac{1}{2}$ . Because of the difference in the minimum weights, 10,000 pounds from San Francisco to Los Angeles and 14,000 pounds Los Angeles to El Centro, the charges are in most instances lower at

the \$1.31 through class rate than in connection with the commodity rates and the varying minimum weights.

We find after careful consideration of all the facts of record that the assailed rate of \$1.31 from San Francisco to El Centro is unreasonable and excessive, in violation of Section 13 of the Public Utilities Act, to the extent that it exceeds a rate of 91 cents. We further find, giving consideration to the elements of distance, operating and market conditions, that the rate assailed of 51½ cents from Los Angeles to El Centro is unreasonable and excessive, in violation of Section 13 of the Public Utilities Act to the extent that it exceeds a rate of 40 cents; also that for the future the rate of 51½ cents will be discriminatory, in violation of Section 19 of the Public Utilities Act to the extent that it may exceed the contemporaneous rate from Los Angeles to equidistant points in the San Joaquin Valley.

We further find that complainant made shipments as described in the complaint and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable, and that it is entitled to reparation, with interest at 6% per annum, on all shipments coming within the purview of Section 71 of the Public Utilities Act.

While complainant also seeks reparation because of the discriminatory adjustment from Los Angeles to El Centro, the record is devoid of proof of damage suffered, if any, as required to be made on a finding of undue discrimination, and reparation is therefore denied. (Penn. R.R.Co. vs. International Coal Company, 230 U.S. 184. Los Angeles County vs. Pacific Electric et al., 27 C.R.C. 337.)

Complainant should submit statements to defendant for check. Should it not be possible to reach an agreement as to the amount of the reparation, the matter may be referred to this Commission for further attention and the entry of a supplemental order.

O R D E R

This case being at issue upon complaint and answer on file, 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 defendant, Southern Pacific Company, be and it is hereby notified and required to cease and desist within thirty (30) days from the effective date of this order and thereafter abstain from demanding, assessing or collecting for the transportation of slack barrels, carloads, from San Francisco to El Centro a rate in excess of 91 cents per 100 pounds, and from Los Angeles to El Centro a rate in excess of the rate contemporaneously in effect from Los Angeles to equidistant points in the San Joaquin Valley.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is 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 slack barrels, in carloads, from San Francisco to El Centro a rate of 91 cents, and from Los Angeles to El Centro a rate not to exceed the rate contemporaneously in effect from Los Angeles to equidistant points in the San Joaquin Valley.

IT IS HEREBY FURTHER ORDERED that defendant, Southern Pacific Company, be and it is hereby authorized and directed to refund, with interest at six (6) per cent. per annum, to complainant, Golden State Milk Products Company, all charges that it may have collected in excess of a rate of 91 cents from San

Francisco to El Centro, and a rate of 40 cents from Los Angeles to El Centro on the shipments involved in this proceeding and coming within the purview of Section 71 of the Public Utilities Act.

Dated at San Francisco, California, this 4th day of March, 1929.

Paul B. Dutton

C. Scammy

Emmanuel L. ...

Leon Whitell

M. J. ...  
Commissioners.