

Decision No. 20956 .

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ARROWHEAD SPRINGS CORPORATION,  
ARROWHEAD WATER DISTRIBUTING COMPANY, )

Complainants, )

vs. )

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,  
PACIFIC ELECTRIC RAILWAY COMPANY,  
SOUTHERN PACIFIC COMPANY, )

Defendants. )

Case No. 2539.

H. M. Avey, E. B. Byers and L. E. Stewart, for  
complainants.  
C. W. Cornell, for Pacific Electric Railway  
Company.  
C. N. Bell and A. B. Mason, for Southern  
Pacific Company.  
W. E. Richard, for The Atchison, Topeka and  
Santa Fe Railway Company.

BY THE COMMISSION:

O P I N I O N

The complainants are corporations engaged in the handling, selling and distributing of water. By complaint filed May 11, 1928, and as amended July 24, 1928, it is alleged that the charges assessed and collected on 2698 cars of water moving in tank cars from Arrowhead Springs to Los Angeles, Venice, Imperial, San Diego, Ventura and Fresno subsequent to May 10, 1926, were, are, and for the future will be, unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and unduly preferential and prejudicial, in violation of Section 19

of the Act. It is further alleged that the rates now maintained by defendants for the transportation of water, in tank cars, from Arrowhead Springs to Long Beach, Bakersfield, Santa Barbara, San Jose, Oakland, San Francisco, Stockton and Sacramento will be for the future unjust and unreasonable.

Reparation on the shipments moving to Los Angeles, Venice, Imperial, San Diego, Ventura and Fresno, and rates for the future from Arrowhead Springs to all points of destination heretofore named, are asked. Rates, while carried in the tariffs in amounts per 1000 gallons, will for convenience be stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles November 16, 1928, and the case having been submitted is now ready for an opinion and order.

Arrowhead Springs is located on the Pacific Electric Railway 7.2 miles north of San Bernardino. Complainants' shipments consisted of 2328 carloads to Los Angeles, 194 to Venice, 78 to San Diego, 76 to Ventura, 13 to Imperial and 9 to Fresno. The rates assessed and collected, except to San Diego and Venice, were based upon a combination of the mileage scales as published for a maximum distance of 75 miles in Pacific Electric Railway Tariff 120-C, C.R.C. 289, and for a maximum distance of 120 miles in Southern Pacific Tariff 730-C, C.R.C. 2904. Under these scales the rate assessed to Los Angeles was 8.44 cents for 66 miles, to Imperial 18.57 cents for 167 miles, to Ventura 16.03 cents for 141 miles, and to Fresno 32.91 cents for 342 miles. The applicable rate to San Diego prior to August 5, 1927, was 29.94 cents, made combination over Los Angeles, using the Pacific Electric mileage scale to Los Angeles plus the applicable 5th class rate beyond. Subsequent to August 5, 1927, the rate to San Diego was a specific commodity rate of 20 cents. The rate to Venice at

all times was a specific commodity rate of 10 cents. The present published rate to Long Beach is 12.66 cents for 86 miles, to Bakersfield 20.40 cents for 229 miles, to Santa Barbara 17.72 cents for 169 miles, and to San Jose, Oakland, San Francisco, Stockton and Sacramento 46.94 cents for 487 miles, 528 miles, 532 miles, 464 miles and 513 miles respectively.

The water here involved has no medicinal or chemical properties and is used mainly for drinking purposes, coming from cold springs, flowing by gravity to reservoirs located alongside the spur tracks, and being loaded by gravity into tank cars. The commodity is then transported to the consuming centers in both privately owned and leased tank cars. At destinations it is pumped into storage tanks and subsequently bottled in 5-gallon containers, the only form in which it is sold to the trade, which is largely confined to homes, apartment houses, offices and industrial concerns, at prices ranging from 22½ cents to 50 cents per 5-gallon bottle.

The major consumption is in Los Angeles, but complainants maintain there is a potential market at practically all points within the state. It is contended the present mileage scales of rates heretofore referred to are designed only for short hauls, as evidenced by the fact that the Pacific Electric scale governs for distances to and including 75 miles and the Southern Pacific scale to and including 120 miles. Where the shipments move greater distances than 75 and 120 miles respectively it is necessary to use the scales two or three times in order to arrive at the through rate, or to combine the mileage rates with the applicable 5th class rates. This method, complainants contend, is contrary to the fundamental principles of rate making, inasmuch as the mileage scales include the proper terminal charges, and therefore when used more than once there is a multiplication of the terminal

charges. They take the position that as the distance increases the ton per mile revenue should decrease.

Complainants compare the rates assailed with rates on other commodities moving in tank cars between various points in California and having a higher value than plain water, such as calcium chloride, bittern water, sulphuric acid, lime and sulphur solutions, and petroleum and petroleum products. In practically all instances the commodities used for comparative purposes produce a lower per car mile revenue than do the rates on water here involved. Complainants also point to the fact that defendants have in numerous instances established specific point to point rates on water less than those that would be applicable under the mileage scale of rates assessed, and that the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway now maintain mileage rates on plain water in Arizona and other states on a materially lower basis than in California.

Defendants show by the testimony of witnesses that their rates in Arizona and the adjacent states were established for the purpose of supplying desert localities with ordinary tank car water where such communities were unable to obtain their supply in any other manner. They contend that the water here at issue is a different and relatively higher valued commodity, as evidenced by the fact that it is rated 5th class in the Consolidated Freight Classification, and therefore the rates should be on a relative level with other 5th class commodities such as sugar, canned goods, roofing paper, gasoline, and iron and steel articles. In support of this contention reference is made to the decision of the Interstate Commerce Commission in Consolidated Southwestern Cases, 123 I.C.C. 203, wherein rates were established on water on the same commodity basis as on other articles taking 5th class. The rates established by that decision were applicable only to

water in packages, including carbonated water and other beverages, and therefore are not properly comparable with rates on ordinary water transported in tank cars such as the commodity involved in this proceeding, where the value is established after original transportation has been completed and the water processed, bottled, labeled and delivered.

Defendants also point to the fact that the transportation of complainants' shipments involves an empty tank car haul of approximately 100% and originates at a point where the operating conditions are extremely difficult. Arrowhead Springs, as previously stated, is located on a branch of the Pacific Electric Railway 7.2 miles north of San Bernardino, the line extending through a territory of light traffic density, for other than a slight passenger movement the revenue is confined entirely to the shipments of complainants, amounting at the present time to a monthly movement of approximately 100 cars of water outbound and one car of fuel oil inbound. The ruling grade from San Bernardino to Arrowhead Springs is 5.42%, making it impossible to handle more than 3 empty tank cars at one time; and in addition, the sharp turns require the cars to be equipped with a special coupling device. The record also shows it is necessary to maintain an additional substation at Arrowhead to supply sufficient electrical current to handle complainants' shipments. The adverse operating conditions encountered by the Pacific Electric Railway in handling complainants' shipments warrant a somewhat higher basis of rates than in effect via the trunk line carriers, Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company.

After careful consideration of all the facts of record we are of the opinion and so find that the assailed rates from Arrowhead Springs to Los Angeles and Ventura were not and are not

unjust and unreasonable, but that the rates from Arrowhead Springs to Long Beach, Ventura, Imperial, San Diego, Santa Barbara, Bakersfield, Fresno, San Jose, Oakland, San Francisco, Stockton and Sacramento were, are, and for the future will be unjust and unreasonable to the extent they exceeded, exceed or may exceed the following:

<u>FROM</u>			
<u>ARROWHEAD SPRINGS</u>			
<u>TO</u>		<u>TO</u>	
Long Beach	10 cents.	Fresno	25½ cents.
Ventura	15 "	San Francisco	)
Imperial	16½ "	Oakland	
San Diego	15 "	San Jose	) 32½ "
Santa Barbara	16½ "	Stockton	
Bakersfield	19 "	Sacramento	)

We further find that complainants made the shipments as described, paid and bore the charges thereon and have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable and are entitled to reparation, with interest at the rate of six (6) per cent. per annum. Complainants will submit statement of shipments 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 this Commission for further consideration and the entry of a supplemental order should such be necessary. Shipments made subsequent to the hearing may be included if accompanied by appropriate proof in the form of an affidavit that the freight charges thereon were paid and borne by complainants.

The record does not support complainants' allegation that the assailed rates were unduly preferential and prejudicial.

### O R D E R

This case being at issue upon complaint, full investigation of the matters and things involved having been had, and

basing this order on the findings of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that The Atchison, Topeka and Santa Fe Railway Company, Pacific Electric Railway Company and Southern Pacific Company be and they are hereby notified and required to cease and desist on or before forty-five (45) days from the date of this order and thereafter to abstain from publishing, demanding or collecting rates for the transportation of water from Arrowhead Springs to points involved in this proceeding, not in harmony with the rates prescribed in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that said defendants The Atchison, Topeka and Santa Fe Railway Company, Pacific Electric Railway Company and Southern Pacific Company, according as they participate in the transportation, be and they are hereby required to establish on or before forty-five (45) days from the date of this order upon notice to this Commission and the general public by not less than five (5) days' filing and posting in the manner prescribed by law, and thereafter to maintain and apply for the transportation of water from Arrowhead Springs to the points involved in this proceeding, rates which will not exceed those set forth in the opinion immediately preceding this order.

IT IS HEREBY FURTHER ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company, Pacific Electric Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainants, Arrowhead Springs Corporation and Arrowhead Water Distributing Company, with interest at the rate of six (6) per cent. per annum, all charges they may have collected in excess of the rates herein found reasonable

for the transportation of water from Arrowhead Springs.

Dated at San Francisco, California, this 12<sup>th</sup> day  
of April, 1929.

Thos O Loutin

Alberry

Emmett

Leon Whittell

W. J. Lane  
Commissioners.