Decision No. 20035.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SNYDER-ASHE COMPANY INCORPORATED,
SEABOARD PETROLEUM CORPORATION,
MONOLITH PORTLAND CEMENT COMPANY,

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
LOS ANGELES AND SALT LAKE RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY,

Defendants.

ORIGINAL

Case No. 2618.

H. M. Avey and A. V. Jones, for the complainants.

C. N. Bell and H. H. McElroy, for the defendants.

J. P. Quigley, for the Los Angeles & Salt Lake Railroad Company, defendant.

BY THE COMMISSION:

O P I N I O N

The Snyder-Ashe Company Incorporated is engaged in buying, selling, handling and shipping building materials of various kinds; the Seaboard Petroleum Corporation is engaged in buying, selling, marketing and shipping petroleum and its products; and the Monolith Portland Cement Company, a corporation, is engaged in producing and marketing cement. By complaint filed October 11, 1928, and as amended, it is alleged that the rates assessed and collected by defendants on cement, in carloads, moving from Monolith to Los Angeles and on fuel oil, in carloads, moving from

Los Angeles to Loma Linda, Lone Pine, Olancha and Aberdeen during the period subsequent to June 16, 1925, were, are now, and for the future will be excessive, unjust and unreasonable, in violation of Section 13 of the Public Utilities Act; contrary to the applicable tariffs, in violation of Section 17 of the Act; unduly prejudicial and discriminatory, in violation of Section 19 of the Act; and in violation of the long and short haul provisions of Section 24(a) of the Act.

Reparation and rates for the future are asked. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Geary at Los Angeles February 28, 1929, and the case having been submitted is now ready for an opinion and order.

The shipments of cement, consisting of 209 cars, originated at the plant of the Monolith Portland Cement Company at Monolith, were hauled from there to Los Angeles by the Southern Pacific Company, where they were turned over to the Los Angeles & Salt Lake Railroad and switched by that line to the industry track of the Snyder-Ashe Company, Inc., located within the Los Angeles switching limits. The shipments of fuel oil made by the Seaboard Petroleum Corporation from Los Angeles consisted of 2 cars to Loma Linda, 2 cars to Olancha, 3 cars to Lone Pine and 3 cars to Aberdeen. They originated on an industry track within the switching limits of The Atchison, Topeka and Santa Fe Railway at Los Angeles, were switched to the interchange track of the Southern Pacific, and line-hauled by the latter carrier to the destination points.

The rate assessed and collected on the cement shipments from Monolith was 8½ cents for the line haul service plus a switching charge of $2.70 per car accruing to the Los Angeles &

Salt Lake Railroad Company. The charges assessed on the shipments of fuel oil from Los Angeles were based on a $2.70 per car rate for the switching service of The Atchison, Topeka and Santa Fe Railway plus the Southern Pacific line haul rates of 8 cents to Loma Linda, 27½ cents to Olancha, 29 cents to Lone Pine, and 35½ cents to Aberdeen. At the time these shipments moved the Southern Pacific and the Los Angeles & Salt Lake Railroad Company maintained from Monolith to Dotson Spur, a point 10 miles north of Los Angeles, a joint rate on cement of 8½ cents, the same as the local rate of the Southern Pacific to Los Angeles, and this rate included a switching service to an industry at Dotson Spur. Similarly The Atchison, Topeka and Santa Fe Railway and Southern Pacific Company had in effect at the time the fuel oil shipments moved, joint rates on this commodity from El Segundo, 17 miles west of Los Angeles, to Loma Linda, Olancha, Lone Pine and Aberdeen of the same volume as the local rates of the Southern Pacific from Los Angeles to the same destination points, and these rates also included a switching service from industries at El Segundo. The joint rates on cement were published in Pacific Freight Tariff Bureau Tariff No. 88-H, C.R.C. 339, and the fuel oil rates in Pacific Freight Tariff Bureau Tariff No. 167-C, C.R.C. 346. The rates in Tariff 88-H were governed by an intermediate application of rates reading:

> "Except as otherwise specifically provided in connection with individual rates, rates named in this tariff will, in the absence of specific commodity rates, apply to directly intermediate points on the same line (see Note)."
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> "Note. - The term 'line' as used in this application means the individual company on whose line the point having a specific rate is located, and such rate must not be used to determine a rate to a point on any other line."

Likewise the rates in Tariff 167-C were governed by a similar application of rates with the exception that it provided

for origin points instead of destination points as in Tariff No.88-H.

Complainants contend that under the intermediate application of rates just referred to, the joint rates established the maximum charge that could lawfully be made at the interchange point, Los Angeles, and therefore the $2.70 per car switching charge was inapplicable under the tariffs. They further maintain that inasmuch as no switching charge was made in connection with the joint rates to Dotson Spur and from El Segundo, the collection of a switching charge at Los Angeles in addition to the line haul rates resulted in charges which in the aggregate exceeded those from or to more distant points and were therefore in violation of the long and short haul provisions of Section 24(a) of the Act. The volume of the line haul rates, per se, is not in issue.

Defendants hold that the term "line" carried in the "note" of the intermediate application rule excludes the joint rates from applying as maximum at the interchange point and that the terminal tariffs of the switching lines authorize the $2.70 per car switching charge in addition to the line haul rates. They further contend that an industry track being removed from the main line of the carriers, the shorter distance is not included within the longer on a movement from or to points beyond, as contemplated by Section 24(a) of the Act and therefore there is no actual violation of the long and short haul provisions.

These contentions of defendant have twice been passed upon by this Commission. In Case 2176, Decision No. 17175 of July 31, 1926, 28 C.R.C. 440, we held that under the intermediate application rule contained in the tariffs issued by the Pacific Freight Tariff Bureau, including Tariffs 88-H and 167-C, that the joint rates contained therein established as maximum the charges that could be made on traffic originating at, or destined to, the

interchange points on the direct route with connecting carriers. And we further held that the assessing of a switching charge at the intermediate interchange point which resulted in higher total charges than applied from and to more distant points under the same line haul rate was in violation of the long and short haul clause of Section 24(a).

Again in Case 2588, Decision No. 20781 of February 13, 1929, we condemned this practice of carriers as in violation of Sections 17(2) and 24(a) of the Act and contrary to the provisions of Article XII Section 21 of the State Constitution. This decision was affirmed by our Decision No. 20947, April 10, 1929, denying a petition for rehearing in Case No. 2588.

After consideration of all the facts of record we are of the opinion and so find that the switching charge of $2.70 per car assessed and collected on complainants' shipments resulted in charges in the aggregate which were unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, contrary to the tariffs in violation of Section 17(2) of the Act, unduly discriminatory in violation of Section 19 of the Act, and resulted in charges which exceeded those applicable from or to more distant points in violation of Section 24(a) of the Public Utilities Act. We are of the further opinion and so find that complainants made the shipments as described; that complainant Snyder-Ashe Company Incorporated paid, and complainant Monolith Portland Cement Company ultimately bore, the charges on the shipments of cement from Monolith to Los Angeles; that complainant Seaboard Petroleum Corporation paid and bore the charges on the shipments of fuel oil from El Segundo to Loma Linda, Olancha, Lone Pine and Aberdeen, and that complainants Monolith Portland Cement Company and Seaboard Petroleum Corporation have been damaged in the amount of the difference between the charges paid and those herein found reasonable,

applicable under the tariffs and otherwise lawful, and are entitled to reparation with interest on all shipments coming within the purview of Section 7 of the Public Utilities Act.

Complainants should submit a statement of the shipments to defendants. Should it not be possible to reach an agreement as to the amount of reparation due, the matter may be referred to the Commission for further consideration should such be necessary.

O R D E R

This case being at issue upon complaint and answers on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact contained in the preceding opinion,

IT IS HEREBY ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, and Southern Pacific Company, according as they participate in the transportation, be and they are hereby notified and required to cease and desist and thereafter to abstain from assessing, collecting, maintaining or applying charges for the transportation of complainants' shipments of cement from Monolith to Los Angeles for delivery on the industry track of the Los Angeles & Salt Lake Railroad within its switching limits, which in the aggregate exceed those accruing at a rate of 8½ cents per 100 pounds, and for the transportation of complainants' shipments of fuel oil originating on an industry track of The Atchison, Topeka and Santa Fe Railway at Los Angeles and destined to Loma Linda, Olancha, Lone Pine and Aberdeen, which in the aggregate exceed those accruing at rates of 8 cents, 27½ cents, 29 cents and 35½ cents per 100 pounds respectively.

IT IS HEREBY FURTHER ORDERED that defendants, according

as they participated in the transportation, be and they are hereby authorized and directed to refund, with interest at six (6) per cent. per annum, to complainants, Monolith Portland Cement Company and Seaboard Petroleum Corporation, according as their interests may appear, all charges they may have collected in excess of 8½ cents per 100 pounds for the transportation of cement from Monolith to an industry track located on the Los Angeles & Salt Lake Railroad Company at Los Angeles; and in excess of 8 cents per 100 pounds, 27½ cents per 100 pounds, 29 cents per 100 pounds and 35½ cents per 100 pounds to Loma Linda, Olancha, Lone Pine and Aberdeen, respectively, for the transportation of shipments of fuel oil originating on an industry track of The Atchison, Topeka and Santa Fe Railway at Los Angeles.

Dated at San Francisco, California, this 18th day of April, 1929.

Commissioners.