

Decision No. 21782.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

GEORGE R. CURTIS PAVING COMPANY,
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,

Defendant.

ORIGINAL

Case No. 2693.

B. H. Carmichael and F. W. Turcotte, for the complainant.
E. H. McElroy and C. N. Bell, for the defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is engaged in a general paving and contracting business and the manufacture of paving material, in the pursuit of which it made shipments of common earth, clay and shale from Tom, on the Mina Branch (50 miles north of Owenyo) to Sentous, on the Santa Monica Branch of the Southern Pacific Company, a total distance of 311 miles.

By complaint filed May 15, 1929, it is alleged that the 19-cent rate assessed on such shipments, moving within the statutory period prior to July 26, 1928, and embracing the factors of 13 cents, Tom to Los Angeles, plus 6 cents, Los Angeles to Sentous, as well as the 15-cent through rate thereafter established by defendant, were, are and each will be unreasonable in

violation of Section 13 of the Public Utilities Act.

We are asked to prescribe just and reasonable rates for the future and to award reparation.

A public hearing was held before Examiner Geary at Los Angeles August 22, 1929, and the proceeding having been submitted is now ready for an opinion and order.

Rates will be stated in cents per 100 pounds.

Applicant seeks a through rate of $13\frac{1}{2}$ cents extended on a mileage progression to Sentous.

The record shows complainant, in anticipation of these shipments, to have requested of defendant as of May 18, 1928, the establishment of a through rate of 15 cents, which defendant agreed to, but the tariff publication did not become effective until July 26, 1928, following movement. Only 15 cars are involved and no shipments have been made since June 1928.

The commodity consists of a selected clay, shipped in covered equipment, the average car loading of which is in excess of 41 tons.

The transportation, while admittedly local in character, undergoes transfer from narrow-gauge to standard-gauge cars (at the ratio of two for one) at Owenyo and also receives Pacific Electric handling, from Los Angeles to Sentous, owing to city regulations prohibiting steam operation by the Southern Pacific over the Santa Monica Air Line.

The record shows that the Pacific Electric Railway maintains a local commodity rate of $2\frac{1}{2}$ cents, minimum 20,000 pounds, on clay and shale over this same line from Los Angeles to Santa Monica and vice versa, Sentous being intermediate. It also maintains through rates generally lower than the combination over Los Angeles and the same general situation prevails as to the Southern Pacific Company. Comparative statements of the local rates of the Pacific Electric and defendant, Southern

Pacific, covering similar short haul movements of common earth, crushed rock, gravel, sand, clay and shale, asphalt and powdered lime rock, from and to Los Angeles, some of which are embracive of the Los Angeles to Sentous movement, reveal the 6-cent factor of the 19-cent combination rate Tom to Sentous to be disproportionately high.

Gauged by per-car, per-car-mile and per-ton-mile revenues the 13-cent factor, Tom to Los Angeles, compares favorably with defendant's revenues on the same and kindred commodities from equidistant points in the same general territory to Los Angeles, including common earth from Chalfant and Shealy moving under similar transportation conditions as shipments from Tom to Sentous.

While we have repeatedly held that a voluntary reduction of a freight rate does not, in and of itself, establish the unreasonableness of the rate as it stood prior to the reduction, we find after a careful consideration of all the facts of record with respect to the rate here involved, and especially in view of the agreement to publish the 15-cent rate prior to the date of these shipments, that the 19-cent rate assessed and collected was unjust and unreasonable to the extent that it exceeded the subsequently established through rate of 15 cents per 100 pounds, minimum carload weight of 80,000 pounds, Tom to Sentous. The 15-cent rate now in effect has not been shown to be either excessive, unjust or unreasonable.

Complainant made the shipments as described, paid and bore the charges thereon and is entitled to reparation with interest at six (6) per cent. per annum.

Complainant will submit statements of shipments to defendant for check, and should it not be possible to reach an agreement as to the amount of reparation the matter may be re-

ferred to the Commission for further attention and the entry of a supplemental order should such be necessary.

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 said opinion is hereby referred to and made a part hereof,

IT IS HEREBY 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, George R. Curtis Paving Company, all charges it may have collected in the amount of the difference between the freight charges paid and those that would have accrued at the rate herein found reasonable on the shipments of common earth, clay and shale involved in this proceeding and moved from Tom to Sentous.

Dated at San Francisco, California, this 13th day of November, 1929.

Thos D. Lott

C. L. Lacey

Leon Whiteley

Commissioners.