

DECISION No. 22181 CASE No. ²⁴¹³2670 APP. No. 15840

Decision No. 22181.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

BLUE DIAMOND COMPANY, a corporation,
Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,
Defendant.

Case No. 2413.

In the Matter of the Investigation on
the Commission's own motion into the
lawfulness of the rates on plaster from
Plaster City, Midland, Los Angeles and
Long Beach to various points in Cali-
fornia.

Case No. 2670.

In the Matter of the Application of LOS
ANGELES JUNCTION RAILWAY COMPANY, PAC-
IFIC ELECTRIC RAILWAY COMPANY, SAN DIE-
GO & ARIZONA RAILWAY COMPANY and SOUTHE-
ERN PACIFIC COMPANY, for authority to
establish non-intermediate rate on plas-
ter and products, straight or mixed ear-
loads, from Plaster City, California, to
Los Angeles and other destinations in
Southern California.

Application No. 15840.

- O. T. Halpling, P. H. Campbell and A. R. Sutton,
for the Blue Diamond Company, complainant.
- James E. Lyons and A. Burton Mason, for Southern
Pacific Company, defendant.
- A. S. Halsted and E. E. Bennett, for Union Pacific
Railroad Company.
- Frank Karr, C. W. Cornell and W. G. Knoche, for
Pacific Electric Railway Company.
- E. W. Camp, Berne Levy and Platt Kent, for The
Atchison, Topeka and Santa Fe Railway Company.
- James E. Lyons, for Southern Pacific Company and
for the applicants in Application 15840.
- L. N. Bradshaw, for The Western Pacific Railroad
Company, Sacramento Northern Railway and Tide-
water Southern Railway in Case 2670.
- R. G. Dilworth and F. P. Dorsey, for San Diego &
Arizona Railway Company.

Sanborn, Roehl & Smith, James A. Keller and
N. E. Keller, for Pacific Portland Cement
Company, intervener.
E. A. McCaffrey and Martin Uldall, for the
Standard Gypsum Company, intervener.
W. D. Lindsay, E. H. Carmichael and F. W. Tur-
cotte, for the United States Gypsum Company.

BY THE COMMISSION:

O P I N I O N

These three proceedings, involving the rates on plas-
ter and plaster products, hereafter collectively referred to as
plaster, from the Southern California mills to various points in
California, were by stipulation heard upon a common record and
will be disposed of in one decision.

The complaint in Case 2413 as amended alleges that the
rates maintained by defendant for the transportation of plaster
from Los Angeles to points in California extending from the Im-
perial Valley to the California-Oregon state line, were, are,
and for the future will be unjust and unreasonable in violation
of Section 13 of the Public Utilities Act, and prejudicial to
complainant and preferential of complainant's competitor at
Plaster City, in violation of Section 19 of the Act. Reparation
on past shipments is sought.

The Commission on its own motion instituted Case 2670
for the purpose of determining whether the rates on plaster from
Midland, Plaster City, Los Angeles and Long Beach to San Francisco,
Stockton, Sacramento, Marysville, San Jose, Merced, Bakersfield,
Santa Barbara, Los Angeles, San Diego, San Bernardino, Earstow,
El Centro and intermediate points, including the branch line

points, are unjust, unreasonable, unduly discriminatory, prejudicial, preferential or otherwise unlawful.

Application 15840, filed jointly by the Southern Pacific Company, San Diego & Arizona Railway, Pacific Electric Railway and Los Angeles Junction Railway, requests authority under the provisions of Section 24 of the Public Utilities Act to establish a non-intermediate rate of $9\frac{1}{2}$ cents on plaster from Plaster City, on the San Diego & Arizona Railway, to Los Angeles, Tweedy, Lynwood, Compton, Elftman, Dolores, Watson, Thenard and Caspur on the Southern Pacific Company, Los Angeles on the Los Angeles Junction Railway, and Wingfoot on the Pacific Electric Railway.

A public hearing was held in Case 2413 on May 3, 1928, before Examiner Geary, and a further hearing in this case and in Case 2670 and Application 15840 on August 8 and 9, 1929, at which time the three proceedings were submitted upon briefs.

There are four plaster mills situated in the southern part of the state, at Los Angeles on the Southern Pacific, Long Beach on the Pacific Electric Railway, Plaster City on the San Diego & Arizona Railway, and Midland on the Atchison, Topeka and Santa Fe Railway. Plaster City is 18 miles west of El Centro and 236 miles from Los Angeles; Midland is 305 miles east of Los Angeles. These plants have all been established since 1922, primarily to supply the Southern California markets. There are also mills at Arden, Nevada, on the Los Angeles & Salt Lake Railroad, Gerlach, Nevada, on the Western Pacific Railroad, and Ludwig, Nevada, on the Nevada Copper Belt Railroad.

The crude gypsum, from which plaster is manufactured, is obtained by the Los Angeles and Long Beach mills from Arden, Nevada, and San Marcos Island, Mexico, respectively. The Plaster City and Midland plants are situated near the source of the

crude supply, although the one at Plaster City maintains an industrial railroad approximately 26 miles in length to transport the gypsum from the deposits to the mill.

The industries located at these four points are not concerned so much with the volume of the freight rate to the consuming points as they are with the relationship of the rates between the mills. The ultimate selling price of a low grade commodity such as plaster is largely determined by transportation costs in reaching the market and thus the mill which has the most favorable freight rates is usually in a position to control the markets. The trade competition in the Los Angeles area is particularly keen and to obtain this business there has been a tendency on the part of some of the mills during the past few years to cut the wholesale and retail prices of plaster.

Until the Southern California mills were constructed, plaster was supplied the California markets from points in Nevada and Utah, and to a large extent the rate adjustment from the Nevada mills has directly influenced the rates now in effect from the Southern California mills to practically all destinations in the state. The first rates from Nevada were published in 1912 and applied from Moundhouse on the Virginia & Truckee Railroad. That line in connection with the Southern Pacific Company established a rate of \$3.00 per ton to San Francisco. This rate was originally extended south through the San Joaquin Valley to Fresno and later to Bakersfield, to meet the competition of a \$3.00 per ton rate from Amboy, California, on the Atchison, Topeka and Santa Fe Railway to San Francisco and the intermediate points. The Amboy mill is not now in operation. South of Bakersfield the rate was graded out to \$4.00 per ton at Los Angeles, the Los Angeles rate being depressed, it is claimed, to enable Moundhouse to compete with shippers at Arden.

Nevada, who were able to reach the Los Angeles market at a rate of \$2.00 per ton. The Moundhouse plant was subsequently moved to Gerlach, Nevada, when the gypsum supply at the former point became exhausted, and the carriers accorded to Gerlach the same basis of rates as formerly in effect from Moundhouse. About the time the Gerlach plant was established a new mill was opened at Ludwig, Nevada, and the carriers in order to allow this shipper to reach the primary markets in California established the same rates as in effect from Gerlach. The rates originally established from Gerlach and Ludwig have remained unchanged except for the general war-time increases and reductions.

In 1924 the Pacific Portland Cement Company established its mill at Plaster City. At that time the Los Angeles & Salt Lake Railroad maintained a rate of 13½ cents from Arden to Los Angeles, for a distance of 321 miles, yielding a ton mile revenue of 8.41 mills. Using the Arden to Los Angeles rate as a guide, the San Diego & Arizona Railway and the Southern Pacific Company established from Plaster City to Los Angeles a rate of 11 cents, which produces a per ton mile revenue of 9.32 mills. They also established to Mojave a rate of 19 cents, the same as that in effect from Amboy, and to Fresno and San Francisco they published rates of 20 and 25 cents respectively, which were the rates concurrently in effect to those points from Arden, Nevada. These rates are now in effect.

When the Midland plant was constructed the Atchison, Topeka and Santa Fe Railway placed this point on a rate equality with Plaster City to the Los Angeles area, the San Joaquin Valley and the San Francisco Bay district. Slightly lower rates than those in effect from Plaster City were published to Mojave and a few other points.

The present rates from Los Angeles to San Francisco,

the San Joaquin Valley and Coast Division points were established to enable Los Angeles to meet the competition of plaster moving from Gerlach. To points east of Colton the rates were originally published, and are now maintained, without any apparent recognition of the competition of the local mills reaching this territory.

The Long Beach rates are the same as those from Los Angeles to the Imperial Valley and to the San Francisco Bay district and north thereof. To the territory contiguous to Los Angeles and to some points in the San Joaquin Valley and on the Coast Division of the Southern Pacific Company they are slightly higher than the Los Angeles rate.

It is apparent from this record that with the exception of the rates from Los Angeles and Long Beach to points east of Colton the present rates on plaster from the mills here at issue reflect little or no attempt on the part of the carriers to give a great deal of consideration to the length of the hauls. The major thought was the adjustment from other mills, resulting in a rate structure which on the whole is subnormal when compared with rates on plaster and cement established by the Interstate Commerce Commission and this Commission in Nephi Plaster & Mfg. Co. vs. D.& R.G.W.R.R., 87 I.C.C. 159; Western Cement Rates, 48 I.C.C. 201, 69 I.C.C. 644; Grand Rapids Plaster Co. vs. Director General, 62 I.C.C. 237; and Geo. A. Long et al. vs. Southern Pacific, 1 C.R.C. 114. The rates are also lower than rates established by the Interstate Commerce Commission on fertilizer from points in Nevada to various points in this territory in Calvada Fertilizer Company vs. Southern Pacific, 73 I.C.C. 496, 91 I.C.C. 228. Fertilizer is rated Class E in the Western Classification, while plaster takes Class C.

This record is not convincing that the rates under

review were in the past or are now unjust and unreasonable, in violation of Section 13 of the Public Utilities Act.

The only material evidence in this record relating to the issue of undue preference and prejudice under Section 19 of the Act is directed to the relative adjustment from Los Angeles on the one hand and from Plaster City on the other, the Los Angeles mill alleging that it is unduly prejudiced and Plaster City unduly preferred. The evidence shows however that in the territory north of Mojave and Santa Barbara the competition which Los Angeles meets comes from the Nevada mills and does not come from Plaster City, therefore as to this territory Los Angeles is not prejudiced by the rates from Plaster City. The Blue Diamond admits it is not prejudiced by the adjustment in Southern California, where, because of close proximity to points of consumption, it now has lower rates than Plaster City. This narrows the issue of undue preference and prejudice to a consideration of the rates in Southern California from Los Angeles and Plaster City to points east of Colton.

The rates from Los Angeles to points east of Colton grade out from 11 cents at Beaumont to 25 cents at Calexico for distances of 80 miles and 227 miles respectively. From Plaster City to this territory the rates are materially lower by reason of the San Diego & Arizona Railway and Southern Pacific Company publishing a rate of 11 cents to Los Angeles and holding this rate as maximum at the intermediate points. In doing this however the carriers have accorded to Plaster City a more favorable rate adjustment than from Los Angeles. For example, from Los Angeles to Garnett, 106 miles, they maintain a rate of 19½ cents, while from Plaster City to the same point, 130 miles, a rate of 11 cents is published. Similar inequalities of the same

nature exist some of which we commented upon In the Matter of the Suspension of Rates on Plaster, etc., 32 C.R.C. 445. There is no justification on this record for the Southern Pacific maintaining from Los Angeles to points east of Colton a different level of rates than now exist in the opposite direction from Plaster City.

Application No. 15840 of the Southern Pacific Company and its short line connections seeks authority to cancel the present rate of 11 cents on plaster from Plaster City to Los Angeles and the adjacent territory, and to publish in lieu thereof a rate of $9\frac{1}{2}$ cents non-intermediate in application and thus depart from the provisions of the State Constitution and Section 24 of the Public Utilities Act. It is claimed that this reduced rate is essential to bring about an increase in the tonnage of plaster manufactured by the Pacific Portland Cement Company at Plaster City and is to meet the competition of plaster manufactured at Long Beach by the Standard Gypsum Company from gypsum imported by vessels from San Marcos Island, Mexico, the plaster manufactured at Los Angeles by the Blue Diamond Company from gypsum secured at Arden, Nevada, and the plaster sent into the Los Angeles territory by the United States Gypsum Company from its plants at Midland, California, and Arden, Nevada.

The mileages and the present rail freight rates on plaster to Los Angeles from the competing plants are as follows:

Long Beach,	21.6 miles,	4 cents.
Plaster City,	236 miles,	11 cents.
Midland,	310 miles,	11 cents.
Arden, Nevada,	321 miles,	$13\frac{1}{2}$ cents.

The mill at Plaster City was constructed at a total cost of approximately \$1,500,000.00. Since 1925 the business done in the Los Angeles area has steadily decreased, until now the volume is but $62\frac{1}{2}\%$ of that in 1925. Although building permits in Los Angeles declined 20% from 1926 to 1928, the importa-

tion of gypsum from San Marcos Island increased from 42,191 tons in 1926 to 62,688 tons in 1928, an increase of over 48%. The record shows that until the year 1927 the Plaster City plant enjoyed the business of a wall-board company at Los Angeles, amounting to between 15,000 and 20,000 tons per year. This customer reorganized its plant facilities and arranged for a special grade of hot plaster by automobile trucks from the Long Beach plant, and this material, because of its peculiar characteristics, can no longer be furnished by the Plaster City manufacturer under any volume of freight rate.

The Los Angeles mill for the years 1926, 1927 and 1928 increased its business over that done in 1925 by 39%, 40% and 13%, and attributes this in part to an increase in export shipments, but the record indicates that the plaster exported from Southern California is negligible.

The freight rate on gypsum from Arden, Nevada, to Los Angeles is $9\frac{1}{2}$ cents, and from San Marcos Island, Mexico, to Long Beach the cost is $8\frac{1}{2}$ cents, made up of the boat and the unloading charges plus a charge of 4 cents for the plaster from Long Beach to Los Angeles. The plants at Los Angeles and Long Beach claim that at least 20% of the weight of the gypsum is lost in calcination while passing through the process of manufacture. It is thus apparent that the transportation cost to these plants to reach Los Angeles exceeds the proposed plaster rate of $9\frac{1}{2}$ cents from Plaster City to Los Angeles.

The interested parties in endeavoring to sustain their contention that the $9\frac{1}{2}$ -cent non-intermediate rate should be placed in effect, refer to rates on cement from interior mills to the San Francisco Bay region, authorized by this Commission to apply non-intermediate in application. There are no cement mills in San Francisco, and the rates from the interior mills were author-

ized to meet the competition of other mills which by reason of their geographical location or because of actual or potential water competition were accorded low rates into the San Francisco district. But here we are confronted with a different situation, for neither the mills at Long Beach, Los Angeles, Midland nor Arden are now able to reach the Los Angeles market at a lower transportation cost than Plaster City. To authorize these nonintermediate rates would in effect extend an undue preference to Plaster City and create undue prejudice to the other mills.

Much was said about the manufacturing costs and the financial condition of the San Diego & Arizona Railway, but this Commission cannot establish rates solely for the purpose of removing these disabilities. Each industry is entitled to the benefits flowing from its selected location, and when rates by which the advantages or disadvantages are neutralized result in undue preference they are in violation of the State Constitution and the Public Utilities Act.

We are of the opinion on this record that the proposed non-intermediate rates would result in unlawful prejudice and preference. The application will be denied.

After consideration of all the facts of record we are of the opinion and find:

1. That the present rates from Los Angeles, Long Beach, Plaster City and Midland to the points here at issue were not and are not unjust and unreasonable.
2. That the present rates from Los Angeles to Banning, Calexico and the intermediate points are unduly prejudicial to Los Angeles and unduly preferential to Plaster City to the extent they exceed the rates concurrently in effect from Plaster City to Los Angeles.
3. That Application 15840 should be denied.
4. That as to all other matters the proceedings should be dismissed.

O R D E R

These proceedings 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 contained in the preceding opinion,

IT IS HEREBY ORDERED that defendant Southern Pacific Company be and it is hereby ordered to cease and desist within thirty (30) days after the effective date of this order and thereafter to abstain from applying, demanding or collecting rates on plaster and its products from Los Angeles to Banning, Calexico and the intermediate points which shall exceed the rates concurrently in effect from Plaster City to Los Angeles.

IT IS HEREBY FURTHER ORDERED that defendant Southern Pacific Company be and it is hereby ordered to establish on or before thirty (30) days after the effective date of this order on not less than five (5) days' notice to the Commission and the public and thereafter to maintain for the transportation of plaster and its products from Los Angeles to Banning, Calexico and the intermediate points rates which shall not be in excess of those concurrently in effect from Plaster City to Los Angeles.

IT IS HEREBY FURTHER ORDERED that in all other respects the proceedings be and they are hereby dismissed.

Dated at San Francisco, California, this 6th day
March
of ~~February~~, 1930.

W. J. Conroy
Leon Whiteley
Paul D. Lewis
W. J. Conroy
Commissioners.