PC

Decision No. 23202

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SAN DIEGO CONSOLIDATED GAS AND ELECTRIC)
COMPANY, a corporation, for an order)
authorizing the issue and sale of its) Application No. 17043
one year notes in the principal amount)
of $1,500,000.00.)

Chickering and Gregory, by W. C. Fox,
for applicant.

BY THE COMMISSION:

O P I N I O N

In this proceeding the San Diego Consolidated Gas and Electric Company asks permission to issue and sell, at not less than 98-1/2 percent of their face value and accrued interest, $1,500,000.00 of its four percent one year gold notes and use $800,000.00 of the proceeds to pay outstanding notes and to use the remainder of the proceeds to reimburse its treasury on account of income expended for additions and betterments and to provide itself with funds to pay for new construction.

It is of record that applicant as of September 30, 1930 had uncapitalized construction expenditures of $2,827,441.97. This amount is determined in the following manner:

Uncapitalized construction expenditures as of September 30, 1928		$3,788,941.81
Additional net construction expenditures from September 30, 1928 to September 30, 1930		4,621,062.34
Total		$8,410,004.15
Deduct cash from earnings and other sources for the two year period ending Sept. 30, 1930:		
Net increase in reserve for accrued repreciation	$1,352,667.61	
Total amount set aside for amortization of bond discount and expense	146,635.44	
Increase in customers deposits and customers advances for construction for the period from March 31, 1921 to Sept.30,1930	485,956.83	
Increase in other reserves for the period March 31, 1921 to Sept. 30, 1930	597,302.30	
	2,582,562.18	
Cash realized from the sale of $3,000,000 of stock authorized by Decision No. 20698	3,000,000.00	
Total cash		5,582,562.18
Leaving an uncapitalized construction balance as of September 30, 1930 of		$2,827,441.97

It will be noted that in arriving at the uncapitalized construction balance as of September 30, 1930, the company has deducted the increase in its reserve for accrued depreciation and the increase in customers' deposits and customers' advances for construction and the increase in its other reserves.

In Exhibit No. 3 the company reports its actual and estimated net construction expenditures from September 30, 1930 to December 1, 1930 at $720,000.00. In the same exhibit, it reports its estimated net construction expenditures for the year 1931 at $1,867,882.00.

W. F. Raber, Vice President and General Manager of applicant, testified that if this application were granted and the

company succeeded in selling the notes it would use the proceeds realized from such sale to pay $800,000.00 of outstanding notes and to pay the cost of constructing additions and betterments during 1930 and 1931 insofar as funds would be available. He expressed the opinion that the sale of the $1,500,000.00 of notes would enable the company to finance its construction expenditures to the month of March or April of 1931.

The company's proposed $1,500,000.00 of four percent notes will be dated December 1, 1930 and mature December 1, 1931. They will bear interest at the rate of four percent per annum, payable semi-annually on June 1st and December 1st and will be callable at the option of the company any time prior to the date of maturity. If called prior to June 1, 1931, the company will be required to pay the principal, the accrued interest and a premium of one fourth of one percent. If called subsequent to June 1, 1931, no premium need be paid. The notes will not be secured by a lien on any property.

O R D E R

San Diego Consolidated Gas and Electric Company having applied to the Railroad Commission for permission to issue $1,500,000. of its four percent gold notes, a public hearing having been held before Examiner Fankhauser and the Commission being of the opinion that the money, property or labor to be procured or paid for by such issue is reasonably required for the purposes herein stated and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, and that this application should be granted, as herein provided, therefore,

IT IS HEREBY ORDERED, that San Diego Consolidated Gas

and Electric Company be, and it is hereby, authorized to issue and sell, on or before April 1, 1931 at not less than 98-1/2 percent of their face value and accrued interest, $1,500,000.00 of its four percent gold notes payable December 1, 1931.

IT IS HEREBY FURTHER ORDERED that San Diego Consolidated Gas and Electric Company shall use $800,000.00 of the proceeds realized from the sale of the aforesaid notes to pay $800,000.00 of outstanding notes and shall use the remainder of the proceeds to reimburse its treasury on account of income expended to pay the cost of additions and betterments set forth in Exhibits No. 2 and No. 3 and to finance the cost of additions and betterments described in Exhibits No. 2 and No. 3.

IT IS HEREBY FURTHER ORDERED that San Diego Consolidated Gas and Electric Company shall keep such record of the issue, sale and delivery of the notes herein authorized and of the disposition of the proceeds, as will enable it to file, on or before the 25th day of each month, a verified report, as required by the Railroad Commission's General Order No. 24, which order, insofar as applicable, is made a part of this order.

IT IS HEREBY FURTHER ORDERED that the authority herein granted will become effective when applicant has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is One Thousand Two Hundred and Fifty ($1,250.00) Dollars.

DATED at San Francisco, California, this 22nd day of December, 1930.

Fee $1,250.00

Fee #28511

Commissioners.

transported during the same period from Logandale, Riz, Willows and Artois to West Sacramento were in violation of Sections 17 and 24(a) of the Act.

Complainants in Case 2796 as amended and in Case 2797 allege that the charges assessed and collected on various shipments of paddy rice, in carloads, transported from Woodland, Corranco, Knights Landing, Oswald, Tudor and Williams to West Sacramento (Case 2796), and from Woodland, Knights Landing, Oswald, Tudor, Logandale, Willows and Riz to West Sacramento (Case 2797) were in violation of Section 24(a) of the Act.

A public hearing was held before Examiner Geary at San Francisco August 6, 1930, and the cases submitted on briefs. The three proceedings were heard upon a common record and will be disposed of in one decision.

At the hearing defendants moved to dismiss the complaints in so far as they involved the payment of reparation because of the charges alleged to have been collected in violation of the long and short haul provisions of Section 24 upon the ground that this Commission is without jurisdiction to award damages for such violations of the Act. In view of our conclusions it will not be necessary to pass upon the motion.

The pleadings raise two issues: first, the reasonableness of the rates from Seymour and Subaco to West Sacramento (Case 2687), and second, whether the rates from Logandale, Riz, Willows, Artois, Woodland, Corranco, Knights Landing, Oswald, Tudor and Williams to West Sacramento (Cases 2687, 2796 and 2797) were higher than the rates contemporaneously in effect from points beyond those just named to West Sacramento, in violation of the long and short haul provisions of Section 24 of the Act. Complainant in Case 2687 also alleges that the rates from Logandale, Riz, Willows and Artois to West Sacramento were in excess of the rates shown in the tariff, in violation of Section 17 of the Act,

but there being nothing in the record to support this allegation it will be deemed to have been abandoned.

The issue of reasonableness (Case 2687) rests solely upon complainant's contention that a rate of 12 cents collected on its shipments from Seymour and Subaco to West Sacramento exceeded 125% of the contemporaneously applicable rate on grain. We have repeatedly held that rates on paddy rice were unreasonable to the extent they exceeded 125% of the grain rates. (Rosenberg Bros. vs. A.T.& S.F.Ry. et al., 19 C.R.C. 248; Rosenberg Bros. et al. vs. S.P.Co., 31 C.R.C. 81; Rosenberg Bros. et al. vs. S.P.Co., 32 C.R.C. 859.) At the time complainant's shipments moved there were no through joint rates on grain in effect from Seymour and Subaco to West Sacramento. However, there was in effect from these two points of origin to Sacramento a rate of 8½ cents (Class C) and from Sacramento to West Sacramento a proportional commodity rate of ½ cent. These two rates if combined would make a through rate on grain of 9 cents, but defendants contend the factor to Sacramento is subject to the minimum class rule in the line haul tariff, which in substence provides that no rates shall be applied on any traffic moving under class rates lower than the minimum provided therein for the class under which the article is rated in the current Western Classification. The classification rating on grain is Class B. The minimum Class B rate is 9 cents; therefore according to defendants the through rate on grain from Seymour and Subaco to West Sacramento was 9½ cents instead of 9 cents, and the corresponding paddy rice rate 12 cents. The minimum class rule however is subject to the following qualification:

> "On continuous through movement of freight on which charges are obtained by use of combinations of separately established class rates or class and commodity rates, the minimum scale of class rates * * * * shall apply, not in connection with the separately established class rate factor or factors but to the total of the combined rates applicable to the through continuous movements."
> (Underscoring supplied.)

In construing a similar rule in Rosenberg Bros. & Co. et al. vs. Southern Pacific, 32 C.R.C. 859, we held the minimum class scale rule was applicable only to the through rate and not to the separately established factors. The through rate made by the use of the 8½-cent factor to Sacramento plus the ½-cent factor beyond was the same as the minimum Class B rate of 9 cents, hence the minimum class rule was not applicable. The applicable grain rate from Seymour and Subaco to West Sacramento was 9 cents. The 12-cent rate assessed and collected on complainant's shipments exceeded 125% of this rate, and was unreasonable to that extent. Subject to the disposition of fractions ordinarily followed the reasonable rate would have been 11½ cents.

The determination of the second issue, relating to the alleged long and short haul violations, requires an interpretation of the applicable tariffs. If complainants' interpretation is given effect, the rates assessed and collected were clearly in violation of the long and short haul provisions of Section 24(a) of the Act. On the other hand, if defendants' construction of the tariffs is proper, no violations of the long and short haul provisions exist. For the purpose of this decision it will only be necessary to consider the rate lawfully in effect from Knights Landing, Oswald and Tudor to West Sacramento, as the principle decided will apply with equal force to the rates from the other points to West Sacramento.

The rate assessed and collected on complainants' shipments from Knights Landing to West Sacramento will be considered first. This rate was 9½ cents. It is conceded by complainants that it was specifically published in the tariffs. But when the shipments moved the Southern Pacific had in effect from Bypass, a point beyond Knights Landing, to Sacramento a proportional rate of 7 cents, and the Sacramento Northern Railway had in effect in Item 434-B of its Tariff 10-C, C.R.C. 31, from Sacramento to West

Sacramento a proportional rate of ½ cent. The local rates from Bypass to Sacramento and from Sacramento to West Sacramento were 9 cents and 2½ cents respectively. The proportional rate of the Southern Pacific Company applied on traffic delivered to the Sacramento Northern Railway at Sacramento for final delivery at West Sacramento or points beyond, while that of the Sacramento Northern was subject to a number of restrictions, including Note 1 and Note 3(a), reading as follows:

> "Note 1 - Applies only as a proportional rate on shipments originating at points beyond Sacramento, Cal., and only where the lowest obtainable all rail rate (as per tariffs on file with the Railroad Commission of California and/or the Interstate Commerce Commission) from original point of shipment to West Sacramento, Cal. would otherwise exceed by more than one-half (1/2) cent per 100 lbs. the rate (as per tariffs on file with the Railroad Commission of California and/or the Interstate Commerce Commission) contemporaneously in effect from the same point of origin to Sacramento, Cal., over that portion of the route shipment traveled from point of origin to Sacramento, Cal.
>
> "Note 3 - Will not apply:
> (a) Where joint commodity rates are published to West Sacramento, Cal., on commodities named in connection with the Southern Pacific Co., or the Western Pacific R.R.Co., or the San Francisco-Sacramento R.R.Co., or the Central California Traction Co."

Complainants contend Note 1 permits the 7-cent proportional rate from Bypass to Sacramento and the ½-cent proportional rate from Sacramento to West Sacramento to be combined, thus making a through rate of 7½ cents from Bypass to West Sacramento, or 2 cents lower than the rate of 9½ cents assessed on its shipments from Knights Landing, a point directly intermediate to Bypass on the route to West Sacramento. Complainants also contend that in the event Note 1 does not permit the combination of the two proportional rates just referred to, then both Notes 1 and 3(a) are invalid because the provisions therein place an undue and unreasonable burden on shippers by requiring them to search the tariffs to determine the rates via all rail routes and to ascertain whether there are joint rates published to West Sacramento.

Note 1 is reasonably clear as to its meaning. Paraphrased

it simply means that if any rail rate from point of origin to West Sacramento exceeds by more than ½ cent the rate to Sacramento via the route the shipment moved, the ½-cent proportional rate may be used. Otherwise it is not applicable. Thus under Note 1 to ascertain whether the ½-cent rate may be used it is necessary first to determine the lawful rate from Bypass to Sacramento. As heretofore stated, the Southern Pacific Company maintained from Bypass to Sacramento two rates. One was a proportional rate of 7 cents and the other a local rate of 9 cents. But the proportional rate was only applicable when combined with rates to West Sacramento or to points beyond. It was thus but a factor of a through rate. (Kansas City Board of Trade vs. A.T.& S.F.Ry., 69 I.C.C. 185; Kansas City Board of Trade vs. A.& W.Railway, 102 I.C.C. 285; Hocking Valley Railway Co. vs. Lackawanna Coal & Lumber Co., 224 Fed. 930.) Should a shipment move from Bypass to Sacramento there was only one rate applicable and that was the 9-cent local. As the combination of the 7-cent proportional rate from Bypass to Sacramento plus the 2½-cent local rate of the Sacramento Northern Railway from Sacramento to West Sacramento did not exceed by more than ½ cent the rate of 9 cents from Bypass to Sacramento, the ½-cent proportional rate was not applicable. The lawful rate from Bypass to West Sacramento is 9½ cents, the same as in effect from Knights Landing to West Sacramento, therefore there is no violation of Section 24(a) of the Act. This finding with respect to the shipments from Knights Landing will also apply with equal force to the shipments from Logandale, Riz, Willows, Artois, Woodland, Corranco and Williams. The finding however is not applicable to the shipments from Tudor and Oswald.

The rate assessed on the shipments from Tudor and Oswald to West Sacramento was 9½ cents. At the time they moved

defendants had in effect from Yuba City, a point beyond Tudor and Oswald, to Sacramento a local rate of 9 cents and a proportional rate of 8½ cents. As heretofore stated, the Sacramento Northern Railway also had in effect from Sacramento to West Sacramento a local rate of 2½ cents and a proportional rate of ½ cent, the latter to be used under the conditions discussed in connection with the shipments from Knights Landing. The combination of the proportional rate from Yuba City to Sacramento plus the 2½-cent local rate of the Sacramento Northern from Sacramento to West Sacramento exceeded by more than ½ cent the rate of 9 cents from Yuba City to Sacramento; therefore under the tariff the ½-cent proportional rate could be combined with the 8½-cent rate, making a through rate from Yuba City to West Sacramento of 9 cents. As the 9-cent rate from Yuba City was ½ cent lower than the rate assessed on complainants' shipments from Oswald and Tudor for a shorter haul over the same line or route, there was an unauthorized violation of the long and short haul provisions of Section 24(a) of the Act.

Complainants' request that we condemn Note 1 and Note 3(a) because of an alleged undue burden placed upon shippers, is apparently based upon decisions of the Interstate Commerce Commission in Joseph Iron Co. vs. M.L.& T.R.R.Co., 37 I.C.C. 591, 40 I.C.C. 323; Ash Grove Lime and Portland Cement Co. vs. Missouri Pacific R.R., 92 I.C.C. 51; Borden Co. vs. Ann Arbor R.R. Co., 100 I.C.C. 153; Ryan Fruit Co. vs. Director General, 120 I.C.C. 206; and Waite Carpet Co. vs. Director General, 146 I.C.C. 775. But these decisions are not controlling in the instant case. There the Commission held certain restrictions on proportional rates inapplicable because the restrictions were not so published as to be definite, clear and ascertainable. Both Note 1 and Note 3(a) are reasonably definite and clear as to their

meaning. It is true they require a search of the rates in other tariffs to determine if the 2-cent rate may be applied. But this is not materially more burdensome than the rule of this Commission reproduced in all California intrastate tariffs, making the lowest combination of class rates or commodity rates or class and commodity rates the lawful rates even though through rates are published in the tariffs. Item 434-B could be improved by carrying cross references to the tariffs containing intrastate rates from or to West Sacramento, but this is more a question of tariff simplification than one of tariff interpretation.

Upon consideration of all the facts of record we are of the opinion and so find that the rates assessed on complainant's shipments of paddy rice from Seymour and Subaco to West Sacramento were unjust and unreasonable to the extent they exceeded 125% of the grain rate herein found to be contemporaneously applicable from Seymour and Subaco to West Sacramento. At the hearing it was stipulated that in the event the Commission should find the rates unreasonable the proceeding would be held open to allow complainant to present proper proof that it paid and bore the charges. Our order will so provide. It will be unnecessary to issue an order for the future as defendants subsequent to the filing of the complaint voluntarily reduced the paddy rice rate from Seymour and Subaco to West Sacramento to a point below 125% of the grain rate to meet threatened motor truck competition.

We are also of the opinion and so find that the rates assessed on complainants' shipments from Tudor and Oswald were in violation of the long and short haul provisions of Section 24(a) of the Public Utilities Act. An order will be issued requiring defendants to cease and desist from charging, demanding, collecting or receiving a higher rate for the transportation of grain from Tudor and Oswald to West Sacramento than contemporaneously applicable from Yuba City to West Sacramento.

Complainants also ask for reparation because of the violation of the long and short haul provisions, but as the question of our jurisdiction to award reparation for such violation is now before the Supreme Court of the State of California in A.T.& S.F. Ry.et al. vs. Railroad Commission et al., S.F. No. 14100, no order will be issued at this time. However, should the court conclude the Commission has jurisdiction to award reparation, this proceeding will be reopened upon request of complainants.

We are of the further opinion and so find that as to all other matters the complaints should be dismissed.

O R D E R

These cases 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 and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that Case 2687 in so far as the alleged violations of Sections 17 and 24 of the Public Utilities Act are concerned, and Cases 2796 and 2797 be and they are hereby dismissed, without prejudice to the reopening of Cases 2796 and 2797 for the purpose of considering the issue of reparation.

IT IS HEREBY FURTHER ORDERED that Case 2687 in so far as it pertains to a violation of Section 13 of the Act, be held open for a period of 90 days from the date hereof to allow complainant to present proper proof that it paid and bore the charges on the shipments of paddy rice from Seymour and Subaco to West Sacramento.

Dated at San Francisco, California, this 23rd day of December, 1930.

Commissioners.