

ORIGINALDecision No. 23376.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension by)
 the Commission on its own motion of)
 reduced rates on crushed rock from)
 Dwight and Richmond to Hayward)
 via The Atchison, Topeka and Santa)
 Fe Railway Company and The Western)
 Pacific Railroad Company.)

Case No. 2981.

E. C. Pierre, J. P. Haynes and L. N. Bradshaw
 for respondents.

E. W. Hollingsworth, for Kaiser Paving Company,
 and Pacific Coast Aggregates, a corporation,
 protestants.

BY THE COMMISSION:

O P I N I O N

By schedules filed to become effective January 10, 1931, Supplements 29 and 30 to Pacific Freight Tariff Bureau Joint Freight Tariff 166-D, C.R.C. No. 442, issued by F. W. Gomph, Agent on behalf of The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the Santa Fe) and The Western Pacific Railroad Company (hereinafter referred to as the Western Pacific), these carriers propose a joint rate of $2\frac{1}{2}$ cents on crushed rock, sand and gravel in carload lots from Richmond and Dwight on the Santa Fe to Hayward on the Western Pacific. The rates herein will be stated in cents per 100 pounds.

The Pacific Coast Aggregates Inc. and the Kaiser Paving Company, with offices in San Francisco and Oakland, shippers of crushed rock, sand and gravel in the same general

territory, protested against the schedules upon the grounds that the joint rate was unduly prejudicial to their interests, and if put into effect would be discriminatory. The rate was suspended until May 5, 1931.

A public hearing was held before Examiner Geary at San Francisco on January 26, 1931, and the matter having been submitted is now ready for an opinion and order.

The quarries at Richmond are located on the rails of the Southern Pacific and the Santa Fe, while the industry track at Hayward used by the consignee receiving the rock is exclusively on the rails of the Western Pacific. The distance from Richmond to Hayward via the proposed route, Santa Fe to Oakland, Southern Pacific between the interchange yards at Oakland, and the Western Pacific from Oakland to Hayward, is 24.9 miles; the distance from Richmond to Hayward via the Southern Pacific is 25.3 miles. The distance from Dwight to Hayward via the proposed route is 5 miles shorter than from Richmond. There are no interchange facilities between the Southern Pacific and Western Pacific at Hayward.

The rates now in effect are $2\frac{1}{2}$ cents via the Southern Pacific direct and 3 cents via the joint routes of either the Santa Fe and Western Pacific or the Southern Pacific and Western Pacific. The all Southern Pacific route rate of $2\frac{1}{2}$ cents cannot be employed by the Hayward rock receiver because the delivery on the Southern Pacific team tracks necessitates a truck haul of approximately one half mile to the consignee's rock bunkers. The rates now in effect from Richmond to Hayward are all in conformity with the Northern California distance scale, and the proposed joint rate of $2\frac{1}{2}$ cents for the three-line haul is $\frac{1}{2}$ cent under the distance scale.

In justification of the reduction respondents recite

that they desire to meet the single line rate of the Southern Pacific, and presented exhibits showing that some rock rates from interior points to San Francisco Bay points - San Francisco, Oakland, Richmond, etc. - are below the published distance scale.

There was testimony to the effect that the competition from the water-borne rock had reduced rates below a normal rail basis. In some instances it is profitable to have the rock barged to the Oakland water front and trucked to the Hayward consuming territory. This situation is not denied, and the records of this Commission amply prove the contention. The record shows that the specific commodity rates where the distance scale is not observed are forced rates to meet this competition created by barges transporting crushed rock into the San Francisco Bay consuming communities at rates far below the railroad distance scale. The record also shows that no crushed rock has been moved from Richmond to Hayward during a period of 12 months either under the one-line rate of $2\frac{1}{2}$ cents or the joint rate of 3 cents.

Protestants have rock plants on the rails of the Southern Pacific and the Western Pacific at Niles and on the Southern Pacific at Eliot, and ship into this general territory on the distance scale of rates. Adjustments are not proposed in the joint rates from the plants operated by protestants and others, and it is contended that where commercial competition and transportation conditions are the same, it is unlawful to charge different rates for equal services into the same consuming points.

It is apparent the $2\frac{1}{2}$ -cent rate will bring about an unjust and discriminatory situation for which no justification has been given. If rates are depressed to secure tonnage of a given commodity, proper adjustments must be made from all competing points in order to prevent discrimination, preference

or prejudice, in violation of Section 19 of the Public Utilities Act. The proposed rate also violates the long and short haul provisions of Section 21 Article XII of the State Constitution and Section 24 of the Public Utilities Act, inasmuch as the charges from Oakland, an intermediate point, would be greater than from Richmond, the more distant point.

We find that respondents have not justified the proposed rate. An order will be entered requiring the cancellation of the schedules under suspension, and the discontinuance of this proceeding.

O R D E R

It appearing that by order dated January 7, 1931, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in the schedules enumerated and described in said order, and ordered that the operation of said schedules be suspended until May 5, 1931;

It further appearing that a full investigation of the matters and things involved has been had, and that the preceding opinion contains our findings of fact and conclusions thereon, which said opinion is hereby referred to and made a part hereof:

IT IS HEREBY ORDERED that the respondents herein be, and they are hereby, notified and required to cancel said schedules, on or before May 5, 1931, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in Section 14 of the Public Utilities Act, and that this proceeding be discontinued.

Dated at San Francisco, California, this 9th day of February, 1931.

C. S. Sweeney

W. H. Kern

W. B. Hayes

Fred G. Stewart

COMMISSIONERS.