

Decision No. 23410.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

POULTRY PRODUCERS OF CENTRAL CALIFORNIA,
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation,

Defendant.

ORIGINAL

Case No. 2892.

Carl R. Schulz and J. E. McCurdy, for complainant.

J. E. Lyons and E. H. McElroy, by E. H. McElroy,
for defendant.

BY THE COMMISSION:

O P I N I O N

In this proceeding complainant alleges that an out-of-line milling in transit charge of 2 cents per 100 pounds assessed on shipments of grain and grain products originating in the San Joaquin Valley south of Tracy and Lathrop, as shown in Index Nos. 1720 to 1885 inclusive, 1933 to 1945 inclusive, 1951 to 1957 inclusive, and 1963 to 1981 inclusive of defendant's Tariff 658-D, C.R.C. 3283, milled in transit at Stockton and subsequently shipped to Petaluma, Santa Rosa and other points on the Northwestern Pacific Railroad, either in straight carloads or in mixed carloads with non-transit articles or with transit articles from other points of origin, is unduly prejudicial to complainant and preferential of complainant's competitors at Oakland, in violation of Section 18 of the Public Utilities Act.

We are asked to remove the alleged undue preference and prejudice. Rates are stated in cents per 100 pounds.

A public hearing was held before Examiner Geary and the case submitted upon briefs.

Complainant operates a mill at Stockton for the manufacture and storage of grain and grain products. A part of its grain is obtained from points in the San Joaquin Valley south of Tracy and Lathrop, and the finished products subsequently shipped to points on the Northwestern Pacific in straight carloads or in mixed carloads with transit and non-transit articles. In disposing of its products complainant meets with the competition of grain mills at Oakland. By reason of certain provisions in defendant's tariffs, which will hereafter be discussed in detail, the mills at Oakland may obtain their grain in the San Joaquin Valley, mill it at Oakland, and reship it to points on the Northwestern Pacific by paying the line haul rates without any additional charge for the transit service. Complainant however in addition to the line haul rates, which are the same as paid by the Oakland mill, is assessed an out-of-line transit charge of 2 cents per 100 pounds. The competition for the grain business is exceptionally acute, and the difference of 2 cents per 100 pounds may determine which mill will obtain the business.

The line haul rates from the origin territory here under consideration to points on the Northwestern Pacific Railroad are published in Pacific Freight Tariff Bureau Tariff 16-L, C.R.C. No. 452. They are subject to the rules and regulations of defendant's Terminal Tariff 230-E, C.R.C. 2477, which permit milling in transit without charge if the transit point is directly intermediate between point of origin and final destination; but if the transit point is not directly intermediate, out-of-line

charges varying from 2 cents to 6 cents are applicable, dependent upon the length of the out-of-line haul.

The line haul rates from the San Joaquin Valley to Northwestern Pacific points apply via either Schellville Junction or San Francisco. Stockton is not a directly intermediate point via either route, although until the opening of the Southern Pacific bridge across Carquinez Straits on November 1, 1930, the traffic was actually handled as an operating convenience via Stockton, Sacramento and Schellville Junction. Oakland is a directly intermediate point via the San Francisco gateway, and therefore no out-of-line transit charge is made. This route was added following our decision in California Hawaiian Milling Company vs. Southern Pacific, 31 C.R.C. 665, wherein we ordered the Southern Pacific to remove an undue prejudice against San Francisco and an undue preference of Oakland created by a provision in the terminal tariff effective February 5, 1924, making Oakland a directly intermediate point on traffic from the San Joaquin Valley to Northwestern Pacific points, although the line haul rates did not at that time apply via that route, nor was the traffic handled through Oakland unless transitted at that point. Defendant elected to remove the prejudice and preference by specifically publishing the grain rates to apply via San Francisco, thus from a rate standpoint making both Oakland and San Francisco intermediate points. The Southern Pacific Company originally made Oakland an intermediate point to meet a competitive situation created by the Atchison, Topeka and Santa Fe Railway when by a provision in its Circular No. 2297, C.R.C. No. 412, effective April 10, 1923, it made Oakland an intermediate point on traffic from the San Joaquin Valley to Northwestern Pacific points, although Oakland was physically an out-of-line point. The Atchison, Topeka and Santa Fe Railway Company did this

because it understood the Southern Pacific was then considering Oakland a directly intermediate point. (George H. Croley vs. Atchison, Topeka and Santa Fe, 31 C.R.C. 625.) Defendant now claims that the understanding of the Atchison, Topeka and Santa Fe Railway was erroneous, as it only treated Oakland as an intermediate point in connection with transcontinental traffic and did not consider it an intermediate point in connection with local traffic. Nevertheless the Southern Pacific met the competition of the Atchison, Topeka and Santa Fe Railway at the competitive points and also made it apply from the origin points here involved, notwithstanding that none of the points is common with the Atchison, Topeka and Santa Fe Railway.

On traffic from the San Joaquin Valley to Northwestern Pacific points the Oakland gateway is not the normal route for this traffic, although, as defendant points out, the actual short-line mileage is via Oakland and San Francisco, and that it is customary to compute the rates via the short-line distance. Ordinarily this is true, but defendant has ignored the fact that the haul via Oakland requires two bay transfers, i. e., from Oakland to San Francisco and from San Francisco to Tiburon. In Western Pacific Railroad vs. Northwestern Pacific Railroad, 29 C.R.C. 408, we found the cost of the bay transfer to be approximately \$11.92 per car. Defendant has many times urged before this Commission that where unusual operative conditions are present it should be allowed to use constructive mileage. (Traffic Bureau of the Merchants Exchange vs. Southern Pacific et al., 1 C.R.C. 95; San Francisco Chamber of Commerce vs. Southern Pacific et al., 11 C.R.C. 867.) It is apparent that if defendant adhered to this principle and made an allowance for the bay transfers the short line distance would probably be via Brentwood, Martinez and Schellville Junction, the route by which the traffic is now handled. In

any event the record is reasonably clear that this is the normal route for traffic from the San Joaquin Valley to Northwestern Pacific Railroad points, regardless of the tariff provisions creating a route via Oakland. Indeed, the line haul rates in Tariff 16-L from points in the San Joaquin Valley to Northwestern Pacific Railroad points, with the exception of those applying on grain and grain products, generally apply only via this route. The actual out-of-line haul via the route through Brentwood, Martinez and Schellville Junction to permit complainant to mill its products in transit at Stockton would be 19 miles from points south of Lathrop and 40 miles from points south of Tracy, while the shortest out-of-line haul via the same route to permit milling in transit at Oakland would be 48 miles. There is nothing in the record which would warrant any greater charge for the privilege of milling in transit at Stockton than is contemporaneously in effect at Oakland.

Upon consideration of all the facts of record we are of the opinion and so find that the practice of defendant in assessing and collecting an out-of-line transit charge on complainant's shipments from the points of origin here involved, milled in transit at Stockton and subsequently shipped to points on the Northwestern Pacific Railroad here involved, is, and for the future will be, unduly prejudicial to Stockton and unduly preferential of Oakland to the extent the transit charges at Stockton exceed those contemporaneously applicable at Oakland.

O R D E R

This case 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 and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is hereby ordered to cease and desist on or before thirty (30) days from the effective date of this order, and thereafter to abstain from applying, demanding, receiving or collecting from complainant, Poultry Producers of Central California, for the transportation of grain and grain products as described in Southern Pacific Tariff 659-D, C.R.C. 3283, from the points of origin here involved, milled at Stockton and subsequently shipped to Petaluma, Santa Rosa and other points on the Northwestern Pacific Railroad Company here involved, milling in transit charges which shall exceed those contemporaneously in effect on like traffic milled in transit at Oakland.

Dated at San Francisco, California, this 16th day of February, 1931.

C. C. Sauer

Leon Overbury

M. J. Cunn

M. B. Harris

Frederic G. Stewart
Commissioners.