

23574

Decision No. 23574.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension)
 by the Commission on its own)
 motion, of Supplement 27 to the)
 Atchison, Topeka and Santa Fe)
 Railway Company Local and Joint)
 Freight Tariff 8117-M, Cal.R.C.)
 629, and 11th revised page 17)
 of Southern Pacific Company Ter-)
 minal Tariff 230-J, C.R.C. 3183.)

Case No. 3022.

Berne Levy and G. E. Duffy, for The Atchison,
 Topeka and Santa Fe Railway Company.
 Roy G. Eillebrand, for Southern Pacific Company.
 Gwynn H. Baker, for Atlas-Olympia Company, Limited.
 E. W. Hollingsworth and Bishop & Bahler, for Pacific
 Coast Aggregates, Incorporated, Kaiser Paving
 Company, Basalt Rock Company, Hutchinson Company,
 and Blake Brothers, protestants.
 E. A. Butchart, for Sierra Railway Company of
 California.

STEVENOT, Commissioner:

O P I N I O N

By its order of February 25, 1931, in the above entitled proceeding the Commission suspended until June 25, 1931, Item 2395 of Supplement 27 to Atchison, Topeka and Santa Fe Railway Company Local and Joint Freight Tariff 8117-M, Cal.R.C. 629, and Item 267, 11th revised page 17 of Southern Pacific Company Terminal Tariff 230-J, C.R.C. 3183. The tariff of the Atchison, Topeka and Santa Fe Railway (herein called the Santa Fe) provides for the absorption, on both competitive and noncompetitive traffic, of a \$5.00 per car charge maintained by the Sierra Railway Company of California (herein called the Sierra Railway) for transporting car-load shipments of boulders, crushed rock, gravel, sand and waste

rock or gravel coated with liquid asphaltum or petroleum fuel oil from the industry track of the Atlas Rock Company to the interchange track with the Santa Fe at Oakdale. The item of the Southern Pacific Company provides for a like absorption to its interchange track but only in connection with traffic competitive with the Santa Fe.

The items were suspended upon complaints of various competitors of the Rock Company located at Atlas, who are shippers of crushed rock, sand and gravel, alleging that the proposed absorption would be unduly prejudicial and discriminatory and in some instances create unauthorized departures from the long and short haul provisions of Section 24(a) of the Public Utilities Act.

Public hearings were held March 10 and 11, 1931, and the proceeding submitted on briefs.

Atlas is on the Sierra Railway approximately 3.22 miles northeast of Oakdale, and within the operating yard limits but not within the switching limits of the latter point. The Atlas-Olympia Company, Ltd., herein called the Rock Company, the only industry at Atlas, maintains facilities for the production of crushed rock, sand and gravel, practically all of which moves outbound by rail to points in the San Joaquin Valley on the Santa Fe or Southern Pacific Company. There are however some local rail movements and also a tonnage hauled by trucks to nearby points. At the present time the rail traffic moves either under joint rates (Sierra Railway to Oakdale, thence Santa Fe or Southern Pacific) based upon the so-called two-line mileage rock scale generally in effect in Northern California, or at a flat charge of \$5.00 per car to the interchange track of the Santa Fe or Southern Pacific at Oakdale, plus the one-line mileage scale of rates from Oakdale. The one-line scale is 10 cents per ton lower

than the two-line scale.

The Rock Company is apparently experiencing difficulty in reaching the consuming territory under the joint rates or under the single-line rates plus the \$5.00 per car charge. To permit it to obtain the lower single-line rates it has perfected plans for the construction of an industrial railroad to connect directly with the Southern Pacific at Oakdale. The surveys have been made, the rights of way obtained, and the road can be constructed at a cost of approximately \$40,000.00.

If the industrial road is built the Santa Fe, to retain any of the tonnage, will be forced under the tariffs now in effect to absorb on competitive rock traffic the \$2.70 switching charge of the Southern Pacific and the charge of \$3.50 per car of the Sierra Railway, or a total of \$6.20 per car. To prevent the threatened loss the Santa Fe now proposes to absorb the existing \$5.00 per car charge of the Sierra Railway, thus giving to the Rock Company substantially the same rate benefits it would receive from the constructing of a line to the interchange with the Southern Pacific Company. The record also shows that if the absorption is not permitted and the industrial railroad is constructed the Sierra Railway will be compelled to forego the interline rock traffic from the Atlas plant and may be forced to abandon the tracks. During the last past seven years the Sierra Railway received an average yearly revenue of \$35,798.91 from the Atlas rock, and this would be lost with the exception of the revenue from purely local traffic.

Protestants claim that if respondents are permitted to absorb the \$5.00 per car charge, it will in practice establish single-line rates from the plant of the Rock Company. This is true, but to forbid the absorption of the charge will not cure the situation, for the record leaves no doubt that if we condemn

the proposed absorption, the Rock Company, having the financial ability, will construct the industry track at a relatively small cost. Thus from a rate standpoint protestants would be in no better position, for the shipper in either event will obtain the one-line rates. Protestants contend that if the Rock Company is to have the benefit of the lower rates it should be compelled to make the necessary capital expenditures, otherwise the door is left open to respondents to create undue prejudice and discrimination. This position obviously presupposes that any concession made by the rail lines not universally given to all at all points creates undue prejudice and discrimination. It loses sight of the well-established principle that prejudice and discrimination is a question of fact to be determined in the light of all the relevant circumstances and conditions, and that to be unlawful it must be unjust and undue. Nowhere in this record have I been able to find where protestants actually would be adversely affected by the proposed adjustment. They apparently rest their case largely upon a showing that mile for mile they may pay in some instances higher rates than the Rock Company will pay. The rock tonnage however moves comparatively short distances adjacent to the individual plants, and a mere comparison of the rates used in other territory does not of itself constitute preference and prejudice. If, as protestants contend, the Rock Company will obtain an undue advantage in reaching competitive territory, the facts should have been conclusively shown.

Our condemnation of the proposed absorption will result in a duplication of existing facilities and the diversion of a large part of the traffic. This diversion of the tonnage would probably not be of vital concern to the Santa Fe but it would to the Sierra Railway. The average yearly net revenue for the latter in 1928, 1929 and 1930 was \$17,483.30, and like most short-line

railroads it is faced with acute competition from other forms of transportation, principally trucks, so that a diminution of the traffic now moving almost entirely by rail is a serious matter. The transportation revenues obtained from the Rock Company in 1928, 1929 and 1930 constituted 9% of the total revenue of the Sierra Railway.

The proposed absorption will bring about departures from the long and short haul provisions of Section 24(a) of the Public Utilities Act and of the State Constitution. Respondents admit this, but contend that the violations on the Santa Fe have been authorized by the Commission in Ex Parte No. 24(a)-2519, June 23, 1930, and those on the Southern Pacific in Application 16179, by Decision No. 22670 of July 11, 1930. A careful study of these decisions conclusively makes evident that they do not permit of the departures here created.

In the main I find that respondents have justified the proposed absorption. The schedules will be ordered cancelled without prejudice to the filing of new schedules in conformity with the long and short haul provisions of Section 24(a) of the Act.

The following form of order is recommended:

O R D E R

This case having been duly heard, submitted and briefs filed, 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 respondents, The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, be and they are hereby ordered to cancel on or before April 30, 1931, Item 2395 of Supplement 27 to Atchison, Topeka and Santa

Fe Railway Company Local and Joint Freight Tariff 8117-M, Cal.R.C. 629, and Item 267, 11th revised page 17 of Southern Pacific Company Terminal Tariff 230-J, C.R.C. 3183, without prejudice to the filing of new schedules in conformity with the long and short haul provisions of Section 24(a) of the Public Utilities Act.

IT IS HEREBY FURTHER ORDERED that our order of suspension in the above entitled proceeding be and it is hereby vacated and set aside as of April 30, 1931, and this proceeding be and it is hereby discontinued.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of April, 1931.

C. L. Severy
Leon Williams
W. M. McLean
W. B. Harris
James G. Stewart
Commissioners.