

Decision No. 25187.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

JOHN D. GREGG; TITLE GUARANTEE
& TRUST COMPANY, a corporation,

Complainants,

-vs.-

SOUTHERN PACIFIC COMPANY, a corpora-
tion; CONSUMERS ROCK AND GRAVEL
COMPANY, a corporation; CONSOLI-
DATED ROCK PRODUCTS COMPANY, a
corporation; LOS ANGELES LAND AND
WATER COMPANY, a corporation,

Defendants.

ORIGINAL

Case No. 3196.

Douglas Brookman, for the Complainants.

Bauer, MacDonald, Schultheis & Pettit,
by Fred E. Pettit, Jr., for Consolidated
Rock Products Company and for Consumers
Rock and Gravel Company, of the Defendants.

Anderson & Anderson, by Trent G. Anderson, for
Los Angeles Land & Water Company, a defendant.

Frank Karr, C. W. Durbrow and C. O. Amonette,
for Southern Pacific Company, a Defendant.

J. Ogden Marsh, for Board of Public Utilities
and Transportation of the City of Los Angeles,
interested Party.

BY THE COMMISSION:

O P I N I O N

A public hearing in the above entitled complaint was
held before Examiner Kennedy at Los Angeles on April 12, 1932,

and the matter submitted on briefs which have since been filed.

The complainants ask that an order be made by this Commission granting them authority to construct a spur track to connect with an existing spur track privately owned by defendants other than the Southern Pacific Company, and used in connection with the facilities of the latter for the loading and shipment of gravel and rock products. The complaint is brought under the provisions of the Public Utilities Act contained in Sections 25 and 39(a) thereof. Section 25 is as follows:

"(a) Every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, for a connection between the railroad of such railroad corporation and any existing or contemplated private track, tracks or railroad of such corporation or person, shall make such connection and provide such switches and tracks as may be necessary for that purpose and deliver and receive cars thereover; provided, that such connection is reasonably practicable and can be installed and used without materially increasing the hazard of the operation of the railroad with which such connection is sought, and that the business which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation.

(b) Under the conditions specified in the proviso in subsection (a) hereof, every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby, and shall receive and deliver freight thereby."

Section 39(a) reads as follows:

"Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad corporation for a connection or spur as provided in section twenty-five of this act, and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him under said section twenty-five, the commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the commission shall have the power to prescribe.

Whenever any such connection or spur has been so provided, any corporation or person shall be entitled to connect with the private track, tracks or railroad thereby connected with the railroad of the railroad corporation and to use the same or to use the spur so provided upon payment to the party or parties incurring the primary expense of such private track, tracks or railroad, or the connection therewith or of such spur, of a reasonable proportion of the cost thereof to be determined by the commission after notice to the interested parties and a hearing thereon; provided, that such connection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense."

It should at the outset be noted that Section 25 above quoted relates to the duty of a railroad corporation to provide a connection with the private spur track facilities constructed by a shipper or receiver of freight, its obligations being merely to provide the necessary connections and spurs which are to be located upon its own right of way.

By Section 39(a) the Commission is granted the power to order railroad corporations to fulfill the duty imposed by Section 25. In this section, however, there also is granted to the Commission the power to direct an order against the owner of a private spur track to compel him to accord to other shippers or contemplated shippers of freight the right to connect with and to use his private track facilities. A joint use of private track facilities may not be ordered unless it is found that such use will not constitute an unreasonable interference with the rights of the shipper originally incurring the cost of construction. When it is found that the two may jointly use such facilities without unreasonable interference, the Commission may order such joint use and may determine the reasonable proportion of the cost of construction which the second user shall pay to the first.

The provision contained in the latter part of Section 39(a) empowering the Commission to direct the owner of a private spur to share its use with other shippers seems to refer to such private spurs as have previously been ordered connected to the tracks of the rail carrier as the result of proceedings brought under the first part of that section. In the case before us, the connection between the tracks of the Southern Pacific Company and the private facilities of the defendant shippers was not made upon the direction of the Commission, but was made under an agreement voluntarily executed by the parties. In such a case it is not entirely clear that the Commission has jurisdiction to make the order requested. It is possible that the legislative intent was to limit the authority of the Commission to direct an order against the owner of a private spur to those cases only where it has previously compelled the railroad corporation, upon complaint of a shipper, to make such a connection, and thus impliedly to impose the condition to its order that the complainant shall share the use of his private track facilities with other shippers who may subsequently demand their joint use. However, this may be, from the conclusion reached upon the facts in the matter before us, it will be unnecessary to pass upon the powers conferred upon us by this section of the act, or to consider the argument advanced by defendants that any exercise of authority thereunder would be an unconstitutional taking of private property.

The gravel concerns named as defendants in this proceeding lease a tract of land near Los Angeles on which they have constructed extensive facilities for the dredging of gravel and its preparation for the market, including a series of railroad tracks which are used for the hauling of gravel from the pits to

graders and bunkers, and for the loading of cars with finished products for shipping. A connection exists between these track facilities and a spur of the Southern Pacific Company. An adjoining tract of about 65 acres is held by Title Guarantee & Trust Company in trust for complainant Gregg. This land also is suitable for the mining of gravel, but has no rail shipping facilities. Three of the private tracks of the defendants reach almost to the line which separates the two properties. It is one of these tracks which complainants propose to use as an outlet to gain access to the main line tracks of the Southern Pacific Company. They expect to ship about ten carloads of rock products daily. They allege that the use of the defendants' spur track is essential to their project and that such use will not unreasonably interfere with the business conducted by defendants.

The defendant Gravel Companies contend that they themselves require the full use of all their rail track facilities, and that the granting of any joint use to complainants would, at times at least, seriously interfere with the conduct of their business. They offered evidence to show that the track which complainants wish to use is essential for the loading and transportation of their own cars, and is frequently occupied by their dredger machinery and other equipment. They offered evidence to show also that their lease upon this property, would, under the covenants contained therein, possibly be voided should they permit any other person or corporation to use the tracks they have constructed. The complainants' evidence fell far short of proof that their intended operations will not impose an unreasonable

interference with the rights of defendants. Neither did they offer any testimony in respect to the compensation which should reasonably be awarded to the defendants should their request be granted. On the record before us, we are compelled to deny to complainants the relief which they have sought.

With this disposition of the matter, it becomes unnecessary to discuss at length the contentions advanced that the defendants may not refuse the use of their tracks to others without violating conditions imposed in certain franchises granted to them by the city of Los Angeles to place their tracks across the public highways. Whether the particular track here involved is affected by any of such franchises is not clear. But, in any event, a condition imposed in a franchise for the location of a private rail track across a public road to the effect that other shippers of freight may use the same in like manner as the grantee cannot enlarge our authority under Section 39(a) to order such a use.

The complainants contend also that the defendant gravel companies have entered into an operating agreement with the Southern Pacific Company which affords to the latter full control of the tracks here involved and permits it to use them for the shipment of freight of other persons. But that agreement bears the express condition that such use by the Southern Pacific Company shall not be to the detriment of the rock and gravel company. Were it proper for us to construe the rights accorded to the Southern Pacific Company under that agreement, we would still be confronted by the same question of fact above considered as to whether the proposed

use by complainants will constitute an unreasonable interference or detriment to the primary owners.

The prayer for relief in this complaint is for an order directed against both the Southern Pacific Company and the other defendants. As we have seen, no order may be made under these sections of the act against the rail carrier except to require it to afford the necessary switch and trackage connections upon its own right of way. It offers no objection to the rendition of service to complainants by any means which can legally be effected. Should the complainants propose to construct their own private spur facilities to a point where a connection may reasonably be made, such a connection will doubtless be accorded or may be compelled. The complaint must, therefore, be dismissed as against all defendants.

O R D E R

A public hearing having been held upon the complaint as above entitled, the matter submitted, and the Commission now being fully advised, and basing its order upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that the complaint herein be and it is hereby dismissed.

Dated at San Francisco, California, this 19th
day of September, 1932.

C. L. ...
Leon ...
M. A. ...
A. B. ...
Fred G. ...
Commissioners.