ORIGINAL

Decision No. 4787

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

PURITAS COFFEE & TEA COMPANY,
a corporation,

Complainant,

-vs-

ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, a corporation,
LOS ANGELES TRUST & SAVINGS BANK,
GODFREY HOLTERHOFF and F. W. BRAUN,

Defendants.

Case No. 1071.

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BY THE COMMISSION:

OPINION ON PETITION FOR REHEARING.

The defendants, LOS ANGELES TRUST & SAVINGS BANK, GODFREY HOLTERHOFF, F. W. BRAUN and W. S. HOOK, Jr., have petitioned for rehearing herein upon jurisdictional and other grounds.

Section 39 of the Public Utilities Act, after granting to the Railroad Commission power to require railroads to provide necessary connections and spur tracks, continues:

> "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."

This provision, in our opinion, applies not only to spurs constructed in accordance with orders of the Railroad Commission but also to those voluntarily constructed. The present case clearly falls within the latter class.

The agreement under which the spur track involved in this proceeding was constructed and with which complainant desires to connect, expressly provided that:

"Said railway company may use the same for other purposes than the delivery of freight to or the receipt of freight from the second party, provided that such use shall inconvenience the business of the second party as little as possible consistent therewith."

The obvious intent and understanding of the parties to this agreement was that the spur track should be open to other shippers and receivers of freight insofar as no unreasonable interference resulted to the business of the existing shippers and receivers of freight. The intent and understanding in this agreement appears to us to be in absolute harmony with the provisions of section 39 of the Public Utilities Act, which is that spur tracks over which the railroad company operates shall be regarded as a facility of the railroad system itself.

The Commission has found as a fact that the use by complainant of the spur track in question will not unreasonably interfere with the business of defendants.

Section 39 of the Public Utilities Act further provides, however, that in the event that a new connection be made to

an existing spur, payment of a reasonable proportion of the initial cost of the spur, as fixed by the Railroad Commission, should be made to the proper parties by the new user. The order of the Commission accordingly provides that unless the parties are able to agree upon the reasonable proportion of the primary cost of constructing this spur that the same shall be determined by the Railroad Commission after due notice to parties interested and a hearing thereon.

In their petition for rehearing defendants further refer to the existence of a strip of land between the right of way of the railroad and the property of the complainant, and that it may be necessary that a certain part of this strip of land should be condemned before the proper connection can be made. There is, of course, no attempt in this proceeding to condemn any of the defendants' property. If any part of such strip of land must be condemned, it would have to be condemned by the railroad company in an independent proceeding in which the owners would receive adequate compensation.

The railroad company has not applied for a rehearing, and we believe that the point raised is of no concern to the individual defendants who have applied for a rehearing.

It appears to this Commission that there is no merit in the petition for rehearing, and that the same should be denied.

ORDER DENYING PETITION FOR REHEARING.

IT IS HEREBY ORDERED that the petition for rehearing filed in this proceeding on November 23, 1917, be, and the

same hereby is, denied.

Dated at San Francisco, California, this 13th day of December, 1917.

Max Thelen

H. H. Rowell

Edwin O. Edgerton

Frank R. Devlin

Commissioners.