

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

E. B. AND A. L. STONE COMPANY,	:	
a corporation.	:	
	:	
Complainant,	:	
vs.	:	Case No. 374.
	:	
SOUTHERN PACIFIC COMPANY, a	:	
corporation,	:	
	:	
Defendant.	:	

A. L. Stone, for complainant;
Geo. D. Squires and E. C. Booth, for defendant.

LOVELAND, Commissioner.

O P I N I O N.

On March 7, 1913, E. B. and A. L. Stone Company, a corporation, filed with the Commission a petition to require Southern Pacific Company to construct spur track facilities at Coyote Station, Santa Clara County, California, to serve a proposed crushed rock, sand and gravel plant being constructed by complainant on Coyote Creek near said station. Complainant stated that on December 23, 1912, it addressed a letter to Thomas A. Ahern, Superintendent Coast Division, Southern Pacific Company, requesting said company to construct said spur facilities to said proposed plant, in accordance with the usual custom of railroad companies on the Pacific Coast, viz: that the Railroad Company furnish the necessary rails, fastenings and switches, and the applicant- meaning the complainant in this case- provide the necessary ties, grading and labor to complete the tracks. Defendant, having refused to grant this request, complainant has petitioned the Commission to require defendant to construct said tracks.

After due notice a hearing was held upon the petition on April 29, at which the parties complainant and defendant were represented and testimony taken concerning the matters referred to therein.

The power of the Commission is invoked in this petition

in pursuance of Sections 25 and 39-A, of the Public Utilities Act of the State of California, effective March 23, 1912, to require defendant to construct proper spur track facilities to plant of complainant. Complainant testified that it is willing to stand the cost of the necessary grading, ties and labor to construct certain tracks, beginning at the right of way line of defendant and extending on private property to its plant, provided defendant will provide at its own expense the necessary rails, fastenings and switches for said track. Complainant maintains that defendant should construct at its own expense such additional tracks as may be necessary upon its own right of way to properly care for and handle business which will be tendered it by complainant.

Complainant stated that it proposed to ship, within a reasonable time, at the rate of approximately five hundred tons per day, over the lines of defendant, several hundred thousand tons of crushed rock, sand and gravel, but does not guarantee or indicate either in the petition or testimony that sufficient business will be given to defendant to warrant its incurring the entire expense called for.

Defendant denies the right of complainant to require it to construct at its own entire expense, either upon its own right of way or elsewhere, such tracks as may be necessary or convenient for the purpose of delivering cars and receiving freight to and from complainant's private tracks, and denies the authority of the Commission to require in any case that it shall participate to any extent whatever in the construction of tracks off of its right of way for the purpose of serving private industries. Defendant further maintains that to construct at its own expense the tracks prayed for by complainant would entail a loss which could not be recovered out of such revenue as will probably be derived from the shipment of the low grade commodities which complainant proposed to deliver to it.

Section 25, of the Public Utilities Act, provides that every railroad corporation may be required to connect its railroad with the private tracks of any shipper, or contemplated shipper, or receiver of freight, provided such connection is reasonably practicable, and does not increase the hazard of the operation of its railroad, and further that the business which may reasonably be expected to be derived would justify the expense of such connection. Section 39-A of said Act, provides that the Commission shall have the power to require that such connection be made by a railroad corporation, including the terms thereof; further that the Commission shall have the power to require construction of necessary spurs or tracks and to apportion expense of same between the parties, provided that such connection and use can be made without unreasonable interference with the rights of the railroad.

Before passing upon the petition we will ascertain the power of the Commission in such matters. Primarily it is evident that the Public Utilities Act does not confer upon the Commission the power to require that a railroad corporation shall construct tracks for private industries off of or beyond the limits of its right of way, or participate in the expense of constructing any such tracks, except at its own pleasure. Whether or not railroad corporations of this State have heretofore, in certain instances, participated in such expense, can have no bearing upon this case. The Commission must confine itself to the authority conferred upon it under the terms of the Act.

Having in mind the provisions of the Act, the Commission holds that it is without authority to require defendant in this case to participate to any extent in the cost of constructing the track of complainant outside of the limits of defendant's right of way. If, however, complainant constructs its private track from its plant up to right of way of defendant, then this Commission has power to require defendant to install a connection therewith and provide the necessary tracks to connect therewith to properly handle the business

of complainant upon such terms as this Commission may prescribe.

The business which will be tendered defendant at Coyote Station by reason of construction of the proposed plant of complainant, in my opinion, will reasonably justify the Commission requiring defendant to construct sufficient tracks upon its own right of way for the accommodation of defendant's proposed business, and to make connection with complainant's proposed track which will extend from defendant's right of way line to the plant, upon the terms and conditions which are hereinafter specified; and I further find that such connection can be made without materially increasing the hazard of the operation of the railroad with which such connection is sought.

I, therefore, recommend the following form of Order:-

O R D E R.

E. B. and A. L. Stone Company, a corporation, having on March 7, 1913, filed with the Commission a petition to require Southern Pacific Company to construct certain track facilities upon its right of way and to share in the expense of constructing certain additional tracks upon private property to serve the proposed stone, sand and gravel plant of complainant on Coyote Creek, near the town of Coyote, Santa Clara County, California, said tracks being fully shown upon the map attached to the application, and it appearing to the Commission that a public hearing has been held, at which all interested parties were duly represented; and it further appearing to the Commission that it cannot legally require defendant to participate in the cost of constructing tracks outside of its right of way limits, but that it can legally require defendant to participate in the cost of constructing certain tracks upon its right of way, upon a basis hereinafter provided, for the accommodation of complainant's proposed business, and to make connection with complainant's track, when constructed, at the limits of its right of way;

IT IS HEREBY ORDERED that Southern Pacific Company be, and

it is hereby required, to furnish at its own cost the necessary rails, fastenings and switches for certain tracks to be constructed upon its right of way at Coyote Station to serve the proposed business and connect with the proposed tracks which are to be constructed by complainant for the purpose of handling cars to and from its proposed rock, sand and gravel plant on Coyote Creek, said tracks upon said right of way to aggregate approximately twenty-five hundred and twenty-five feet in length, and including three switches, as shown upon the map attached to the petition. The complainant shall, at its own cost, do the necessary grading, provide the necessary ties, and furnish the necessary labor for the construction of said tracks upon said right of way in good and first-class condition, to the satisfaction of defendant, which shall also include the cost of moving the present team track of defendant, now on the ground, to the new position indicated on the map, and which also shall include the cost of three additional cattle guards where crossing is made with the fences of defendant.

AND IT IS FURTHER ORDERED that complainant shall, at its own expense, complete such tracks as may be necessary to reach its proposed plant on Coyote Creek, on private land, beginning at the right of way line of defendant and extending to said plant, and shall complete the necessary grading for the tracks on defendant's right of way hereinbefore referred to, before defendant shall be required to incur any cost whatever in securing and delivering any rails and other material, provided, however, that complainant shall have the right to enter into any agreement concerning the construction of said tracks and the apportionment of the cost of same, not provided for in this Order, as may be satisfactory to defendant.

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 24
day of May, 1913.

John W. Merkleman

H. D. England

Edwin O. Edgerton

Commissioners.