

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application of )  
the Bay Point & Clayton Railroad )  
Company for Revision of Division of )  
Rates with the Oakland, Antioch & )  
Eastern Railway Company. )

Application No. 4305.

Mastick & Partridge, by John S. Partridge, for Applicant.

Steinhart, McAtee & Levy, and Sanborn & Roehl, for  
Oakland, Antioch & Eastern Railway Company.

LOVELAND, COMMISSIONER:

C O P I N I O N

The Bay Point & Clayton Railroad Company on January 8, 1919 petitioned this Commission under Section 33 of the Public Utilities Act to prescribe the division of the earnings in connection with the through route and joint rates applying to cement, carloads, from Cowell to Concord, Walnut Creek, Danville, Mallard, Pittsburg, Oakland, Sacramento and to other points located on the Oakland, Antioch & Eastern Railway.

The Bay Point & Clayton Railroad was incorporated August 29, 1906 under the laws of the State of California. The line extends from Cowell to Bay point, a total distance of 8.19 miles, connecting with the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company at Bay Point and with the defendant at Clyde. Applicant's railroad is owned by the same interests as control the Cowell Portland Cement Company and was constructed primarily to serve the cement plant located at Cowell.

According to an exhibit presented at the hearing, applicant commenced regular operation on June 1, 1909 and claims an investment as of December 31, 1917 of \$225,518.84. During the first four years of its operations, June 1, 1909 to June 30, 1913, it accumulated a surplus of \$41,305.96. In 1914 it had a net income (profit) of \$1,328.55, while during the period from June 30, 1915 to December 31, 1918, inclusive, it suffered a net loss of \$21,743.48, thus reducing its surplus from \$41,305.96 as of June 30, 1913, to \$20,891.03 on December 31, 1918. Prior to December, 1912 there were no joint rates on cement with main-line carriers and applicant received a much higher revenue per ton for the transportation of this commodity based on the combination of local rates than it later received when joint rates were established. The record further shows that in the year 1916 a pipe line was constructed into the plant of the cement company, thus depriving applicant of the freight revenue from approximately 26000 tons of fuel oil per annum. These changes, no doubt, account for the unfavorable financial showing made during the last four years.

The gross earnings, based on the total freight tonnage, represented 18.3 cents per ton in 1916, 18.4 cents in 1917 and 21.9 cents in 1918, or an average of 19.5 cents per ton for a three-year period.

During the five years 1914-15-16-17-18 applicant transported a total of 708672.94 tons of freight. Of this total 603168.92 tons were outbound and 105504.02 tons were inbound. As closely as can be determined from the exhibit filed 592068.95 tons of the outbound freight were moved on behalf of the Cowell Portland Cement Company and only 11099.97 tons for outside parties. This represents 98.16% for the Cowell Portland Cement Company and 1.84% for outside parties. Of the inbound traffic 101082.34 tons were for the Cowell Portland Cement Company and 4421.68 tons for outside

parties, or a percentage of 95.81 and 4.19. Taking the combined tonnage, outbound and inbound, it is found that there were handled for the Cowell Portland Cement Company 693151.29 tons and for outside parties 15521.65 tons, or a ratio of 97.81% and 2.19%. This demonstrates clearly that applicant's railroad was constructed and is now being maintained for the traffic of the cement company, there being practically no outside business.

The joint rates here under discussion were first published in Oakland, Antioch & Eastern Joint Freight Tariff No. 8, C.R.C. No. 33, effective October 7, 1915. Prior to July 8, 1918, applicant was receiving from the Oakland, Antioch & Eastern through Clyde the same division of the joint earnings as it received in connection with tonnage handled by the Atchison, Topeka & Santa Fe and Southern Pacific Company through Bay Point. Apparently, the basis was satisfactory to the parties in this proceeding, for they agreed to it in October, 1914, as evidenced by correspondence between the traffic managers of the two companies.

Statement set forth below shows the rates to the specified points in effect prior to July 8, 1918 and those established on that date:

From Cowell To	:	Prior to : July 8, 1918 : July 8, 1918:	:	July 8, 1918 : And at Present
Concord	:	\$ .75	:	\$1.20
Walnut Creek	:	.75	:	1.20
Denville	:	1.25	:	1.70
Mallard	:	.30	:	.70
Pittsburg	:	.50	:	.90
Oakland	:	.75	:	1.20
(40th & Shafter St.)	:		:	
Sacramento	:	1.00	:	1.40
(Front & M Sts.)	:		:	

The change in rates July 8, 1918 amounted to an increase of practically 40 cents per ton and are in line with the cement rate increases made effective June 25, 1918 by Director General of

Railroads, W. G. McAdoo, in his General Order No. 28 on the federal controlled lines.

Since the advance in cement rates from Cowell to points on the Oakland, Antioch & Eastern, no change has been made in the basis for the division of the earnings and applicant is now asking for a part of the 40 cents per ton increase in the Joint cement rates. In answer to a direct question as to the earnings the Bay Point & Clayton should receive, its traffic manager stated that in his judgment the allowance to the Bay Point & Clayton should be 30 cents per ton out of rates not in excess of \$1.00 per ton and 40 cents per ton when the rates are over \$1.00 per ton.

The Oakland, Antioch & Eastern Railway was incorporated April 1, 1911 and operates an electric Railway between Oakland and Sacramento, with branches to Diablo and Pittsburg and has arrangements with the San Francisco-Oakland Terminal Railways for handling passengers between Oakland and San Francisco. The system includes the Oakland & Antioch Railway and the San Ramon Valley Railroad and has 105.57 miles of main line, with 17.49 miles of second track and sidings, making a total of 123.06 miles. In the year 1918 the total operating revenues were \$879766.36; of this amount \$663541.03 was passenger revenue and \$181986.50 freight revenue. The company has operated at a deficit since the commencement of service, the net income (loss) was \$137,362.62 in 1914, \$157,439.74 in 1915; \$210,231.58 in 1916; \$149,989.77 in 1917 and \$34,161.20 in 1918, or a total loss of \$689,184.71 during the past five years.

For the benefit of this proceeding it will not be necessary to go into the details of defendant's financial condition, but it may here be stated that an assessment was levied against the stock in 1917 and that after the credits from this assessment had been applied the company carried as a deficit December 31, 1918, in its profit and loss account, the sum of \$862,325.93.

In the year 1917 the total cement tonnage originating at the plant of the Cowell Portland Cement Company and forwarded via the Bay Point & Clayton Railroad was 131259 tons. Of this total approximately 25000 tons were delivered to the Oakland, Antioch & Eastern Railway and of this 25000 tons, 21000 tons were destined to Mallard Station for trans-shipment by water craft, leaving but 4000 tons in the year 1917 for delivery to points on the Oakland, Antioch & Eastern other than Mallard. In the year 1918 the total cement tonnage was 107319 tons; of this total 16000 tons were delivered to the Oakland, Antioch & Eastern at Clyde and of the 16000 tons approximately 13000 tons were delivered at Mallard for trans-shipment by water craft, leaving but 3000 tons in the year 1918 for local points on the Oakland, Antioch & Eastern. The Bay Point & Clayton is now constructing a line to tidewater at Bay Point which, the testimony indicates, will be completed about August 1, 1919, when all shipments to Mallard Station will cease, but as a matter of fact, there have been no shipments to Mallard during the year 1919. It will thus be seen that by the elimination of the Mallard tonnage the Oakland, Antioch & Eastern receives at Clyde less than 3% of the total cement tonnage handled by the Bay Point & Clayton, the other 97% being delivered either to the Atchison, Topeka & Santa Fe or the Southern Pacific Company at Bay Point.

As shown by defendant's Exhibit No.3, there were but 71 carloads of cement, other than the shipments to Mallard, forwarded to Oakland, Antioch & Eastern points during the year 1918. Of these 71 cars, 61 moved to Oakland, Sacramento, Concord and Meinert, where the rate prior to July 8, 1918 was \$1.00 per ton or less, out of which the Bay Point & Clayton received a division of 10 cents per ton, with a maximum of \$5.00 per car.

Under the rates as increased July 8, 1918, to these four points, as shown in the preceding exhibit, the Bay Point & Clayton

Railroad will receive an increase in its revenue of 100%; in other words, where the division was 10 cents per ton to the Bay Point & Clayton, that carrier now receives 20 cents per ton. The increasing of the rates to the other three points, Diablo, Pittsburg and Ohmar, to which the remaining ten cars were consigned, will not change the division of the earnings to the Bay Point & Clayton, but the total revenue accruing to the Bay Point & Clayton on tonnage to these three points was only \$33.30 during 1918 and, therefore, is of no importance. By the changing of the rates on July 8, 1918, the revenue for the balance of the year 1918 accruing to the Oakland, Antioch & Eastern was increased by 45%, while that secured by the Bay Point & Clayton increased 90%. On a tonnage basis the Bay Point & Clayton has already received increased earnings of 100% on 81% of the traffic moved in connection with the Oakland, Antioch & Eastern by reason of the higher through rates.

The applicant owns but one locomotive and one flat car and in the year 1917 had but thirteen employees, consisting of three general office men, four section men, one station agent and five engine and train men. The total pay roll for that year was \$16,698.71 and of this amount \$5400.00 covered the compensation paid to the three general office employees. The total expenses of applicant, including taxes and the hire of equipment, in the year 1916 were \$34100.29; in 1917 \$31207.19 and in 1918 \$32793.33. These figures indicate that there have been no material increases in operating costs during recent years and no testimony was introduced on this point.

In cases Nos. 232 and 233, decided October 25, 1912, Cowell Portland Cement Company and Bay Point & Clayton Railroad Company vs The Atchison, Topeka & Santa Fe Railway Company and Southern Pacific Company (Vol.1, Opinions and Orders of the Railroad Commission of California, pages 809-823), this Commission

established through routes and joint rates on cement from Cowell, the terminus of the Bay Point & Clayton Railroad, to stations located on the rails of the Southern Pacific and Atchison, Topeka & Santa Fe. An order was made in the above numbered cases requiring these main-line carriers to extend the rates applying on cement at Bay Point to Cowell, on the Bay Point & Clayton Railroad.

In deciding these cases, the Commission recommended certain re-adjustments in cement rates to points within California and suggested to the connecting main-line carriers that in the division of the earnings the Bay Point & Clayton receive 10 cents per ton, with a maximum of \$5.00 per car when the rate from Cowell to destination was \$1.00 per ton or less, and 20 cents per ton when the rate was in excess of \$1.00 per ton. The cement rates recommended in the decision became effective in connection with the Southern Pacific and Atchison, Topeka & Santa Fe on December 13, 1912 and interested carriers accepted the division of joint rates as set forth above and this division is still being maintained by the federal controlled railroads.

The opinions and orders in the original cement cases, Nos. 232 and 233, were based upon the fact that the line carriers had created discriminatory situations by applying the main-line rates to cement plants located at Davenport, Napa Junction and San Juan on the rails of the Southern Pacific and to Colton, located on the rails of the Atchison, Topeka & Santa Fe, but had refused to extend the same advantages to the cement shippers forwarding their products from Cowell over the Bay Point & Clayton through Bay Point and from Cement over the rails of the Cement, Tolinas & Tidewater through Tolinas.

The following language is employed in Case No. 232,

supra:

"We do not wish to be understood as claiming that carriers should always be required to extend their main line rates to branch lines which reach industries, nor do we wish to be understood as claiming that when rates are higher on a branch line involving additional movement than those in effect to a junction point, that discrimination must necessarily exist in favor of the shipper from the junction point. In other words, all of the circumstances as to character of the product, policy of the carrier elsewhere under like circumstances, etc. must be considered, and in the case now under consideration, where we are considering solely the rates on cement, to extend main line cement rates from junction point to some plants, and decline to do so for other plants, constitutes a discrimination which should be removed".

In Case No. 233, the Commission's position was re-stated:

"As was stated in Case No. 232, the Commission is of the opinion that large steam roads should not in all cases be required to give through route and joint rates with industrial or tap line roads but that each case coming before the Commission must be considered upon the merits of that particular case, and in granting the prayer of complainant in this case and ordering the defendant to publish through route and joint rates with complainants and intervenors on cement the opinion of the Commission is not based upon the right of complainants and intervenors to through route and joint rates by reason of the volume of the traffic other than the movement of cement, but upon the circumstances disclosed in the case relating to the charge of discrimination and the reasonableness of the rate, which we believe has been sustained".

It appears to me that if at this time an order were issued increasing the allowance to the Bay Point & Clayton Railroad on traffic moving in connection with the Oakland, Antioch & Eastern, a discrimination would immediately be created in favor of the Cowell Portland Cement Company, located at Cowell, as against the cement manufacturers shipping from Tolenas, Davenport, Napa Junction and San Juan to the competitive points reached direct by the Oakland.

Antioch & Eastern, or through its connections.

Notwithstanding the fact that the Bay Point & Clayton Railroad is a common carrier and offers its services to the general public, the conditions are such that the service to the public is insignificant and, therefore, any additional revenue secured out of the joint rates for the transportation of cement from the Oakland, Antioch & Eastern and not also given manufacturers by the other connecting main-line carriers would be, to that extent, an advantage which the Cowell Portland Cement Company would have over its competitors shipping cement from other points.

There is testimony in the instant case to the effect that the Bay Point & Clayton Railroad now has an application before the United States Railroad Administration seeking to secure an increase in the division of the through rates on tonnage delivered to the Atchison, Topeka & Santa Fe and the Southern Pacific at Bay Point.

As outlined in our opinions and orders in Cases 232 and 235 (supra) carrier should not be permitted to maintain discriminatory or unreasonable adjustments as between the different competing cement manufacturers. The tonnage of cement delivered by the Bay Point & Clayton Railroad to the Atchison, Topeka & Santa Fe and Southern Pacific for interchange at Bay Point represents 97% of the total cement shipped by rail from Cowell, the other 3% passing to the Oakland, Antioch & Eastern at Clyde. By the increasing of the joint rates, the Bay Point & Clayton, as heretofore shown, is receiving 100% increased revenue on 81% of the tonnage delivered to the Oakland, Antioch & Eastern at Clyde. The same automatic adjustment has taken place in connection with the traffic delivered to the federal controlled railroads where the through rates have increased from \$1.00 or less per ton to more than \$1.00 per ton.

In prescribing the division of joint rates, the rights of all interested carriers should be considered, for each is entitled to a fair and equitable division of the revenue. It would appear, in a situation of this kind, that the proper procedure would first have been an action before the Interstate Commerce Commission to determine the divisions to be paid by the two federal controlled railroads, who are handling more than 97% of the tonnage.

I am not convinced that applicant has demonstrated the necessity of a change in the divisions. There is no conclusive showing that the allowances to the Bay Point & Clayton are less than reasonable for the services performed, nor that any controlling changes, since our orders in Cases 232 and 233, have taken place in the handling of the cement between the plant and the junction points which would justify the increasing of the expense to the main-line carriers.

Upon this record, I do not find that the divisions of the joint rates, by which the Bay Point & Clayton Railroad receives from the Oakland, Antioch & Eastern Railway, 10 cents per ton, with a minimum of \$5.00 per car, when the joint rate is \$1.00 per ton or less and 20 cents per ton when the joint rate is in excess of \$1.00 per ton, in effect at the time of the hearing, were unreasonable.

No payments have been received by the Oakland, Antioch & Eastern since the joint rates on cement were increased. It is entitled to divisions since that date on the basis outlined above. It is expected that the Bay Point & Clayton Railroad will promptly pay to the Oakland, Antioch & Eastern Railway the amount found due on the prepaid shipments which have moved since the joint rates were increased.

I recommend that the application be denied and submit the following form of order:

O R D E R

The Bay Point & Clayton Railroad Company, having applied to the Railroad Commission for an order changing the divisions of the earning applied to the joint commodity rates on cement to points located on the Oakland, Antioch & Eastern Railway, a hearing having been held, and it appearing to the Commission, as set forth in the preceding opinion, that the application should be denied,

IT IS HEREBY ORDERED that the application herein be and it is hereby denied.

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 1<sup>st</sup>  
day of August, 1919.

Edwin O. Edgerton

A. S. Bradford

Frank Weston

H. C. Bunnick

Commissioners.