

MEXICO & SAN DIEGO RAILWAY COMPANY,

Complainant,

vs.

SAN DIEGO & SOUTHEASTERN RAILWAY COMPANY,

Defendant.

Case No. 401.

George J. Leovy and Leovy & Leovy for complainant.
E. L. Titus and Read G. Dilworth for defendant.

THELEN, Commissioner.

OPINION.

This is an action to compel the defendant Railway Company either to permit the complainant Railway Company to operate jointly with the defendant a portion of the defendant's line of railway or to compel the defendant to operate for passenger as well as freight traffic said portion of its line of railway, and also to establish a through route and to fix rates in connection therewith over the lines of the parties hereto, as will hereinafter appear in greater detail.

The complaint in this proceeding was filed on May 29, 1915. It alleges, in effect, that both complainant and defendant are California corporations engaged in the business of common carriers of freight and passengers; that Coronado Railroad Company was a railway corporation operating a line of steam railway for the carriage of freight and passengers between the city of San Diego and the city of Coronado through what is known as South San Diego Company's Addition to South San Diego, near what is known as the "Head of the Bay" region, in San Diego county; that the defendant is the successor in interest of the Coronado Railroad Company; that complainant has constructed and is now operating its line of railway from a point in Imperial Beach, in San Diego county, to what is known as its Ninth Street Station, in

South San Diego, at which point it has a physical connection with the track of the defendant, formerly owned and operated by the Coronado Railroad Company; that defendant operates by steam that portion of the line of railway formerly owned by the Coronado Railroad Company, which lies between the foot of Ninth Street, in San Diego, and what is known as the N. C. & O. Junction, about one mile east of complainant's said Ninth Street Station, in South San Diego, and thence over another portion of its line of railway to the town of Tia Juana, on the Mexican border, and that the portion of the Coronado Railroad Company's line of railway which lies between said N. C. & O. Junction and the city of Coronado and with which complainant has its physical connection, is operated for freight purposes only; that persons desiring to travel to and from Imperial Beach must either walk a distance of about one mile from complainant's Ninth Street Station to said N. C. & O. Junction to take defendant's trains or travel by boat to and from the city of San Diego; that the boat service is inadequate and unsatisfactory; that Imperial Beach and vicinity are rapidly growing in population; and that defendant has refused complainant's request, both as to a joint operation of said portion of defendant's line of railway lying between the N. C. & O. Junction and complainant's said Ninth Street Station and for the installation by defendant itself of passenger service between said points. Then follow allegations with reference to the freight and passenger rates of both parties. The complainant then asks that either that defendant permit the joint operation of its said track between N. C. & O. Junction and defendant's said Ninth Street Station in South San Diego or that defendant be compelled to resume the operation of said line of track for passenger as well as for freight service. The complainant also asks that defendant be compelled to extend the same rate per passenger per mile over that portion of defendant's road as to which operation was requested as now exists over defendant's line of railway between the foot of Sixth Street, in San Diego, and defendant's Twenty-fourth Street Station, in National City.

On June 23, 1913, defendant filed its answer. In its

answer defendant alleges, in effect, that the portion of its line of railway formerly owned by the Coronado Railroad Company, lying between N. C. & O. Junction and the city of Coronado and passing through South San Diego, is used for the carriage of freight only; that the territory included between said Junction and the city of Coronado is sparsely populated and that the population has not materially increased in the last 20 years, so that its line of railway could not be operated between said points for the carriage of passengers without considerable loss; that passenger traffic on said line was abandoned many years ago for the reason that it could not be made to pay the cost of operation; that the freight carried on this portion of its line of railway consists mostly of rock and other material used in the construction of streets and a seawall in the city of Coronado; that the locality known as Imperial Beach is sparsely populated and that there has been but small increase in its population during the last two years; that the Mexico & San Diego Railway was built and promoted by one E. S. Babcock for the purpose of exploiting real estate owned by said Babcock at Imperial Beach; that the passenger traffic proposed to be delivered by complainant to the defendant will be so small that the revenue therefrom will not for a number of years, if ever, pay actual cost of operating cars on defendant's line of railway required for the purpose of carrying passengers between complainant's Ninth Street Station, in San Diego, and N. C. & O. Junction, and that there is not sufficient public necessity to require the said operation for passengers; that complainant by constructing one additional mile of track from its said Ninth Street Station, in South San Diego, to the N. C. & O. Junction, could connect directly with defendant's line of railway operated both for passengers and freight, between San Diego and Tia Juana; that the passenger rate in effect on the old Coronado Belt Line while it was being operated for passenger traffic many years ago was forty-five cents between San Diego and South San Diego; and that the passenger

rate between San Diego and defendant's Twenty-fourth Street Station, in National City, was put into effect under peculiar conditions and cannot fairly be used as a basis for the establishment of rates to points beyond said station. Defendant further raises the point that the tracks and equipment of the old Coronado Belt Line between the N. C. & O. Junction and Coronado are upon private right of way, and that no part of same is constructed or laid on, over or under any street or highway, except such parts thereof as cross streets which intersect it, and that any joint use of said tracks with any other railroad would result in irreparable injury, and that under Section 42 of the Public Utilities Act, this Commission has no jurisdiction to compel a joint operation of these tracks or any portion thereof by the defendant and any other railway company.

The hearing in this case was held in the city of San Diego on July 5, 1913. The defendant waived its point with reference to the jurisdiction of the Commission and both sides submitted fully to the Commission's jurisdiction and requested the Commission to decide all points at issue.

It appears from the evidence that the complainant has constructed its line of railway from a station at Ninth Street, in South San Diego, at which point a physical connection exists with the track of the old Coronado Belt Line, a distance of about 2.5 miles in a general southerly and southwesterly direction to Imperial Beach, on the Pacific Ocean, a few miles north from the Mexican boundary line; that said line of railway is a single track line and is being operated by electric storage battery cars; that the purpose of constructing this line of railway was primarily to promote the sale of lands in Imperial Beach, owned or controlled by Mr. E. S. Babcock, who is the chief owner of the Mexico & San Diego Railway Company, and to serve such persons as may desire to locate at Imperial Beach; that persons desiring to travel between San Diego and Imperial Beach must now either use gasoline launches or other water craft, between San Diego and the landing near complainant's Ninth Street Station, in

South San Diego or walk a distance of about a mile between said station and defendant's N. C. & O. Junction; that travel by boat is uncertain and unsatisfactory; that in order to traverse the distance between complainant's said Ninth Street Station and defendant's said N. C. & O. Junction by rail it will be necessary either to have complainant secure the right to the joint operation of defendant's line of railway between said points or to have the defendant itself operate this line for passenger business or to have complainant build its own line of railway between said two points; that for many years defendant's line of railway between said two points has been operated for freight alone except for an occasional passenger excursion around the Bay between San Diego and Coronado; that defendant operates several steam trains each day on regular passenger and freight schedule between San Diego and Tia Juana, through N. C. & O. Junction; that if a connection between the lines of the two railway companies were made at N. C. & O. Junction, passengers between Imperial Beach and points north of said Junction could use the lines of complainant between N. C. & O. Junction and points south thereof and the lines of the defendant between said Junction and points north thereof; and that the land lying between the Ninth Street Station in South San Diego and N. C. & O. Junction is owned or controlled by E. S. Babcock, and that the construction of a track between said points, exclusive of right of way, would cost \$7,000 or over.

There was considerable controversy with reference to the population of Imperial Beach and South San Diego, both of which localities would be inconvenienced by the establishment of through rail transportation. It appears that the population of Imperial Beach is largely transient and a considerable proportion of the people living there come to Imperial Beach only over weekends or during certain seasons of the year. Mr. E. W. Petersen, who manages a water system in this locality, testified that in Imperial Beach there are 50 water taps in use and 15 not in use, and that there is an average of two or three people to the tap. He also testified that in South San Diego

there are 23 taps in use and 10 not in use. It thus appears from his testimony that in Imperial Beach and South San Diego together there are 73/^{water} taps in use and 23 not in use. Mr. David Dissinger, who is the postmaster at Imperial Beach and has a store there, testified that Imperial Beach has a population of 75 persons, and that of some 75 or 80 houses in the locality, some 60 are either occupied or have furniture in them.

Mr. R. B. Talbot, the complainant's superintendent, testified that between May 18th and 31st, inclusive, the complainant's line of railway carried 405 passengers, or an average of 29 per day. During the month of June, 690 passengers were carried, or an average of 23 per day. The electric storage battery cars used have a capacity of 23 passengers. The fare is 5¢ each way. The complainant has been making five round trips each way per day between its Ninth Street Station, in South San Diego, and Imperial Beach. It is evident that the traffic on complainant's line of railway has been very small, and there is considerable doubt whether, at the present time, the traffic pays even operating expenses. Rail service between San Diego and the "Head of the Bay" region would no doubt result in increased population and a larger revenue on complainant's line of railway.

After the hearing had proceeded to some extent, the defendant presented to the Commission copy of a letter dated July 1, 1913, to the attorney for the complainant, in which letter the defendant offered to give to the complainant trackage rights on defendant's line of railway between N. C. & O. Junction/^{and complainant's Ninth Street Station} in South San Diego, until such time as the San Diego & Southeastern Railway Company should extend its passenger service to South San Diego, on the following terms and conditions:

1. That the trackage charge to cover the use of track by cars of the Mexico & San Diego Railway Company should be 25¢ per car mile.
2. That one half of the cost of installation and maintenance of special telephone service required in connection with the joint use of the track should be paid by the Mexico & San Diego Railway

Company.

3. That the running time schedule of the cars of the Mexico & San Diego Railway Company over said track of the San Diego & Southeastern Railway Company should be approved by the superintendent or general superintendent of the San Diego & Southeastern Railway Company, and that no trips other than those provided in the schedule should be made by the Mexico & San Diego Railway Company except under the orders of the superintendent or train dispatcher of the San Diego & Southeastern Railway Company.

4. That Mexico & San Diego Railway Company should hold the San Diego & Southeastern Railway Company harmless in the event of claim for any accident occurring in the operation of the cars of the Mexico & San Diego Railway Company over the tracks of the San Diego & Southeastern Railway Company and should provide a suitable bond to indemnify the San Diego & Southeastern Railway Company against any such claims.

5. That if a through route between points on the Mexico & San Diego Railway Company to points on the San Diego & Southeastern Railway Company be contemplated, the San Diego & Southeastern Railway Company should not be required to accept as its share less than the regular schedule rates between points on its line from time to time established.

The terms of this stipulation were satisfactory to the complainant, except those relating to the bond, the rental and the rates. Both parties submitted these matters to the Commission and requested the Commission to pass on them. I shall now consider them somewhat more in detail, in so far as necessary.

(1) THE BOND.

The San Diego & Southeastern Railway Company asks that the Mexico & San Diego Railway Company give to it a bond so as to hold the Company harmless in the event of any claims from accidents occurring in the operation of the cars of the Mexico & San Diego Railway Company over the tracks of the San Diego & Southeastern

Railway Company. Both sides agreed that a bond should be given but they disagreed with reference to the amount thereof. The Mexico & San Diego Railway Company contends that \$10,000 would be sufficient, while the San Diego & Southeastern Railway Company urges that the amount should be not less than \$50,000. After a careful consideration of the question, I have reached the conclusion that the amount of the bond should be \$25,000. The bond may either be a surety bond or a personal bond, satisfactory to the San Diego & Southeastern Railway Company. If a personal bond is offered and the parties cannot agree, the matter should be submitted to this Commission.

(2) TRACK RENT.

The San Diego & Southeastern Railway Company contended that the trackage charge should be 25¢ per car mile. As the distance is about 1.1 miles, and as the Mexico & San Diego Railway Company ~~intends~~ intends to run about five round-trips per day, the charge would be about \$2.75 per day. The San Diego & Southeastern Railway Company suggested this figure for the reason that it was the figure in effect under a similar prior arrangement with Mr. E.W. Peterson, but expressed its willingness to leave the matter entirely with the Commission. The Commission accordingly asked its engineering department to prepare a report as to the fair charge. The department made a careful investigation into the matter and reported that a charge of \$3.00 per day would be fair on the assumption that the property was entirely new and that it would be used solely by the Mexico & San Diego Railway Company. As the property was constructed many years ago and has been subject to considerable depreciation, and as it will also be used by the San Diego & Southeastern Railway Company for freight service, and as the wear and tear resulting from the complainant's light storage battery cars will not be considerable, I have reached the conclusion that a fair rental to be paid will be the sum of \$1.50 per day, irrespective of the number of trips run by the complainant.

(3) RATES.

Complainant does not question the defendant's local one-way passenger fare of 25¢ between San Diego and N. C. & O. Junction

or its 25-ride, sixty-day family commutation rate of \$4.50 between said points. Complainant, however, asks for the establishment of two new through rates, one being a sixty-ride, 30-day individual commutation book rate of \$11.25 between Imperial Beach and San Diego, of which amount the defendant would receive \$6.75, and the other being a local, round-trip rate between Imperial Beach and San Diego of 50¢, of which amount the defendant would receive 40¢. The defendant's present local round-trip rate between San Diego and N. C. & O. Junction is 50¢.

While complainant has made this request for the establishment of new rates, which amount to a decrease of the compensation at present received by the defendant for traffic between San Diego and N. C. & O. Junction, complainant introduced no satisfactory evidence to justify such rates. Before this Commission would be justified in reducing the rates of the defendant for traffic between San Diego and N. C. & O. Junction, it would be necessary to make a careful inquiry into the value of its property and its present operating expenses, so as to ascertain whether or not such reduction would be fair. For the present the order will be confined to the establishment of a through route, without making any changes in the existing rates.

All service arrangements referred to in the defendant's offer are, of course, subject to the jurisdiction of the Commission. Two railway companies cannot, by making an arrangement between themselves, remove this subject from the Commission's jurisdiction.

It is clear that complainant's line of railway has been built and is being operated primarily for the purpose of selling real estate at Imperial Beach, owned or controlled by Mr. E. S. Babcock. It is equally clear that the line is at present probably not even paying operating expenses. This is one of the many cases which are constantly coming under the Commission's observation in which a utility such as particularly a water company or a street railroad company, is being constructed and operated for the purpose, primarily, of selling

land. It often happens in these cases that the rate charged by the utility is low and attractive, so that persons are induced to buy the land. Thereafter, after the land has been sold out, it frequently happens that the utility end of the business is transferred to other hands and that the utility then appeals to this Commission for authority to increase the rate or fare on the strength of which the land was sold. In such cases the utility can show to the Commission that the return from the utility business alone is not sufficient to pay operating expenses and yield a return on the investment. While something may be said in favor of an increased rate in such cases, it seems most unfair to the persons who have bought their land on the faith of the continued existence of the low rate or fare which was held out to them as an inducement. We are commenting on this matter in the present case for the reason that we have here a utility which starts operations subsequent to the enactment of the Public Utilities Act and which is subject from the first to the control of this Commission. We think it well to say at the very outset of this utility's operations that this Commission will not hereafter look with favor on an application for authority to increase rates upon a showing that the railroad is not paying operating expenses plus a fair return on the investment. This Commission, furthermore, will insist that the Mexico & San Diego Railway Company meet to the full its obligation to the public in the way of service, and particularly in the way of safety of operation. The fact that the revenue of this utility as distinguished from the land end of the business, may not be large, will not serve as an excuse for a failure to comply with orders of this Commission compelling the safe operation of its line of railway and the continuance of the service which the Company now holds itself out as performing.

We desire also to say that the Commission will not look with favor on any attempt of the complainant to compel any other utility to help the complainant bear its burdens.

I submit herewith the following form of order:

O R D E R.

The complaint and answer having been filed in the above entitled proceeding, and a public hearing having been held thereon, and the Commission being fully advised in the premises, and both parties having submitted fully to the jurisdiction of the Commission to settle all points at issue, and the defendant having offered to permit the complainant to operate jointly a certain portion of defendant's line of railway, hereinafter referred to, upon the terms of a written offer, referred to in the opinion which precedes this order, subject to the decision of this Commission with reference to the points referred to in said opinion,

IT IS HEREBY ORDERED as follows:

1. SAN DIEGO & SOUTHEASTERN RAILWAY COMPANY is hereby ordered to permit the MEXICO & SAN DIEGO RAILWAY COMPANY to operate jointly that portion of the tracks of said San Diego & Southeastern Railway Company which lies between the junction of the lines of said parties at Ninth Street in South San Diego and the N. C. & C. Junction on the line of said San Diego & Southeastern Railway Company, until such time as the San Diego & Southeastern Railway Company shall extend its passenger service to South San Diego, subject to the following terms and conditions:

(a) The trackage charge to cover the use of said track by the cars of the Mexico & San Diego Railway Company shall be one dollar and fifty cents (\$1.50) per day.

(b) One half of the cost of installation and maintenance of special telephone service required in connection with the joint use of said track shall be paid by the Mexico & San Diego Railway Company.

(c) The running time schedule of the cars of the Mexico & San Diego Railway Company over said portion of the tracks of the San Diego & Southeastern Railway Company shall be approved by the

superintendent or general superintendent of the San Diego & Southeastern Railway Company, and no trips, other than those provided in the schedule, shall be made except under orders of the superintendent or train dispatcher of the San Diego & Southeastern Railway Company, all subject to the authority of this Commission under the Public Utilities Act.

(d) Mexico & San Diego Railway Company shall hold the San Diego & Southeastern Railway Company harmless in the event of claim for any accident occurring in the operation of the cars of the Mexico & San Diego Railway Company over the tracks of the San Diego & Southeastern Railway Company, and not due entirely to the fault and negligence of the San Diego & Southeastern Railway Company, and shall provide a suitable bond in the sum of twenty-five thousand (\$25,000) dollars to indemnify the San Diego & Southeastern Railway against any such claims. Said bond may either be a surety bond or a personal bond. If a personal bond is offered, it shall be satisfactory to the San Diego & Southeastern Railway Company, but if the parties cannot agree, the matter shall be submitted to this Commission.

(e) A through route is hereby established between the lines of railway of the parties to this proceeding, but for the present the San Diego & Southeastern Railway Company shall not be required to accept as its share of the fares less than its present schedule rates between points affected on its own line of railway.

2. The complaint, in so far as it asks for the relief herein given is hereby sustained, but in all other respects dismissed.

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, this 25th day of July, 1913.

Wm. M. Eckleman
Wm. Gordon
Wm. Thelan

Commissioners.