

Decision No. 28378.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC COAST AGGREGATES, INC.,  
Complainant,  
vs.  
SOUTHERN PACIFIC COMPANY,  
THE WESTERN PACIFIC RAILROAD COMPANY,  
Defendants.

OPINION  
Case No. 2837.

E. W. Hollingsworth, R. T. Boyd and Bishop &  
Behler, for complainant.

Frank Nelson and J. E. Lyons, for defendant  
Southern Pacific Company.

J. P. Haynes and L. N. Bradshaw, for defendant  
The Western Pacific Railroad Company.

SEAVEY, Commissioner:

OPINION

Decision No. 25113 in the above entitled proceeding held  
that charges on shipments of crushed rock, sand and gravel moving  
prior to July 31, 1930, and subsequent thereto, from Eliot on the  
Southern Pacific Company to industry tracks served by The Western  
Pacific Railroad Company at Oakland and San Francisco were collect-  
ed in violation of the long and short haul provisions of Section  
21 Article XIII of the Constitution. <sup>1</sup> Reparation was awarded on

<sup>1</sup> The charges collected were higher than on like traffic from  
Livermore to San Francisco and Oakland. Livermore is a more dis-  
tant point than Eliot on the route to San Francisco and Oakland.

all such shipments. The complaint also sought reparation on shipments moving after July 31, 1930, which was denied for the reasons hereafter stated.

Upon petition for rehearing filed by complainant the Commission reopened the case for further hearing which was had on October 6, 1932. Thereafter, on November 28, 1932, Decision No. 25113 was set aside pending final determination of the matters therein involved.

This proceeding is closely allied with Application No. 16179 in which applicants therein applied for, and obtained, authority to depart from the long and short haul provisions of Section 24(a) of the Public Utilities Act by absorbing switching charges on competitive traffic while not absorbing such charges on non-competitive traffic.

By Decision No. 22670 on Application No. 16179 the Commission in effect held that relief should be granted applicants therein, providing that the lower charges from the more distant competitive point could be justified on the grounds of competition which did not exist to the same extent at the non-competitive point. Subsequently, by Decision No. 25100, the Commission broadened this authority to permit the absorption of switching charges at competitive points, regardless of the conditions surrounding the traffic from non-competitive intermediate points. Decision No. 25100 was subsequently set aside. The effect of the latter decision was to deprive complainant of reparation by the Commission changing Decision No. 22670, and upon which complainant relied, nunc pro tunc.<sup>2</sup>

Under the facts here of record the Commission should hold

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<sup>2</sup> The reasons for the Commission's decision, and particularly the effect it had upon the instant case, are fully set forth in Decision No. 16549 of this date.

that complainant is entitled to reparation on all shipments moving on and after July 31, 1930, together with interest at 6% per annum except on those shipments moving during the period extending from August 29, 1932, to November 28, 1932, the period of time in which Decision 25100 was in effect.

The following form of order is recommended:

O R D E R

This proceeding having been duly reheard, full investigation of the matters involved having been had,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company and The Western Pacific Railroad Company, according as they participated in the transportation, be and they are hereby ordered to refund to Pacific Coast Aggregates, Inc., all charges assessed and collected for the transportation of shipments of crushed rock, sand and gravel, in carloads, moving from Eliot on the Southern Pacific Company to industry tracks served by The Western Pacific Railroad Company at Oakland and San Francisco during the period on and after July 31, 1930 (except during the period extending from August 29, 1932, to November 28, 1932), which exceeded the charges contemporaneously applicable on like traffic from Livermore on the Southern Pacific Company to industry tracks on The Western Pacific Railroad Company at Oakland and San Francisco.

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 29 day  
of October, 1933.

O.C. Leaven  
Leon A. Kline  
W.H. McRae  
M.B. Lewis  
Commissioners.