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ORIGINAL

Decision No. 39252

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Pillsbury Mills, Inc. Complainant vs. Southern Pacific Company Defendant	)	Case No. 4803

Appearances

Emuel J. Forman, for complainant.
J. E. Lyons, for defendant.

O P I N I O N

Complainant, a corporation engaged in processing and distributing grain and grain products, alleges that charges assessed and collected by defendant for certain switching services performed within the confines of its plant in Los Angeles have been, are, and for the future will be, unjust and unreasonable in violation of Section 13 of the Public Utilities Act. Reparation and reduced rates for the future are sought.

Public hearing was had before Examiner Bryant in Los Angeles, briefs have been filed, and the matter is ready for decision.

The services in question consist of switching rail carloads of grain within complainant's plant from loading point to track scales for weighing, thence about one-half car length to point of unloading. The movement is along a single spur track for a total distance of less than 800 feet, and is a complete transportation service not related to prior or subsequent rail line haul.

The assailed rate is 37 cents per ton of 2,000 pounds, subject to a minimum charge of $7.92 per car. This rate is one of general application throughout California and other states, maintained by defendant, with exceptions, for the movement of freight in carloads from any location on any track within switching limits to another location on any track within the same switching limits. It is complainant's position that the rate is unreasonably high as applied to the intra-plant switching service herein involved. The charges on complainant's cars averaged about $18.00 a car.

Complainant undertook to show that the service performed for it was relatively simple and inexpensive as compared with other switching movements which defendant was prepared to perform for the same rate. Its traffic manager argued that, in contrast with numerous switching movements, the service in question involves only a relatively short intra-plant switch, and does not require the movement of cars along or across traffic-congested streets, or into or through classification yards. He testified also that his company is frequently able to utilize cars which have been emptied of incoming shipments at the point of origin of the switching movement, thus relieving defendant of the expense of switching cars in for the purpose.

Besides urging that defendant was prepared to perform greater services for the same rate, complainant referred for comparative purposes to certain all-freight rates maintained from Los Angeles and Wingfoot of $11.00 a car to Burbank, $7.92 a car to Glendale and West Glendale, and $4.95 a car to Industrial. Complainant cited these rates, covering services involving two rail lines and a maximum haul in excess of five miles, as indicative of the unreasonableness of the assailed rate as applied to its intra-plant switching service.

The rate sought is $4.00 a car. Complainant's principal basis for this rate appears to be a charge of $4.00 a car maintained by defendant for switching freight in carloads or less-than-carloads within the plant of Pioneer Flintkote Company in Los Angeles, which complainant contends "fixes the maximum charge defendant may demand with propriety and within justifiable reason from all other intra-plant users of its switching services." Complainant referred also to a rate of $3.96 a car maintained by defendant for switching carloads or less-than-carloads within the plant of Lockheed Aircraft Corporation at Burbank; to a switching rate of $3.96 a car for transportation of carload freight from any location at an industry to another location at same industry on cars partly loaded or unloaded and only prior or subsequent to a rail line haul; to a rate of $2.97 a car for movement of carload freight from any location on any track within switching limits to track scales and return, where weights are not used for assessing freight charges, and when movement is prior to initial placement of a car for unloading and is incidental to a line haul; to a rate of $3.96 a car for similar service when movement is not incidental to a line haul; to a rate of $3.96 a car for the transportation of freight, any quantity, between any two locations on tracks serving the Los Angeles Union Terminal Company, applicable only on cars partially loaded or unloaded, and only prior or subsequent to a rail line haul; and to a "no charge" item for movement of carload freight from any location at an industry shed or loading platform to another location at the same industry shed or loading platform.

As additional arguments in support of the proposed reduced rate, complainant urged that grain in carloads customarily moves at line-haul rates lower than most other commodities; that loading and

unloading of the switched cars is performed entirely by complainant's employees; that Class B cars are used, and grain doors are installed by complainant's employees; that no loss or damage occurs and no claims are made; that the cars are weighed on complainant's scales for purpose of assessing charges, thus relieving defendant of switching cars to and from its own track scales; that no special or expedited movement is required; and that intra-plant switching requires less service and time to accomplish than intra-terminal service.

Defendant denied the essential allegations of the complaint, and asserted that the assailed charge was reasonable for the switching movements performed for complainant. In reply to complainant's contention that the movements were relatively simple and inexpensive as compared with other switching services offered at the same rate, defendant declared that switching rates are universally and necessarily established on a flat-rate basis for specified zones. Being made to cover average conditions, such rates of necessity apply to short movements within the zones as well as to extreme movements within the established limits. Moreover, defendant urged, the service involved in this proceeding is not a negligible one, but in fact requires that the carrier dispatch a special switch engine and crew for picking up a Class A car from storage tracks, moving it onto complainant's spur track, weighing the unladen car, moving out any other loaded or empty cars which may prevent placing of the empty car at loading point, returning with and spotting the empty car at loading point, and respotting any other cars awaiting loading or unloading at the plant. After the car is loaded, the switch engine and crew must return and repeat several of these operations in moving the loaded car to track scale for weighing and then to the desired place of unloading. The engine and crew must again return after the

car has been made empty and remove it to storage tracks or classification yard. Defendant argued that, while there is no evidence of the cost of all these operations in the record, it must be "quite apparent" that the labor costs alone will exceed the $4.00-per-car charge which complainant seeks; in addition to which there must be considered the value of the use of the car to its owners, and other items of value or expense.

On brief, defendant argued that a heavy burden of proof rests on complainant for the reason that the assailed rate was prescribed by the Commission and has been in effect for nearly a quarter of a century, and that complainant has failed to sustain the burden. Defendant pointed out that complainant offered no evidence concerning the circumstances and conditions surrounding the establishment and maintenance of any of the rates cited for comparative purposes. The proportional all-freight rates to Industrial, Glendale, West Glendale and Burbank, defendant asserted, are in the nature of reciprocal charges, and the comparison of these charges with the assailed switching rate is "of unlike things and lacks probative force for that reason" (citing cases). Similarly, the various switching rates cited by complainant, other than those applicable at the plants of Pioneer Flintkote Company and Lockheed Aircraft Corporation, were declared by defendant to lack probative force for comparative purposes for the reason that, unlike the assailed rate, they are restricted to movements which are incidental to a rail line haul. Referring to the special switching rates applicable at the Pioneer and Lockheed plants, defendant declared that, far from being a fair measure of maximum reasonableness, these

rates were actually unreasonably low for the service performed.[1]

There are factual conflicts in the record concerning such matters as the class of rail cars used, the extent to which expedited service might have been required or furnished, and the percentage of cars which were supplied specifically for the switching service. The essential facts are clear, however, and these minor conflicts are of no material importance in the disposition of this complaint.

There is no evidence in the record of the actual or estimated cost of performing the service. Complainant's case is rested upon rate comparisons which include (a) the same rate for greater services, and (b) lesser rates for assertedly similar services. That the rate in question is applicable to greater as well as to lesser services does not serve to show that it is unreasonable for the latter. If such were the case, all zoned rate and rate blankets would be prima facie unreasonable for the shorter distances. The comparisons of lesser rates for assertedly similar services are deficient in probative value for the reason that complainant did not establish the similarity of the services. As pointed out by defendant, the compared rates, with two exceptions, are applicable only in connection with shipments having a prior or subsequent rail line haul. This dissimilarity alone, in the absence of a further showing by complainant, must be deemed to invalidate the comparisons. The two exceptions, applicable at the Pioneer Flintkote and the Lockheed plants, were not shown by complainant to be a fair measure of maximum reasonable rates for the intra-plant switching herein involved. Those rates are lower than those generally applicable to intra-plant switching in the Los Angeles area, and were declared

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[1] Applications for authority to cancel these rates were filed with the Commission by defendant a few days before the hearing in this case.

by defendant to be subnormal and unreasonably low. Complainant does not allege that it is unduly prejudiced by the lower rates.

Rate comparisons are of little probative value unless it be shown that the factors influencing the volume of the compared rates are similar. It is incumbent upon the party offering such comparisons to show that they are a fair measure of the reasonableness of the rates in issue. (Decision No. 32376 of September 26, 1939, in Case No. 4289, Kreiker Oil Co. v. P.E. Ry. Co., et al.)

Upon careful consideration of all of the facts and circumstances of record in this proceeding the Commission is of the opinion, and finds as a fact, that the switching rate herein involved has not been shown to be unreasonable. The burden of proof is upon the complainant, and in the absence of affirmative proof the complaint must be dismissed. (Salinas Valley Ice Co. vs. W.P.RR. Co., 41 C.R.C. 79.)

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 30 day of July, 1946.