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Decision No. 44009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SOUTHERN PIPE & CASING COMPANY, Complainant,	)	
vs.	)	Case No. 5160
PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, Defendants.	)	

Appearances

Robert G. Steele, for complainant.

William Meinhold, for defendants.

O P I N I O N

By complaint filed November 19, 1949, Southern Pipe & Casing Company, a California corporation, alleges that rates assessed and collected by Southern Pacific Company and Pacific Electric Railway Company for transportation of certain shipments of steel sheets and plates were unreasonable in violation of Section 13(a) of the Public Utilities Act, and preferential and prejudicial in violation of Section 19 of the act. Reparation with interest is sought. Defendants in their answer deny the essential allegations of the complaint.

Public hearing was had before Examiner Bryant at Los Angeles on February 20, 1950. The matter is ready for decision.

Complainant is engaged principally in the manufacture of welded steel pipe at its plant located at the intersection of Arrow Highway and Irwindale Avenue, approximately two miles northeasterly of Baldwin Park, Los Angeles County. During the period from May 24, 1948, to July 19, 1949, it caused to have shipped to its plant from Kaiser, California, via defendants' lines, 127 carloads of steel sheets and plates. For this transportation defendants assessed and complainant paid charges at the applicable fifth-class rate of 9½ cents per 100 pounds. During the same period defendants maintained a commodity rate of 5½ cents from Kaiser to Los Angeles, Wingfoot, Maywood, Monrovia, Azusa, Glendora and intermediate points.[1] Complainant alleges that the class rate of 9½ cents was unreasonable, preferential, and prejudicial, and that damages were sustained to the extent that this rate exceeded the 5½-cent commodity rate assessed its principal competitor located at Los Angeles and Maywood. Reparation is asked in an amount equal to the difference between the amount collected and the amount which would have accrued at the rate of 5½ cents, (with effective increases), plus six per cent interest from date of collection. The reparation would amount to approximately $4,500.

Representatives of complainant and of Kaiser Steel Corporation testified in explanation of the number and kind of shipments made, the rates and charges paid, and the shipments made to complainant's competitors during the same period. Evidence designed to show the unlawfulness of the assailed rate was introduced by a

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[1] Rates are stated herein in cents per 100 pounds; and, for convenience, are exclusive of general increases which varied during the periods herein involved. The class rate was subject to a minimum weight of 36,000 pounds. The commodity rates were subject to a minimum of 80,000 pounds. Complainant's shipments weighed in excess of 80,000 pounds (with minor exceptions), and averaged 106,000 pounds.

traffic consultant employed by complainant. This evidence consists essentially of a showing of rail distances, via available routes, from Kaiser to various destinations in southern California, with a comparison of the class or commodity rates applicable to the commodities herein involved between the same points. The comparisons show that the distance to complainant's plant, via route of movement, is comparable to those to other destinations accorded a lower rate; and that mileage to the plant via other junctions would be substantially less.[2]

An assistant freight traffic manager of Southern Pacific Company, testifying for the defendants, stated that, in general, the element of distance has been subordinated to other considerations in the establishment of carload rates on iron and steel articles between points in California. He said that in his opinion such rates are less than reasonable maximum rates because they reflect carrier and market competition. He discussed the rates used for comparative purposes by complainant, explaining the competitive considerations which induced the publication of each rate. This witness said also that in his opinion the class rates assessed on the traffic herein involved were themselves depressed class rates, inasmuch as they were established, for competitive reasons, on basis of the minimum rates for truck transportation via the shortest highway route.[3]

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[2] The shipments in issue moved via Los Angeles. Distances are less via Colton or Bassett. There is no difference in rates via the different junctions. Routing was not specified by the shipper. A witness for defendants stated that operating considerations mitigated against movement via Colton or Bassett.

[3] Defendants, without conceding that the assessed rates were unreasonable or in any way unlawful, are arranging to establish the sought rates at once in order to meet truck competition. Such publication will satisfy the complaint so far as rates for the future are concerned.

It is well-settled with respect to rate comparisons generally that when they are submitted in complaint proceedings it is incumbent upon the party offering the comparisons to show that they are a fair measure of the reasonableness of the rates in issue.[4] Complainant did not undertake to show that the compared rates were maximum reasonable rates; and defendants, to the contrary, offered substantial evidence to show that the compared rates were in fact depressed below a maximum reasonable level. It is clear, therefore, that complainant has not supported its allegation of unreasonableness.

Complainant's allegation that unlawful discrimination resulted, however, was supported by a persuasive showing that it was required to pay rates substantially higher than those concurrently assessed a competitor for comparable transportation. The assessed rates exceeded those contemporaneously maintained by defendants for transportation of the same commodities from the same point of origin to numerous destinations similarly distant from Kaiser. As a specific example, the distance from Kaiser to the competitor's plant at Maywood, via Southern Pacific Company and Los Angeles Junction Railway, is virtually the same as the distance from Kaiser to complainant's plant via Southern Pacific Company to Colton thence Pacific Electric Railway Company beyond. That the shipments did not move via Colton, but via a longer route, was attributable entirely to the discretion and operating convenience

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[4] See, for example, Sunshine Biscuits, Inc. v. A.T.&S.F. Ry., et al., 49 Cal.P.U.C. 155 (1949) and cases cited therein; also R. J. Clifford v. C.W.R. & N. Co., et al., 44 C.R.C. 100 (1942).

of the carriers. Defendants did not show that there were differences in operating conditions sufficient to justify the substantial difference in charges. The record as a whole is convincing that the assessed rates unduly preferred complainant's competitor, and unduly prejudiced complainant.

Nevertheless, reparation may not be awarded on the present record. In cases involving violation of Section 19 of the Public Utilities Act the measure of damage is not merely or necessarily the difference between one rate and another, but is the amount of damage suffered. Complainant must prove by direct evidence that it has been injured; the exact amount of damage suffered by it, if any; and that the damage suffered was the direct and proximate result of the difference in rates.[5] Complainant offered no proof of loss or damage suffered by reason of the difference in rates.

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 assailed rates have not been shown to be unreasonable in violation of Section 13(a) of the Public Utilities Act; that the assailed rates have been shown to be preferential to complainant's competitor, and prejudicial to complainant, in violation of Section 19 of the act; and that complainant has not shown that it suffered damage by reason of the preferential and prejudicial rate adjustment. As hereinbefore indicated, defendants will satisfy the complaint at once so far as rates for the future are concerned. The complaint will be dismissed.

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[5] See Gen. Chem. Co. v. P.E. Ry. Co., 45 C.R.C. 483, 486; Calif. P.C. Co. v. S.P. Co., 39 C.R.C. 17, 24; Albers Bros. Milling Co. v. S.P. Co. 34 C.R.C. 743, Croley v. A.T.&S.F. Ry., 31 C.R.C. 625,627; Los Angeles County v. Pacific Electric Railway, 27 C.R.C. 337, 342; 28 C.R.C. 143, 144; Penn R.R. Co. v. International Coal Co. 230 U.S. 184.

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ORDER

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.

This order shall become effective twenty (20) days after the date hereof.

Dated at Los Angeles, California, this 4th day of April, 1950.

Commissioners