

ORIGINALDecision No. 48243

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STAUFFER CHEMICAL COMPANY, a corporation,)	
Complainant;)	
vs.)	Case No. 5333
)	Case No. 5382
)	Case No. 5423
SOUTHERN PACIFIC COMPANY (PACIFIC LINES),)	
a corporation)	
Defendant.)	

Appearances

T. A. L. Loretz and Gabriel Bass, for complainant.

J. E. Lyons, C. W. Burkett, Jr., and E. L. H. Bissinger,
for defendant.O P I N I O N

Stauffer Chemical Company seeks a determination of the lawful charges for the transportation of certain carload shipments of phyllite transported by Southern Pacific Company from Laws (Inyo County) to Los Angeles.

A public hearing was held before Examiner Bryant at Los Angeles on December 17, 1952. The matter is ready for decision.

Stauffer Chemical Company is engaged, among other things, in the manufacture of insecticides at its plant located in the city of Los Angeles. It uses as a diluent or filler various finely-ground materials which have suitable properties and can be easily blended. In July, 1948, it started receiving shipments from Laws of a diluent later identified as phyllite. The commodity moved in 100-pound bags, and was loaded to an average weight of more than 100,000 pounds per car. Some 179 carloads are specified in the complaints. The movement has continued to the present time.

The first shipments were described on the bills of lading as pyrophyllite. Later shipments were described as ground slate. The parties had not yet agreed upon the identification of the commodity in question when these complaints were filed. Defendant, contending that the commodity was neither pyrophyllite nor slate, assessed and attempted to collect the rate applicable to ground mica schist, rating the commodity by analogy. Complainant paid the charges¹ applicable to slate and resisted payment of any greater amounts. Shortly prior to the date of hearing, investigations and analyses were made by mineralogists retained separately by the complainant and by the defendant, and these experts reached agreement that the commodity is properly identified as phyllite.²

¹ Law suits instituted by defendant to effect collection are pending in the Superior Court of the State of California in and for the County of Los Angeles.

² The following definitions are quoted from Webster's New Twentieth Century Dictionary, unabridged:

PHYLLITE

1. A greenish-gray to black mineral occurring in small shining scales or plates in a clay-slate, the crystallization being probably monoclinic. It is essentially a hydrated silicate of aluminum, sesquioxide and protoxide of iron, protoxide of manganese, and potash. The analyses differ very widely, probably owing to the difficulty of separating the mineral from the matrix. It is found in Massachusetts and Rhode Island.

2. A name given to a slaty rock apparently intermediate between mica schist and ordinary clay slate, and which has been shown to result from the latter rock being metamorphosed by chemical and mechanical action under great pressure.

PYROPHYLLITE

An orthorhombic mineral occurring in foliated and radiated lamellar masses, sometimes compact or cryptocrystalline, constituting schistose rocks and composed of a hydrous silicate of aluminum.

SLATE

An argillaceous stone which readily splits into plates; argillite; argillaceous schist. The name is also given to other rocks and stones having a similar structure.

The rates maintained by defendant when the shipments started to move from Laws to Los Angeles in 1948 were 17 cents on slate, 22 cents on pyrophyllite, and 52 cents on phyllite if rated as analogous to ground mica schist.³ Upon definite identification of the material as phyllite, defendant established a commodity rate thereon which became effective on December 17, 1952, the date of the hearing in these complaints. The rate is 24 cents plus six percent, equivalent to 25.4 cents. It is the same as the present rate on pyrophyllite and talc.

The dispute between complainant and defendant was resolved upon identification of the material and publication of the new commodity rate thereon. This rate is satisfactory to complainant. What is sought now is an order authorizing and directing defendant to waive the collection of charges on past shipments to the extent that such charges would exceed those under the new rate, adjusting for past periods as indicated in the margin below.⁴ Defendant is agreeable to the entry of the proposed order.

The testimony shows that the density, value, and other transportation characteristics of phyllite are similar to those of pyrophyllite and talc, both of which are likewise used as diluents

³ Rates are stated herein in cents per 100 pounds, and are those applicable to shipments of 100,000 pounds or more. The rates of 17 cents and 22 cents were commodity rates. The rate of 52 cents was the "Class A" rate applicable to mica schist. There was no commodity rate on either phyllite or mica schist, and phyllite was not specifically indexed in the applicable classification.

⁴ General upward adjustments in the rail rates were made in 1949, 1950 and 1952. Thus the 22-cent rate on pyrophyllite and talc became equivalent to 22.8 cents on May 2, 1949, 24 cents on March 6, 1950, and 25.4 cents on January 14, 1952. These are the rates proposed to be applied to the shipments of phyllite herein involved. Complainant would, of course, pay outstanding charges up to the levels of these rates.

or fillers in the manufacture of insecticides. For transportation from Laws to Los Angeles the Southern Pacific Company maintained commodity rates on pyrophyllite and talc that were substantially lower than the class rates which it assessed and attempted to collect on phyllite. The disparity is explained by the fact that the phyllite was not properly identified. When its identity was established, the parties reached ready agreement that it should be transported at rates the same as those concurrently maintained for the movement of pyrophyllite and talc between the same points.

Upon careful consideration of all of the facts and circumstances of record the Commission finds that the assailed rates were unreasonable for the transportation of phyllite between the points herein involved to the extent that they exceeded the rates concurrently maintained for the transportation of carload shipments of pyrophyllite and talc between the same points. Defendant will be ordered and directed to make the necessary adjustments in the charges assessed on the past shipments involved in these complaints.

O R D E R

Based upon the findings and conclusions contained in the foregoing opinion,

IT IS HEREBY ORDERED that Southern Pacific Company be and it is hereby ordered and directed to assess and collect, for the transportation of carload shipments of phyllite from Laws to the plant of Stauffer Chemical Company (Nico Dust Manufacturing Co. Division) in Los Angeles, during the period from July 1, 1948, to December 17, 1952, rates and charges no higher than those concurrently maintained for the transportation of carload shipments of pyrophyllite and talc between the same points.

IT IS HEREBY FURTHER ORDERED that Southern Pacific Company effect the adjustment and collection of charges on the shipments herein involved in accordance with the preceding paragraph within ninety (90) days after the effective date of this order.

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

Dated at Los Angeles, California, this 2nd day of February, 1953.

R. T. Smith
President

Justus F. Adams
Harold K. Hale

Lucy L. Pottel
Edna E. McMillan
Commissioners