

Decision No. 53697**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VICTOR CHEMICAL WORKS, a corpor-)
 ation, doing business as A. R.)
 MAAS CHEMICAL CO., and PROCTOR)
 AND GAMBLE MANUFACTURING CO.,)
 a corporation,)

Complainants,)

vs)

SOUTHERN PACIFIC COMPANY, a corpora-)
 tion,)

Defendant.)

Case No. 5705

Gordon, Knapp and Gill, by Warren N. Grossman,
 for Complainants.
John MacDonald Smith, for Defendant.

O P I N I O N

By complaint, as amended, Victor Chemical Works, a corpor-
 ation, doing business as A. R. Maas Chemical Co., and Proctor and
 Gamble Manufacturing Co., a corporation, allege that charges assessed
 by Southern Pacific Company for the transportation, during the month
 of December, 1953, of ten carloads of phosphate of soda in bulk, in
 hopper cars, from South Gate to Polk, were excessive, unjust, unrea-
 sonable and unlawful in violation of Sections 451 and 734 of the
 Public Utilities Code. Reparation is requested.

Defendant, in its answer admits the allegations of the
 complaint.

1. According to the record South Gate is a sub-station located within the switching limits of Los Angeles.
2. The matter here in issue has been previously considered on the Commission's so-called "special docket" under Application No. 734-27. On July 12, 1955, the relief sought therein was denied for lack of sufficient justification and without prejudice to further consideration of the same issue in a formal proceeding.

Public hearing of the complaint was held before Examiner Carter R. Bishop at Los Angeles on March 27, 1956. Evidence was adduced on behalf of complainants by the president of the A. R. Maas Chemical Co. division of Victor Chemical Works and by a transportation consultant. No evidence was offered by the defendant.

The record discloses that transportation charges on the shipments in question were assessed and collected on the basis of a combination of rates made up of a commodity rate of 31 cents,³ minimum weight 60,000 pounds, subject to a surcharge of 15 per cent, applicable from South Gate to Stockton, plus a fifth class rate of 18 cents, minimum weight 36,000 pounds, from Stockton to Polk. Subsequently, it was ascertained that the lawfully applicable rate was the through fifth class rate of 53 cents, not subject to surcharge, from South Gate to Polk. It is proposed that the resulting overcharge of \$76.36 be refunded at the time reparation pursuant to this complaint, if authorized, is paid.

Reparation is sought herein to the basis of a rate of 31 cents, minimum weight 60,000 pounds, subject to surcharge of 15 per cent, which was published effective March 12, 1954, subsequent to the dates on which the shipments here in issue were made. The record indicates that this rate is applicable from South Gate to Sacramento, and, under the intermediate rule of the tariff in which it was named, applies to Polk, a directly intermediate point, located 7 miles south of Sacramento. The amount of reparation thus sought is \$2,038.31.

The record discloses also that the charges on the shipments in question were paid by the consignee, Proctor and Gamble Manufacturing Co., which was reimbursed by the consignor, A. R. Maas Chemical Co.

3. All rates mentioned herein are in cents per 100 pounds.

by an amount equal to the difference between the total assessed charges and those which would obtain on shipments of the same kind and quantity moving concurrently from Newark, California to Polk. The president of Maas explained that under the terms of his company's sales contract with the consignee, the former absorbs the difference in freight rates between Newark and South Gate on shipments to Polk. Consequently, the portion of the transportation charges borne by Proctor and Gamble will not be affected by the outcome of this proceeding and any resulting reparation award will be in favor of Maas.

The transportation consultant introduced a series of exhibits purporting to establish the validity of the allegations set forth in the complaint. He pointed out that at the time of movement of the shipments in question, the rate sought to be applied was applicable on shipments of phosphate of soda moving from South Gate to San Francisco Bay points and from Newark to various destination points in Southern California. In the following table are set forth the rates sought herein, the distance involved, and the resulting ton-mile revenue thereunder, together with the compared rates, distances and corresponding ton-mile earnings.

4. Assertedly, Proctor and Gamble was made a party to the complaint herein solely as a precautionary measure, in view of the fact that it bore a portion of the transportation charges in issue.
5. The car-mile revenue produced by the compared rates, the witness stated, was not shown in his exhibits because he had no knowledge of the average weights of the shipments moving under those rates.

TABLE

<u>From</u>	<u>To</u>	<u>Miles</u>	<u>Rate</u> <u>(Cents)</u>	<u>Minimum</u> <u>Weight</u> <u>(Pounds)</u>	<u>Ton-Mile</u> <u>Revenue</u> <u>(Mills)</u>
South Gate	Polk	440	31	60,000	16.2
(Comparisons)					
South Gate	San Fran.	469	31	60,000	15.2
South Gate	Stockton	398	31	60,000	17.9
Newark	Los Angeles	439	31	60,000	16.2
Newark	Long Beach	461	31	60,000	15.5
Newark	Riverside	503	31	60,000	14.2
Newark	San Diego	565	38	60,000	15.5

All rates shown are subject to a surcharge of 15 per cent.

According to the record, phosphate of soda is used in the manufacture of cleaning compounds, synthetic detergents and soap. One of the exhibits introduced by the consultant shows that rates of the same volume as that sought herein were, prior to, and at time of movement, applicable on shipments of the above-mentioned manufactured articles, from South Gate and other points in the Los Angeles area to Polk, Sacramento and San Francisco Bay points. The 31-cent rate as so published is in effect on these commodities at the present time. The minimum weight applicable in connection therewith, the record shows, was and is 50,000 pounds. The value of the phosphate of soda, according to the president of Maas, is approximately one third that of synthetic detergents.

Other rate comparisons were made in the exhibits. These included carload rates applicable, at time of the movement in question, from Los Angeles to Polk, Sacramento and San Francisco on boracic acid, canned goods, fibreboard or pulpboard boxes, knocked down flat, lard, shortening, non-alcoholic beverages and malt liquors. The rates in question were the same as, or lower than, that sought herein, and the applicable minimum weights ranged from 50,000 to 80,000 pounds. No evidence was offered concerning the relative values of phosphate of soda, on the one hand, and of these compared commodities, on the other.

The class rates applicable between Los Angeles and San Francisco, the consultant further pointed out, were and are the same as those concurrently in effect between Los Angeles and Polk.

According to the record, phosphate of soda is a heavy-loading commodity, reflecting high per-car earnings. The average weight of the ten shipments involved in the complaint herein, was 117,482 pounds. Under the sought rate of 31 cents, plus 15 per cent surcharge, the average revenue per car and per-car mile, would be \$418.82 and 95.2 cents, respectively.

The shipments involved herein comprise complainants' entire movement, within the statutory period, from South Gate to Polk. Since the establishment of the sought rate to Polk and Sacramento, the record shows, there has been a regular movement thereunder to Sacramento and it is anticipated that shipments will be resumed to Polk.

Upon careful consideration of all the evidence of record, it is our opinion and we hereby find, that, under all the circumstances and conditions prevailing at the time the shipments involved herein were made, the rate assessed on said shipments was unjust and unreasonable to the extent that it exceeded a rate of 31 cents per 100

pounds, minimum weight 60,000 pounds, plus a surcharge of 15 per cent. We further find that complainant Victor Chemical Works, doing business as Maas Chemical Co., is entitled to recover from defendant reparation to the extent of the difference between the legal and sought rates and charges. We further find that complainant Proctor and Gamble Manufacturing Co. is entitled to no reparation with respect to the shipments here in issue.

Defendant will be expected to make refund of the straight overcharge to which reference was made earlier herein, in compliance with the provisions of Section 494 of the Public Utilities Code.

ORDER

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

IT IS HEREBY ORDERED that defendant, Southern Pacific Company, be and it is ordered and directed to refund to complainant, Victor Chemical Works, a corporation doing business as Maas Chemical Co., the sum of \$2,038.31, together with interest at 6 per cent per annum, as reparation for the unreasonable charges assessed on the shipments involved in this proceeding.

The Secretary is directed to cause a certified copy of this decision to be served upon the Southern Pacific Company in accordance

with law and said decision shall become effective twenty days after the date of such service.

Dated at Los Angeles, California, this 29th day of August, 1956.

John E. Mitchell
President

Justin D. Casner

Ronald Van der Meer

Walter H. ...

[Signature]
Commissioners

Certified as a True Copy

ASST. SECRETARY, PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA