

Decision No. 55117**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 J. P. Haynes, Agent, for authority to )  
 increase certain rates on slate from )  
 Keeler, Zurich and Laws to various )  
 destinations in California; to cancel )  
 specified rates on slate from Laws to )  
 Keeler, California. )

Application No. 37560

Charles W. Burkett, Jr., and John MacDonald  
Smith, for J. P. Haynes, applicant; and  
 for Southern Pacific Company, The Atchison,  
 Topeka and Santa Fe Railway Company, and  
 Pacific Electric Railway Company, interested  
 parties.

Gordon, Knapp and Gill by Hugh Gordon, and  
T. A. L. Loretz, for Huntley Industrial  
 Minerals, Inc., protestant.

John F. Specht, for the Commission staff.

O P I N I O N

By application filed December 7, 1955, J. P. Haynes, on behalf of various rail carriers parties to his Pacific Southcoast Freight Bureau Tariff No. 278, Cal. P.U.C. No. 100, seeks to increase rates for the transportation of slate in carload quantities from Keeler, Zurich and Laws to various points in California, and to cancel the presently effective rate on the same commodity from Laws to Keeler.

Public hearings were held at Los Angeles before Examiner Jack E. Thompson. Briefs were filed by applicant and by protestant Huntley Industrial Minerals, Inc. The matter was taken under submission December 17, 1956, upon the filing of briefs and is ready for decision.

Applicant contends that the present rates on slate here involved do not cover the out-of-pocket cost of transportation and that the rates increased as proposed are comparable in level to rates for the transportation of like commodities within the considered territory.

Protestant contended that applicant's cost figures have failed to justify any increase in the existing rates on slate as distinguished from any general increases in rates proposed by the rail carriers,<sup>1</sup> that the proposed rates are not comparable in level to rates assessed for the transportation of like commodities within the territory, and that the proposed rates would be substantially higher, actually or relatively, than those from competitive slate origins.

A brief account of the background leading to the issues here involved will assist in understanding some of the points relied upon by the applicant and some relied upon by the protestant.

In July, 1948, Stauffer Chemical Company, a manufacturer of insecticides among other things, commenced receiving at its plant in Los Angeles shipments of a commodity described in bills of lading variously as "slate", "pyrolite" and "pyrophyllite". The commodity was used as a diluent in the manufacture of insecticides. In

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Protestant was referring to Application No. 37697 of the rail carriers for a general increase in rates of 6 per cent (comparable to X-196 Increased Rates and Charges). Decision No. 54215, issued in that proceeding on December 11, 1956, denied the increases sought. The matter of the application of the 6 per cent increase (X-196), as well as a proposed 5 per cent increase (X-206) to intrastate commerce in California, is presently before the Interstate Commerce Commission in Docket No. 32089 (Sub-1).

August, 1952, the Southern Pacific Company filed the first of several suits in the Superior Court against Stauffer Chemical Company for undercharges representing the difference between the charges at the rates assessed on slate and the charges at the applicable tariff rate for mica schist, which the railroad contended was the proper commodity description. Stauffer Chemical Company thereupon filed complaints with the Commission against the Southern Pacific Company seeking a determination of the lawful charges for the transportation of the commodity involved.<sup>2</sup> Shortly prior to the date of hearing of the complaints, investigations and analyses were made by mineralogists retained separately by the complainant and the defendant, and they reached agreement that the proper identification of the commodity was phyllite.<sup>3</sup> On December 17, 1952, the date of the aforesaid hearing, as a result of the agreement between the complainant and the defendant, there became effective in P.S.F.B. Tariff No. 278 commodity rates on phyllite between the points involved. The rates were established at the same level as the then applicable rates on pyrophyllite and talc. The dispute between the complainant and the defendant was resolved upon the agreement of the identification of the commodity and the publication of the rates on phyllite. At the request of the complainant and the defendant, the Commission ordered the defendant to adjust its billings on shipments of phyllite transported for complainant during the period July 1, 1948, to December 17,

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Cases Nos. 5333, 5382, 5423, Stauffer Chemical Company vs. Southern Pacific Company (Pacific Lines).

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The definitions of phyllite, pyrophyllite and slate are stated in Decision No. 48243 in the above-mentioned cases. Phyllite is apparently intermediate in metamorphosis between mica schist and ordinary clay slate.

1952, to reflect charges at the concurrently effective rates on pyrophyllite and talc and to collect such undercharges as may be found as a result thereof. The Commission's finding in that proceeding was:

"Upon careful consideration of all of the facts and circumstances of record the Commission is of the opinion and finds that the assailed rates (class rates on Mica Schist) 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."

In 1955 Southern Pacific Company filed suit in the Superior Court of California in and for the County of Inyo to collect from Huntley Industrial Minerals, Inc., the difference in charges on shipments of a commodity used as a diluent at the rates on phyllite as against the rates on slate.<sup>4</sup> The issue in the court proceeding was the application of the rates. The complainant rail line contended the phyllite rates applied to the shipments. Huntley, the defendant, contended the slate rates were applicable. The Court gave judgment for the defendant and in essence found that the slate rates were applicable.

In summation, at the time this application was filed the situation concerning the transportation from Laws of a material prepared and shipped by Huntley was that Stauffer Chemical Company and the Southern Pacific Company agreed that

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<sup>4</sup>  
Southern Pacific Co. v. Huntley Industrial Minerals, Inc.,  
No. 5550, Superior Court of California, in and for the County of  
Inyo. Judgment rendered November 3, 1955.

the commodity is properly identified as phyllite, the Commission held that the rates on phyllite should not exceed the rates on pyrophyllite and talc, and the Superior Court held that the lower rates on slate were applicable to the transportation of this commodity.

Laws, Keeler and Zurich are on a narrow-gauge branch of the Southern Pacific Company. The narrow-gauge line is known as the Keeler Branch and connects with the standard-gauge Owenyo Branch of the Southern Pacific at Owenyo. The junction of the Owenyo Branch and the main line of the Southern Pacific is at Mojave. Freight moving from the Keeler Branch must be physically transferred from narrow-gauge cars to standard-gauge cars at the terminal facilities at Owenyo.

The present rates here involved are determined by applying various increases in rates set forth in tariffs of general increases<sup>5</sup> to the rates set forth in Pacific Southcoast Tariff Bureau Tariff No. 278. At the time the application was filed the last increase was in the form of a surcharge to be applied to the charges determined at the applicable increased rates. Several days after the filing of the application, the surcharge was canceled and that increase was to be applied directly to the rates by use of a conversion table. At the

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<sup>5</sup> Generally known as Tariffs of Increased Rates Nos. X-162, X-166, X-168 and X-175.

hearing applicant stated that it was his intention that the rates herein sought be subject to all general increases in rates that have been or may be authorized by the Commission since the date of the filing of the application. A tabulation of the proposed rates and the present rates, with the applicable general increases, is set forth in Appendix "A".

We will now discuss the evidence relating to the contentions of the parties.

#### Out-of-Pocket Costs

An engineer in the Bureau of Transportation Research of the Southern Pacific Company prepared and presented an estimate of the out-of-pocket cost of hauling ground sacked minerals, loaded 101,055 pounds per car, from Laws, California, to Los Angeles, California, in diesel-powered trains. The estimate was developed from statistical data pertaining to the operation of the Keeler Branch and average unit costs developed for operation over the Southern Pacific Company system. The engineer's estimate of the out-of-pocket cost was 21.6 cents per 100 pounds. Approximately 4 cents per 100 pounds of the above estimate is intended to cover the cost of transferring freight from the narrow-gauge cars to the standard-gauge cars at Owenyo.<sup>6</sup>

Protestant declared that the engineer's estimates should not be given full weight by the Commission in determining whether the sought increase is justified.

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The estimated cost of transfer for 1954 was 70 cents per ton. The engineer applied an additive of 15.24 per cent to the 1954 costs to reflect cost of operation as of January 1, 1956.

It was argued that for rate-making purposes the cost actually incurred by the company should not be used but rather the estimated cost of performing the service if the line was completely standard gauge and equipped with operating equipment as efficient as that operated over the system as a whole. Contending that it is the carrier's and not the shipper's disability that the Laws-Owenyo Branch continues to be narrow gauge, protestant revised the engineer's estimated costs to reflect a standard-gauge operation from Laws to Los Angeles. The costs revised to reduce the car miles (one standard-gauge car is the equivalent of three narrow-gauge cars) and to eliminate the transfer at Owenyo, according to the protestant, show an out-of-pocket cost of 14.2 cents per 100 pounds.

Protestant also argued that the engineer's estimates reflect neither the actual operating conditions nor an operation conducted with reasonable efficiency. It was stated the engineer applied to his estimate the system average of depreciation expense while the narrow-gauge cars are vintage of 1910 or earlier and have by now been fully depreciated. On the other hand, the transfer expense is related to the actual operation whereby employees are taken by bus from Sparks, Nevada, to Owenyo to transfer the freight and the transfer is effected by these employees through the use of hand trucks, shovels and wheelbarrows even though more efficient tools and facilities, such as conveyors, power skip-loaders and overhead trestles for transferring by gravity, are available at the Owenyo depot. Protestant's president testified that he had made a time and motion analysis of the handling of sacked slate and loading of trucks and cars by his employees in an operation comparable to the transfer operation at Owenyo and had maintained

cost records of such operation. He stated that their cost of handling was between 10 cents and 12½ cents per ton.

It was further contended by protestant that the additives used for the purpose of projecting the 1954 costs to January 1, 1956, should not be considered because the rail line had applied for authority for a general rate increase which, according to protestant, was intended to cover the increases in the cost of operation from 1954 to 1956.

Comparison of Rates on Similar Commodities from the Same Points

Applicant and protestant presented exhibits showing comparisons of the present and proposed rates on slate with the current rates applicable to the transportation of other materials between the points here involved.

A summary of the comparisons follows:

<u>Commodity</u>	<u>From</u>	<u>To</u>	<u>Min. C/L Wt. (1,000 Pounds)</u>	<u>Rate in Cents Per 100 Pounds</u>
<u>PROPOSED</u>				
Slate	Laws	Los Angeles	60	28
			100	25
<u>PRESENT</u>				
Slate	Laws	Los Angeles	80	24
			100	21
(Phyllite )	Laws	Los Angeles	60	28
(Pyrophyllite)			100	25
(Talc )				
Melanterite Rock	Laws	Los Angeles	80	28
Salt, Crude	Keeler	Los Angeles	80	25
(Lime Rock )	Laws	Los Angeles	40	26
(Lime Marl )			60	24
(Rock Grit )			80	21
(Sea Shells)			100	20
Silica Sand	Laws	Los Angeles	100	24
Soapstone Refuse	Laws	Los Angeles	80	24
			100	21



It appears that phyllite, pyrophyllite, talc, melanterite rock, and soapstone refuse are used as diluents and to some extent are competitive with slate. Silica sand and salt are not used as diluents. Lime rock, lime marl and sea shells may possibly be used as diluents; however, they do not compete with slate in that crushed limestone is used in certain insecticides requiring an alkaline base, whereas slate is an acid base.

#### Traffic Considerations

In 1954 protestant shipped a total of 20,412 tons of minerals including slates, clays, pyrophyllites, feldspars and asbestos. Of this amount 4,990 tons were of crushed ground slate, 61 shipments consisting of 3,550 tons were made by rail and 36 shipments totaling 1,440 tons were made by truck carriers. In 1955 the total tonnage of protestant was 25,529 tons of which 6,950 tons consisted of slate shipments made by rail. The protestant estimated that his total tonnage for the first six months of 1956 was something over 14,000 tons. He stated that he tenders shipments to the Southern Pacific Company at Laws every day the train runs which is three days a week.

Protestant's principal competition is from shippers of volcanic ash, pumice clay, soapstone refuse, phyllite and pyrophyllite at Los Angeles, Berkeley, Chula Vista and Friant. The record shows that ground slate is shipped from Placerville on the lines of the Southern Pacific Company. In 1955 the rail line moved from Placerville 136 tons to Los Angeles Harbor, 631 tons to Los Angeles, 300 tons to Wilmington, and 1,305 tons to Compton. The Southern Pacific Company's rate from Placerville to Los Angeles and vicinity is 32 cents per 100 pounds on a minimum weight of 80,000 pounds.

Conclusions

The Keeler Branch is the only narrow-gauge line of the Southern Pacific Company in California. The use of system averages by the engineer in developing an estimate of the out-of-pocket cost of providing service on the narrow-gauge line tends to reflect against the reliability of the estimate. However, the method used by the engineer appears to be the only practical and reasonable approach in this instance. The estimate of the cost of transferring cargo at Owenyo was taken from records of the actual expenses experienced by the railroad in providing this service. From the testimony it appears that the transfer operation as actually conducted is not as efficient as the present facilities would permit. A carrier is not entitled to recover all of the expenses of providing the service unless the operation is conducted in a reasonably efficient manner with the facilities and equipment that it has dedicated or reasonably could dedicate to such use. It appears that for rate-making purposes the estimate of the engineer of the out-of-pocket cost of providing the service may be somewhat overstated. On the other hand, the estimate of protestant and the contention that the costs should be estimated as though the line was standard gauge from origin to destination cannot be accepted as reasonable. The Keeler Branch is narrow gauge and a transfer of lading at Owenyo is necessary.

The carrier is entitled to recover the cost of efficiently conducting operations on the lines and facilities that it has dedicated to the public use unless it is shown that the existing facilities are not reasonably adequate to supply the needs of the public or that economies obtained from improved facilities would, considering the amortization of the investment in the improvements, provide

for lower costs of operation and, therefore, lower rates to the public. It has not been shown on this record that the service provided by the railroad on the narrow-gauge line is inadequate to meet the needs of the public nor does it appear that under the existing rates the economies that might result from making the line standard gauge would be sufficient to amortize the expense of the improvements. From the cost data of record it appears that the proposed rates would not provide a greater than maximum reasonable return.

The comparisons of the proposed rates to those applicable to other commodities have been considered. It appears that slate is more like phyllite and melanterite rock than the other commodities.

With respect to the competition that protestant encounters at Los Angeles, the only rates shown were those relating to the transportation of ground slate from Placerville. The rates from Placerville are considerably higher than those proposed here. Protestant has not shown that the proposed rates would prevent it from placing ground slate on the market at Los Angeles at a price which would be competitive with other suppliers.

Comparisons of ton mile earnings under rates that do not involve a movement over a narrow-gauge line or a transfer of freight is not a measure of the reasonableness of rates for transportation that does involve a narrow-gauge haul and a transfer of freight.

Applicant stated that it would apply on top of the rate increases sought herein whatever increases may be authorized by the Commission in Application No. 37697 and other proceedings

involving general rate increases. Protestant argued that the increases sought in the general rate increase matters were introduced to cover the added costs reflected in the additive of 15 per cent applied by the engineer to the estimated 1954 cost of operation. Application No. 37697 was denied by the Commission in its Decision No. 54215 dated December 11, 1956. General rate increases which may be involved in other proceedings are purely speculative at this time. The Commission will determine the justification and the reasonableness of the proposed rates on current costs of operation and current traffic considerations as disclosed by the record herein.

Upon consideration of all of the facts and circumstances of record, including the current cost of performing the service, the Commission is of the opinion and finds that the increased rates sought herein are justified.

#### ORDER

Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that J. P. Haynes, Agent, in the name of, and on behalf of, all carriers parties to Pacific Southcoast Freight Bureau Tariff No. 278, Cal.P.U.C. No. 100, acting under authority of powers of attorney from each of said carriers, be and he is hereby authorized to publish and file the rates designated as proposed rates in Appendix "A" attached hereto and by this reference made a part hereof, and to cancel the rate named in said tariff

for the transportation of broken, crude, crushed or ground slate  
from Laws to Keeler.

The effective date of this order shall be twenty days  
after the date hereof.

Dated at San Francisco, California, this 11<sup>th</sup>  
day of JUNE, 1957.

*[Signature]*  
President  
*[Signature]*  
*[Signature]*  
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*[Signature]*  
Commissioners

## APPENDIX "A"

Comparison of Present Rates and Proposed Rates

Tariff Reference: P.S.F.B. Tariff No. 278, Items 2205  
and 2210 Series.

Commodity: Slate, broken, crude, crushed or  
ground.

Rates: In cents per 100 pounds.

To	Minimum Weight (In Pounds)	Rates in Cents per 100 Pounds		
		Present From		Proposed From
		Laws	Keeler Zurich	Laws Keeler Zurich
Groups 1-2-3 (S.F. Area)	100,000 open top car	32	-	39
	100,000 closed top car	35	-	39
Group 4 (L.A.)	100,000	21	21	25
	80,000	24	24	-
	60,000	-	-	28
Group 5 (Long Beach, Etc.)	100,000	-	28	27
	80,000	-	29	-
	60,000	-	-	30
Corona	100,000	25	-	30
Anaheim	100,000	-	28	27
	80,000	-	29	-
	60,000	-	-	30
Keeler	80,000	8	-	Cancel