

# ORIGINAL

Decision No. 57176

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of UNION PACIFIC RAILROAD COMPANY, a corporation, and RAILWAY EXPRESS AGENCY, INC., a corporation, for authority to abandon and close Nipton Station, San Bernardino County, California.

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Application No. 39241

Edward C. Renwick, General Counsel, by Marshall Vorkink, for applicant.  
Schultheis & Laybourne, by Norman R. Dowds, for Molybdenum Corporation of America; Ted W. Bernhardt, for a group of protestants in and around Nipton and Nipton Mercantile Co.; Donald McCaskey, M.D.; Lynn C. Snyder; protestants.

### OPINION ON REHEARING

By Decision No. 55781, dated November 5, 1957, in the above application, applicants were given authority to discontinue agency service at Nipton, California, subject to certain conditions, and provided: "That the authorization herein granted to discontinue agency service shall become effective June 2, 1958, unless there shall have been filed with the Commission, at least twenty days prior thereto, a petition setting forth facts indicating that the expected increase of traffic in and out of Nipton Station has then occurred, and requesting a hearing thereon. In the event such petition is filed as herein provided the authorization hereinabove granted shall be stayed until a hearing is held and a further order issued."

On May 9, 1958, a petition was filed with the Commission by several residents of the Nipton area requesting another hearing. In said petition they allege, inter alia, that shipments of copper ore and rare earth concentrates from Nipton increased in the six months prior to the filing of said petition and that the increase is expected to continue; and that shipments of cattle for Cima, California, were deviated to the agency station at Kelso instead of Nipton where they should have been taken into account. Pursuant to this petition, a rehearing was held in Victorville before Examiner Kent C. Rogers on July 2, 1958. Evidence, including exhibits herein referred to, was presented and the matter was submitted.

Exhibit No. 1A shows the Union Pacific's portion of all revenues from all sources at the Nipton Station, exclusive of passenger revenues for the year 1957 and the first three months of 1958. This exhibit is summarized as follows:

Year	Freight				Milk ' and ' Cream	Total
	Forwarded		Received			
	Carload	L.C.L.	Carload	L.C.L.		
1957	\$4,695	\$6	\$352	\$421	\$31	\$5,505
1958 (3 mos.)	2,046	-	103	90	11	2,550

Monthly average railroad portion of all revenues:

1957	\$459
1958 (3 mos.)	850

Exhibit No. 2A shows the Union Pacific's portion of all revenues from all sources at the Nipton Station with 50 percent of the carload freight charges apportioned to another Union Pacific station where the freight originated or was destined to such other

station, and exclusive of passenger revenues, for the year 1957 and the first three months of 1958. The exhibit is summarized as follows:

Year	Freight				Milk and Cream	Total
	Forwarded		Received			
	Local	Other	Local	Other		
1957	\$275	\$4,151	-	\$773	\$31	\$5,230
1958 (3 mos.)	474	1,098	-	193	11	1,776

Monthly average railroad portion of all revenues:

1957	\$433
1958 (3 mos.)	575

Exhibit No. 4A shows the carload shipments of various commodities forwarded and received at the Nipton Station during the year 1957 and the first three months of 1958. The exhibit is summarized as follows:

Carloads Forwarded

<u>Year</u>	<u>Copper Ore</u>	<u>Rare Earth Concentrates</u>	<u>Total</u>
1957	2	3	5
1958 (3 mos.)	2	1	3

The record also shows that during the months of April, May, and June, 1958, three carloads of rare earth concentrates were shipped out of the Nipton Station, making a total of four such shipments out of the station during the first six months of 1958. The carloads received were as follows:

Carloads Received

<u>Year</u>	<u>Treated Poles</u>	<u>Household Goods</u>	<u>Total</u>
1957	3	-	3
1958 (3 mos.)	-	1	1

The record shows that one additional carload of general merchandise was received in Nipton in May of 1958.

Exhibit No. 5A shows the less-than-carload shipments forwarded and received at Nipton during the year 1957 and the first three months of 1958. This exhibit is summarized as follows:

Number of Consignments

<u>Year</u>	<u>Forwarded</u>	<u>Received</u>	<u>Total</u>
1957	3	99	102
1958 (3 mos.)	-	20	20

Exhibit No. 3A shows the gross revenues received from less-than-carload freight forwarded and received at the Nipton Station for the year 1957 and the first three months of 1958, together with express receipts. The entire freight revenue is attributed to the Nipton Station and 30 percent of the gross express receipts is credited to said Station as its participation in said receipts. Exhibit No. 3A is summarized as follows:

<u>Year</u>	<u>Forwarded</u>	<u>Received</u>	<u>Milk &amp; Cream</u>	<u>Express</u>	<u>Total</u>
1957	\$6.00	\$421	\$30.96	\$114.60	\$572.56
1958 (3 mos.)	-	90	10.80	27.39	128.19

Exhibit No. 6A lists Union Pacific's out-of-pocket expenses at the Nipton Station for the year 1957 and the first three months of 1958. These expenses are summarized as follows:

<u>Year</u>	<u>Wages</u>	<u>Payroll Taxes</u>	<u>Fuel</u>	<u>Water</u>	<u>Misc.</u>	<u>Total</u>
1957	\$4,707.59	\$353.83	\$39.58	\$5.40	\$15.00	\$5,121.40
1958 (3 mos.)	1,157.12	91.89	42.56	1.35	4.50	1,297.42

Exhibit No. 7A shows that if the Nipton Station is charged with its proportionate share of general railway overhead expenses,

the operations of the station cost the railroad \$2,617 over revenue for the year 1956, and \$3,904 over revenue for the year 1957.

Evidence presented at the first hearing gave figures similar to the above, relative to operations at Nipton during the years 1955 and 1956. The evidence presented at both hearings shows that there has been a steady decline in revenues since 1955 and a steady rise in expenses. As examples, the carload freight received and forwarded has decreased from a total of 30 carloads in 1955 to 8 in 1957, and 7 for the first six months of 1958, and the less-than-carload traffic has remained fairly steady with 107 shipments received and forwarded in 1955, 102 shipments received and forwarded in 1957, and 20 shipments forwarded and received in the first three months of 1958. The record further shows that the revenue from less-than-carload traffic in and out of Nipton has declined from \$1,232 in 1955 to \$572 in 1957, and \$128 for the first three months of 1958. Opposed to these items is the fact that the out-of-pocket expenses of the station have increased from \$4,535 for the year 1955, to \$5,121 for the year 1957, and \$1,297 for the first three months of 1958.

The Molybdenum Corporation of America protested the closing of the station and presented evidence tending to show an increase in the number of carload shipments of rare earth concentrates out of the Nipton Station since the first hearing. Its main objection to removing the agent is that the carload shipments are very valuable, having a value of approximately \$400 a ton, and the company desires that there be a responsible agent at Nipton. Its witness also reiterated the statement made at the first hearing that attempts are being made to secure new markets for the product and that added traffic can be expected when new markets are developed.

At the time of the prior hearing, a Mr. Ted W. Bernhardt owned the majority of businesses in Nipton. Thereafter Mr. Lynn C. Snyder purchased the Nipton townsite, including the general store. Mr. Snyder stated that he has a \$50,000 investment in Nipton. He secures his supplies from Las Vegas and wants them delivered by the railroad at Nipton. It is his opinion that the traffic into and out of Nipton will increase inasmuch as he is adding to the commodities handled through the general store. While Mr. Snyder claimed that the abandonment of agency service at Nipton will hurt his business and possibly cause him to discontinue business in Nipton, he flatly refused to be responsible for any shipments coming into Nipton if the agency were terminated.

Mr. Ted W. Bernhardt, the former owner of Nipton townsite, claimed that shipments of cattle from the east destined for Kelso were credited to Cima, an agency station, instead of Nipton. Nipton and Cima are the nearest stations to Kelso, Cima being west thereof and Nipton being east thereof. The method of handling provided in applicant's rules is that shipments destined for nonagency stations be delivered to the first agency station beyond the nonagency station in the direction the traffic is moving (U.P.R.R. Accounting Bulletin 39-2, Rule 189). This is exactly the method in which the traffic was handled and no preference is involved.

The protestants also objected to the fact that 40 carloads of sheep were loaded at Boulder City, Nevada, instead of at Nipton, thereby reducing the Nipton income. The applicant's witness stated, however, that this business was solicited by applicant's Boulder City agent and was loaded at Boulder City at the shipper's request.

The evidence indicates, as stated in the prior decision herein, that traffic in and out of Nipton may increase in the future due to the efforts of the Molybdenum Corporation of America to increase its market. The record also shows that the new owner of the commercial enterprises in Nipton is energetic and has plans to expand the business therein. The record clearly demonstrates now, however, as it did at the prior hearing, that under the present conditions, retaining an agent for Nipton causes an out-of-pocket loss to the railroad. Upon careful consideration of the entire record, the Commission concludes that public convenience and necessity will not be adversely affected by authorizing the discontinuance of agency service at Nipton. The application will be granted.

ORDER ON REHEARING

An application having been filed, a public hearing having been held thereon, the matter having been submitted and the Commission having made the foregoing findings and based upon said findings,

IT IS ORDERED:

That Union Pacific Railroad Company is authorized to discontinue agency service at Nipton, San Bernardino County, subject to the following conditions:

- a. Applicant shall continue said station as a nonagency station.
- b. Applicant shall give not less than ten days' notice to the public of the discontinuance of said agency service by posting a notice at said station.

- c. Applicant shall provide storage under lock at said station for less-than-carload freight shipments and shall provide a key to said storage space to be kept at a convenient location nearby and shall maintain notice at such station advising patrons where the key may be secured. In the event applicant is unable to obtain such location, it shall furnish a key to each of the following:  
Dr. Donald McCaskey, Molybdenum Corporation of America, Nipton Mercantile Co., and a representative of the Business Men's Association of Searchlight, Nevada.
- d. Applicant shall within thirty days thereafter notify this Commission in writing of the discontinuance of the agency service authorized herein and of the compliance with the conditions of this order.

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

Dated at San Francisco, California,  
this 12<sup>th</sup> day of August, 1958.

E. Lynn Fox  
President

J. E. Mitchell

Robert L. Sullivan

W. H. [unclear]

Commissioners

Commissioner Theodore H. Jenner  
..... being  
necessarily absent, did not participate  
in the disposition of this proceeding.