

Decision No. 57413

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commercial Minerals Company, a  
corporation,  
Complainant,

vs.

The Atchison, Topeka & Santa Fe  
Railway Company, Southern Pacific  
Company, and Union Pacific Railroad  
Company,  
Defendants.

Case No. 5526

OPINION AND ORDER

Complainant alleges that the rates and charges assessed by defendants for the transportation of specified carload shipments of rough-quarried crude soapstone or talc from Dunn and Field to San Francisco were and are excessive and unreasonable in violation of Section 451, and unduly discriminatory, prejudicial and preferential in violation of Section 453, of the Public Utilities Code. Reparation and reduced rates for the future are sought.

The matter was submitted by agreement of the parties upon written memoranda of facts and argument. Defendants deny the essential allegations of the complaint.

Complainant grinds crude soapstone or talc in its plant in San Francisco and sells the finished product to paint manufacturers in the San Francisco Bay area. Since 1924, the rough-quarried crude soapstone or talc for this purpose has been obtained from the Death Valley area in Inyo and San Bernardino Counties.<sup>1/</sup> The crude talc is hauled by motor truck from the producing point for distances of 75 miles to 110 miles to railheads at Dunn or Field on the Union Pacific Railroad for rail movement to San Francisco via Union Pacific

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<sup>1/</sup> The term "talc" as used hereinafter includes both talc and soapstone, unless otherwise indicated.

to Barstow, thence The Atchison, Topeka & Santa Fe Railway. Complainant states that it meets direct competition in San Francisco Bay area markets from processing plants situated in Los Angeles which also ship their crude talc from Dunn or Field.

Defendants publish in their tariffs through rates on talc of 46 cents, minimum 40,000 pounds, and 44 cents, minimum 60,000 pounds, from Cima to San Francisco, which rates apply also to the intermediate shipping points of Dunn and Field.<sup>2/</sup> However, from the latter points lower combination rates constructed over Barstow ranging from 40½ cents to 43½ cents, minimum 80,000 pounds, depending upon the date of movement, were available under defendants' tariffs and were applied to complainant's shipments.

Complainant states that its main objective is to have the Commission restore the rail rate relationship formerly existing with its Los Angeles competitors. Historical data and rate comparisons were submitted in support of the contention that complainant has been subjected to unreasonable rates by the refusal of defendants to establish a joint rate to San Francisco via Barstow on rough crude talc lower than the combination of local rates and that it has suffered undue discrimination as a result of the preferential treatment of its competitors in Los Angeles. The record shows that for many years rail shipments of crude talc moved from Acme, a point on the Tonopah & Tidewater Railroad then operating in the producing area with track connections with the Union Pacific at Crucero. Through rail rates were in effect at the time of 29 cents to San Francisco and 15 cents to Los Angeles, minimum 60,000 pounds. When the Tonopah & Tidewater discontinued operations in June 1940, the shippers trucked the talc to Dunn, a point on the Union Pacific, for rail shipment. For the

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<sup>2/</sup> Throughout this opinion rates are stated in cents per 100 pounds and, unless otherwise stated, do not include authorized general increases published by defendants in tariff of increased rates and charges.

movement to Los Angeles, a commodity rate of  $7\frac{1}{2}$  cents, minimum 80,000 pounds, was established. No through rate was published, however, for the San Francisco shipments and they moved under a combination rate of  $26\frac{1}{2}$  cents constructed over Barstow.<sup>3/</sup>

According to complainant, although it received a rate reduction of  $2\frac{1}{2}$  cents in the adjustment as compared with the decrease of  $7\frac{1}{2}$  cents accorded its competitors, no protest was made at the time because war conditions had greatly reduced the amount of crude talc available to processors. Negotiations were commenced in the postwar period for a rate adjustment but defendants declined any relief until 1953, when they offered to establish a commodity rate of 11 cents in lieu of the Class E rate of  $12\frac{1}{2}$  cents applicable from Dunn to Barstow, one of the factors in the combination rate to San Francisco. Applicant declined the offer because it appeared that pending general rate increases would have raised it above the existing class rate.

Complainant states that as a result of its inability to obtain a rate reduction, the  $26\frac{1}{2}$  cent rate in effect when the Tonopah & Tidewater ceased operations had become 48.15 cents by reason of various general increases over the years, an increase of 81.7 per cent on the date the complaint was filed. Complainant maintains that the  $26\frac{1}{2}$  cent rate would have been  $21\frac{1}{2}$  cents if defendants had accorded the San Francisco movement rate treatment similar to that given the Los Angeles processors in 1940. The application of subsequent general increases would have produced a rate of 33 cents, minimum 80,000 pounds, subject to Ex Parte 175-B increases, which is the rate complainant seeks in this proceeding.

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<sup>3/</sup> The combination rate consisted of the Class E rate of  $6\frac{1}{2}$  cents, minimum 36,000 pounds, from Dunn to Barstow, and a commodity rate of 20 cents, minimum 80,000 pounds, from Barstow to San Francisco.

The earnings on rough crude talc under the assailed combination rate from Dunn to San Francisco, via Barstow, according to complainant, are unreasonably greater than those accruing under the combination rate contemporaneously maintained by defendants from and to the same points via the much longer route via Los Angeles. The following comparison was submitted:

<u>Route</u>	<u>Miles</u>		<u>(*) Rates</u>	<u>Revenue Per Car</u>	<u>Revenue Per Car- Mile</u>	<u>Revenue Per Ton- Mile</u>
UP Barstow-ATSF	490	(1)	48.15	\$385.20	78.61c	1.97c
UP Los Angeles-ATSF	779	(2)	49.30	394.40	50.63c	1.27c
UP Los Angeles-SP	654	(2)	49.30	394.40	60.31c	1.51c

(\*) Rates include general increases.

- (1) Combination of Class E rate of 12½ cents, minimum 36,000 pounds, Dunn to Barstow, plus 35.65 cents, minimum 80,000 pounds, commodity rate Barstow to San Francisco.
- (2) Combination of commodity rate of 13.8 cents, minimum 80,000 pounds, Dunn to Los Angeles, plus Class E rate of 35½ cents, minimum 36,000 pounds, Los Angeles to San Francisco.

Comparisons also were submitted of the car-mile and ton-mile earnings accruing under the assailed rate with those under the sought rate from Dunn and also under existing rates from various other producing points. The rate and earnings comparisons summarized below are for movements to San Francisco from the points of origin listed.

<u>Origin</u>	<u>Miles</u>	<u>Rates and Minimum Weight</u>	(*) <u>Earnings Per Car-Mile in Cents</u>	(*) <u>Earnings Per Ton-Mile in Mills</u>
Dunn	490	(1) 33-80000	61.96	15.49
Dunn	490	(2) 43½-80000	78.61	19.66
Barstow	453	31-80000	60.75	15.19
Cima (3)	849	( 44-60000	36.19	12.06
		( 46-40000	25.22	12.61
Olancha	485 (4)	( 42-80000	79.67	19.92
		( 44-60000	62.60	20.87
		( 46-40000	43.63	21.81
Keeler	531 (5)	( 42-80000	72.67	18.19
		( 44-60000	57.18	19.06
		( 46-40000	39.85	19.93
Zurich	552 (5)	( 42-80000	70.00	17.50
		( 44-60000	55.00	18.33
		( 46-40000	38.33	19.17
Laws	568 (5)	( 42-80000	68.03	17.01
		( 44-60000	53.45	17.82
		( 46-40000	37.25	18.73
Mecca	611	44-80000	64.24	16.06

- (\*) Earnings include general increase surcharges but the rates in rate column are exclusive of surcharges.
- (1) Sought rate limited to rough-quarried crude talc.
- (2) Assailed rate on crude, crushed or powdered talc.
- (3) Distance calculated via longest applicable route. Via the short-line route of 557 miles, the earnings are 55.16 cents per car-mile and 18.17 mills per ton-mile.
- (4) Rates from Keeler apply as maximum from Olancha.
- (5) The same rates are maintained from Keeler, Zurich and Laws. Such rates include the cost of transfer from narrow gauge to broad gauge cars at Owenyo.

In addition, complainant pointed out that defendants maintained a rate of 46 cents, minimum 80,000 pounds from Field (one of the origins involved herein) to Napa Junction, which applies only on crude talc. For the distance of 662 miles involved, the earnings are equal to 63.93 cents per car-mile and 15.98 mills per ton-mile.

Other comparisons submitted covered movements from Redding to Los Angeles (610 miles) and Redding to Rosamond (523 miles). The

compared rates are 43 cents and 48 cents, respectively, minimum 80,000 pounds. The earnings are equal to 63.93 cents and 75.64 cents per car-mile and 15.98 mills and 18.91 mills per ton-mile, respectively.

The average of the earnings under the general level of rail rates on talc for comparable distances in California was compared by complainant with those produced by the assailed rate. The average earnings amount to 66.36 cents per car-mile and 16.89 mills per ton-mile and the corresponding figures for the assailed rate are 78.61 cents and 19.66 mills.

In addition to assailing the combination rate constructed over Barstow, complainant contends that the factor applicable from Dunn to Barstow is excessive when compared with rates on rough crude talc from Dunn and Field to Los Angeles and with minimum rates prescribed by this Commission between such points.

Complainant contends that it has been subjected to a competitive disadvantage as a result of disruption of previously existing rate relationships. It is explained that Los Angeles processors are able to move the crude talc from Dunn into their plants for grinding and sacking and to reship the finished product to San Francisco Bay area consumers under a through rate from Dunn plus a grinding in transit charge. The total rate amounts to 56.64 cents. This is compared with the rate of 48.15 cents applicable for moving only the crude talc from Dunn to complainant's plant in San Francisco for processing. It is pointed out that the competitors also have the benefit of a rate of 45 cents, minimum 36,000 pounds, published by Southern Pacific Company in 1953 to move their finished talc from Los Angeles to the San Francisco Bay area. As many as fifteen split deliveries are permitted, subject to additional charges per component

part. According to complainant, the effect upon its competitive position is apparent when the total transportation costs are considered for hauling the crude product from point of origin, grinding it and moving the finished product to consumers in the Bay area via Los Angeles as compared with the movement via San Francisco. Calculations were submitted showing that the total rate paid by complainant on a single 40,000 pound shipment delivered as a finished product amounted to 85/100 of a cent more than the Los Angeles competitors bear and that on a 40,000 pound split delivery shipment of four component parts complainant's rate is 11.78 cents greater than for a like shipment via Los Angeles.

Complainant attributes the adverse competitive position indicated to unequal rate treatment of the San Francisco movement as compared with that accorded the Los Angeles processors. When the Tonopah & Tidewater Railroad discontinued operations in 1940, the rate for hauling rough crude talc from the producing area to San Francisco was equal to 63 per cent of the total charge for moving the crude talc to Los Angeles for grinding and shipping the finished talc to the San Francisco Bay area markets. For a like movement via San Francisco, the total rate was equal to 71.2 per cent of the transportation cost to the Los Angeles grinders for placing their finished product in the Bay area markets in quantities of 40,000 pounds, and 73.3 per cent of the rate in quantities of 10,000 pounds. Assertedly, similar rate relationships existed as far back as 1924. Since then the relationships have become 88.3 per cent, 101.4 per cent and 119.1 per cent, respectively.

According to complainant, its business was built over the years on the previously existing relationships, and the changes which

have occurred because of unequal rate adjustments have caused it to absorb an increasing amount of the disparity in freight rates. The record shows that complainant's gross profit on talc sales in 1940 was equal to 20.6 per cent and that it has dropped to 13.8 per cent. It is claimed that the latter profit figure would have been 18.9 per cent if the 1940 rate relationship still prevailed.

In reply, defendants contend that the 1940 rate structure is not in issue and that the only question presented here is whether the present rates are reasonable and properly related under present day conditions.

According to defendants, on the movements to the Bay area the Los Angeles processors are using a combination rate constructed over Los Angeles which is 2.17 cents higher than the through grinding in transit rate. The total rate on this basis is 58.8 cents as compared with the rate of 48.15 cents available to complainant. It is pointed out, however, that the higher rate covers store door delivery of the finished talc in the Bay area on a split delivery basis whereas the latter rate covers only the movement of the crude product to the local processing plant.

The average rate and earnings calculations presented by complainant were challenged by defendants as not reflecting a proper measure of the assailed rate. It was pointed out that the earnings on the rate from Cima were developed via the most circuitous route rather than the short-line route of movement. Defendants maintain also that the rates from Olancha and nearby points were blanketed at the same level to equalize shipping points and should not be dealt with separately in the comparative calculations.



The record contains statements presented by defendants showing the rates and earnings on talc from various producing points. The compared rates, which apply on both crude and ground talc unless otherwise shown, are summarized below.

<u>(*)</u> <u>From</u>	<u>(*)</u> <u>To</u>	<u>Miles</u>	<u>(1)</u> <u>Rates</u>	<u>Minimum</u> <u>Weight</u>	<u>Earnings per</u> <u>Ton-Mile in</u> <u>Mills</u>
Dunn	San Francisco	490	(2) 50.6	60,000	20.65
Dunn	San Francisco	490	(3) 48.15	80,000	19.65
Dunn	Barstow	37	(4) 12.5	50,000	67.57
Dunn	Los Angeles	185	13.8	80,000	14.92
Los Angeles	San Francisco	469	45.0	36,000	19.19
Cima	San Francisco	557	50.6	80,000	18.17
Barstow	San Francisco	453	35.65	80,000	15.74
Olancha	Los Angeles	215	25.3	80,000	23.53
Keeler	Los Angeles	261	27.6	60,000	21.15
Zurich	Los Angeles	283	27.6	60,000	19.51
Laws	Los Angeles	298	27.6	80,000	18.84
Keeler	San Francisco	531	48.3	80,000	18.19

- (1) Rates include general increase surcharges X-175-B.
- (2) Rate from Cima applicable as maximum from Dunn.
- (3) Present rate made by combination of rates over Barstow applicable on crude talc.
- (4) Class rate on crude talc.
- (\*) Identical comparisons appearing in complainant's showing are not repeated.

Defendant's rate comparisons also show earnings from the movement of crude or ground talc in other states. The movements are from Barratts to Ogden, Utah (321 miles) and Spokane, Washington (902 miles) and Norris to Aberdeen, Washington (934 miles). The rates range from 42.55 cents to 72.45 cents including general increases. The per ton-mile earnings range from 14.53 mills to 26.51 mills.

Defendants maintain that the comparisons show that the earnings under the assailed rate compare favorably with those from

rates applying from the same and other talc shipping points and that the assailed rate is not in excess of a maximum reasonable rate. They assert that no showing has been made of the circumstances under which complainant and its competitors market talc in the San Francisco Bay area, and that it was not established that the competitors fixed or influenced the market prices nor that any loss of sales or profit was attributable to the activities of competitors or to the claimed rate disadvantage.

#### Conclusions

This record is replete with rate comparisons and other data submitted by complainant and defendants in support of their respective positions. All of the evidence and the arguments have been carefully considered.

Complainant contends that the earnings from the assailed rate for hauling its rough talc are excessive when compared with those from rates of its competitors on such talc, and also with other compared rates of record, most of which apply on ground or powdered (finished) talc as well as on the rough-quarried product. It is maintained that the difference between these products for transportation purposes is demonstrated by the fact that the ground or powdered type is accorded a classification rating of Class C for carload movements as compared with the lower rating of Class E for the rough product. Complainant points out that it ships only the rough product from Dunn and has no need for a rate applicable to both the rough and finished products.

Defendants contend that the earnings of 19.65 mills per ton-mile produced by the combination rate paid by complainant for moving rough talc from Dunn to San Francisco compare favorably with ton-mile earnings to San Francisco of 18.19 mills from Keeler, 17.50 mills from Zurick and 17.01 mills from Laws. The record shows, however, that the latter rates include the cost of transferring the talc from narrow gauge to broad gauge cars at Owenyo, an operation not involved in the haul from Dunn. Also, the rates from Keeler, Zurich, and Laws apply on ground or powdered as well as on rough-quarried talc. On taking these factors into consideration in connection with earnings of 14.92 mills and 15.74 mills from rates for hauling rough-quarried talc from Dunn to Los Angeles and from Barstow to San Francisco, respectively, and with the other rate comparisons of record, we find that the earnings from the assailed combination rate are excessive. Defendants claimed that the Barstow rate was depressed but no evidence of probative value was submitted in support of this allegation.

With respect to the allegation that the rates are unduly discriminatory, prejudicial and preferential, complainant's comparisons of total charges on powdered or ground talc paid by the competitors with its charges on the rough product do not cover costs of comparable transportation under similar circumstances and conditions. It has not been shown that the alleged prejudice and preference constitute a source of undue disadvantage to one party and undue advantage to another.

Upon careful consideration of all of the facts and circumstances of record, we are of the opinion and find that the assailed combination rate was and for the future will be unjust and unreasonable to the extent that it exceeds a rate of 37 cents, minimum 80,000 pounds, subject to Tariff of Increased Rates and Charges X-175-B

during the statutory period, and subject to such other general increases authorized subsequent thereto to the extent that such increases have been made applicable by defendants to the rough talc rates of complainant's competitors, for the movement of soapstone or talc, crude, rough-quarried, in blocks, pieces or slabs, from Dunn and Field to San Francisco via Union Pacific to Barstow thence The Atchison, Topeka and Santa Fe Railway Company. We further find that complainant is entitled to recover from defendants reparation to the extent of the differences between the rate prescribed herein and those exacted by defendants with interest at four per cent per annum.

The exact amount of reparation due is not of record. Complainant should submit to defendant for verification a statement of the shipments made and, upon payment of the reparation, defendant shall notify the Commission of the amount thereof. Should it not be possible to reach an agreement as to the reparation award, the matter may be referred to the Commission for further action and the entry of a supplemental order should such be necessary. ✓

O R D E R

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

IT IS HEREBY ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company and Union Pacific Railroad Company, be and they are hereby ordered and directed to refund to complainant, Commercial Minerals Company, all charges collected on the shipments

of rough-quarried crude soapstone or talc here involved in excess of those which would have accrued on the basis of a rate of 37 cents, minimum weight 80,000 pounds, subject to general increases as indicated in the findings in the foregoing opinion, together with interest at four per cent per annum.

The Secretary is directed to cause a certified copy of this decision to be served upon defendants in accordance with law and said decision shall become effective twenty days after the date of such service.

Dated at San Francisco California, this 29<sup>th</sup> day of September, 1958.

E. Lynn Fox  
President

W. C. Mitchell

Raymond Metcalf

Walter J. ...

Theodore Jenner  
Commissioners