

Decision No. 60403

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THATCHER GLASS MANUFACTURING  
COMPANY, INC.,

Complainant,

vs.

Case No. 6400

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, and SOUTHERN  
PACIFIC COMPANY,

Defendants.

D. H. Marken, for Thatcher Glass Manufac-  
turing Company, complainant.

Charles W. Burkett, Jr., and Robert A.  
Thompson, for The Atchison, Topeka and  
Santa Fe Railway Company and Southern  
Pacific Company, defendants.

O P I N I O N

By this complaint, filed January 4, 1960, Thatcher Glass Manufacturing Company, Inc., seeks reparation from defendants in the amount of \$3,409.61, covering 32 carload shipments of silica sand from Weisel to Saugus during the period January to April 1958. Complainant alleges that the rate of 15-3/4 cents per 100 pounds assessed by defendants during that period was unreasonable, in violation of Section 451 of the Public Utilities Code, in so far as that rate exceeded a rate of 8½ cents per 100 pounds which was established by defendants effective April 23, 1958. Complainant also alleges that defendants in publishing and maintaining through one-factor rates on carload shipments of silica sand from and to points other than from Weisel to Saugus have subjected complainant and its traffic to unjust and unreasonable prejudice in violation of Section 453 of the Code. Defendants in general deny the allegations.

Public hearing was held before Examiner William E. Turpen at Los Angeles on April 14, 1960.

A witness for complainant explained in detail the operations of the glass container industry in California. From his testimony it appears that the color and quality of the glass manufactured depends on the amounts and kinds of various impurities contained in the silica sand used to make the glass, and that sand from various origin points contain different amounts and kinds of impurities. The witness said that near the end of 1956, complainant commenced manufacture of flint, or clear, glass containers, and after considerable experiment, it was determined that the sand then being secured from Oceanside (shipping point of Falda) could not be used, and that the only source of satisfactory sand was at Corona (shipping point of Weisel). Upon deciding to purchase sand from Corona, according to the witness, it was discovered that there was no through rate on silica sand from Weisel to Saugus so that it would be necessary to use a combination rate of 4-3/4 cents per 100 pounds from Weisel to Los Angeles plus a rate of 11 cents per 100 pounds from Los Angeles to Saugus,<sup>1</sup> or a total of 15-3/4 cents per 100 pounds. The witness said that his company filed an application with the railroads in September of 1957 seeking a lower rate on this traffic. A rate of 8½ cents per 100 pounds was established by defendants and became effective April 23, 1958. In the meantime, complainant commenced purchasing sand and shipping from Weisel in January of 1958, and shipped 32 carloads prior to the effective date of the 8½-cent rate.<sup>2</sup> It is on these shipments that reparation is sought.

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1 The 11-cent rate actually applied from Falda to Saugus, Los Angeles being intermediate.

2 These carloads ranged in weight from 142,160 pounds to 149,880 pounds.

A traffic consultant employed by complainant introduced into evidence exhibits listing approximately 150 rates published by defendants on silica sand between California points. For each rate the exhibits showed the mileage involved, the applicable minimum weight, the car-mile earnings and the ton-mile earnings. The witness explained that in computing the car-mile earnings he used the applicable minimum weight for each rate,<sup>3</sup> and in the cases where the minimum weight was indicated as "marked capacity of car used" he used a weight of 140,000 pounds. Due to the great variations in minimum weights used, the ton-mile earnings provide a better means of comparison than the car-mile earnings. The exhibits show that the distance from Weisel to Saugus is 85 miles, that the assailed rate of 15-3/4 cents per 100 pounds produces ton-mile earnings of 3.71 cents and that the subsequently established rate of 8½ cents per 100 pounds produces ton-mile earnings of 2.0 cents. The exhibits clearly show that there is no pattern or consistency between the various rates. Even for similar distances a wide range of ton-mile earnings is evident. For example, one rate for a distance of 76 miles produces ton-mile earnings of 1.84 cents, and at the other extreme a rate for a distance of 88 miles produces ton-mile earnings of 4.32 cents. Upon cross-examination the witness stated that he did not know the circumstances or conditions underlying the establishment of nearly all of the rates shown in his exhibits.

An assistant freight traffic manager of Southern Pacific Company testified that he had been unable to find any proceedings in which this Commission had reviewed rates on silica sand, but did refer to a case in which an unpublished scale of joint line carload

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<sup>3</sup> The minimum weights ranged from 60,000 pounds to "marked capacity of car."

rates on common sand was reviewed and found not to be unreasonable.<sup>4</sup> By increasing that scale by the various general rate increases authorized since then, the equivalent rate on that scale for the transportation of common sand for the distance between the points here involved would amount to 235 cents per ton (or 11-3/4 cents per 100 pounds). The witness also presented rate scales found to be maximum reasonable rates by the Interstate Commerce Commission for transportation of common sand and silica sand between points in the Southwest. For the same distance as here involved these scales show rates, in cents per ton, of 219 and 272 for common sand and silica sand, respectively.<sup>5</sup> The witness also testified that in several comprehensive proceedings the Interstate Commerce Commission has prescribed maximum reasonable rates for application between points in Mountain Pacific territory based 10 and 15 per cent higher than for application between points in the Southwest. In accordance with this he showed rates computed at 110 per cent and 115 per cent of the 272 cents per ton rate shown for application on silica sand between points in the Southwest. The resultant rates of 299 cents (110 per cent) and 313 cents (115 per cent), he said, was in his opinion a better yardstick for measuring the reasonableness of the assailed rate.<sup>6</sup>

The only conclusions we can draw from the rate exhibits offered by complainant are that there is a great variation in the level of rates applicable to shipments of silica sand, and that

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4 County of Los Angeles vs. A.T. & S.F. Ry. Co., et al. and related Cases, 32 C.R.C. 296. This proceeding did not find the rates in question to be maximum reasonable rates.

5 It can be calculated that the above interstate rate of 272 cents on silica sand is 24.2 per cent higher than the corresponding rate of 219 cents on common sand. If the 235-cent intrastate rate on the unpublished scale for common sand is increased by this percentage, it would result in a rate of 292 cents per ton (or 14.6 cents per 100 pounds.)

6 The assailed rate of 15-3/4 cents per 100 pounds is equivalent to 315 cents per ton.

there are rates and ton-mile earnings from such rates both greater and lesser than the rate here assailed. Rate comparisons are of little probative value unless it be shown that the factors influencing the volume of the compared rates are similar. It is incumbent upon the party offering such comparisons to show that they are a fair measure of the reasonableness of the rates in issue.<sup>7</sup> From the evidence of record we are unable to find that complainant has shown the rate of 15-3/4 cents per 100 pounds assessed by defendants on shipments of silica sand to be unreasonable in violation of Section 451 of the Public Utilities Code.

In regard to complainant's allegation of unjust and unreasonable prejudice in violation of Section 453 of the Code due to defendants not having published through one-factor rates on silica sand from Weisel to Saugus, it appears that it has been the practice of the railroads to publish point-to-point rates only between points where definite movements can be expected. The record does not show that silica sand moved from Weisel to Saugus at any time prior to the shipments here involved. It thus appears that no reason existed for defendants to publish and maintain such a rate. Following request by the complainant, defendants did establish and publish a through rate. We therefore find and conclude that there was no unjust and unreasonable prejudice against complainant and no violation of Section 453 of the Public Utilities Code.

The complaint will be dismissed.

#### O R D E R

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

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<sup>7</sup> Pillsbury Mills, Inc., vs. Southern Pacific Co., 46 C.R.C. 564.

IT IS ORDERED that the complaint in this proceeding be and it is hereby dismissed.

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

Dated at San Francisco, California, this 12<sup>th</sup> day of July, 1960.

Gerald A. B. [Signature]  
President  
[Signature]  
[Signature]  
Theodore J. [Signature]  
Commissioners