

Decision No. 24527.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WILL F. PECK and WESLEY W. PECK,  
a copartnership, doing business  
under the name and style of A.  
M. PECK COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,

Defendant.

**ORIGINAL**

Case No. 3123.

BY THE COMMISSION:

O P I N I O N

Complainant is engaged in the paving and general construction business. By complaint filed September 25, 1931, and as amended, it alleges that the charges assessed and collected on three carloads of crushed rock transported May 22, 1930, from Westmorland to El Centro were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

Reparation only is sought. Rates are stated in cents per 100 pounds.

Westmorland and El Centro are on the Westmorland and Inter-California Railway branches of the Southern Pacific respectively. The distance from Westmorland to El Centro is 36 miles. Charges were assessed and collected on complainant's shipments on basis of a rate of 15½ cents, made by use of a Class "E" rate of 11½ cents from Westmorland to Calipatria

plus a 4-cent commodity rate applying from Frink, a point beyond Calipatria, to El Centro. Complainant seeks reparation on basis of a rate of  $4\frac{1}{2}$  cents. This rate is predicated upon an unpublished mileage scale used by the rail carriers in computing rock rates in some portions of Southern California, plus an arbitrary of one cent. The cars in issue were originally shipped to Westmorland from Frink but were reshipped without being unloaded and it is not likely that there will be other shipments from there in the near future. No rock is produced at Westmorland.

Defendant admits the allegations of the complaint and has signified its willingness to make a reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate was unjust and unreasonable to the extent it exceeded  $4\frac{1}{2}$  cents; that complainant made the shipments as described, paid and bore the charges thereon, and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

The exact amount of reparation due is not of record. Complainant will submit to defendant for verification a statement of the shipments made and upon payment of the reparation defendant will notify the Commission 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 attention and the entry of a supplemental order should such be necessary.

#### ORDER

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved

having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant Southern Pacific Company be and it is hereby authorized and directed to refund without interest to complainant Will F. Peck and Wesley W. Peck, a copartnership doing business under the name and style of A. M. Peck Company, all charges collected in excess of  $4\frac{1}{2}$  cents per 100 pounds for the transportation from Westmorland to El Centro of the shipments of crushed rock involved in this proceeding.

Dated at San Francisco, California, this 29<sup>th</sup> day of February, 1932.

C. Deary  
Leon Whiteley  
M. J. ...  
W. B. ...  
Fred G. ...  
Commissioners.