

ORIGINAL

Decision No. 34857.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Shannahan Brothers, Incorporated, )  
Complainant, )

vs. )

Union Pacific Railroad Company )  
and Southern Pacific Company, )  
Defendants. )

Case No. 4377

Rohl-Connolly Company, Incorporated, )  
Complainant, )

vs. )

Union Pacific Railroad Company )  
and Southern Pacific Company, )  
Defendants. )

Case No. 4504

BY THE COMMISSION:

Appearances

L.H. Stewart and Malcolm E. Stewart, for complainants  
Edward C. Renwick and R.E. Wedekind, for defendants.

O P I N I O N

In Case No. 4377 Shannahan Brothers, Incorporated, alleges that the rates for the transportation by defendants of carload shipments of riprap, waste rock and granite spalls from Bly Quarry to Arguello were during the two-year period immediately preceding the filing of the complaint, are now and for the future will be unjust and unreasonable in violation of Section 13 of the Public Utilities Act. In Case No. 4504 Rohl-Connolly Company, Incorporated, makes similar allegations with respect to carload shipments of riprap from Ormand and Declezville to Arguello. Complainants in both cases seek reparation and rates for the future.

The matters were submitted on concurrent briefs following

public hearings had at Los Angeles.<sup>1</sup> A petition to reopen Case No. 4504 was thereafter filed by defendants and is now pending.<sup>2</sup> Upon careful consideration of the petition and each and every allegation therein contained the Commission is of the opinion that no good cause for reopening Case No. 4504 has been made to appear and that the petition should be denied.

The issues in Cases Nos. 4377 and 4504 being similar, they will be disposed of in one decision. Rates are stated in cents per 100 pounds.

Bly Quarry and Ormand are located on the Crestmore Branch of the Union Pacific Railroad Company, 51 and 52 miles, respectively, east of Los Angeles. Declezville is on the Declezville Branch of the Southern Pacific Company, 50 miles east of Los Angeles. Arguello is located on the coast line of the Southern Pacific Company, 161 miles northwest of Los Angeles.

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Case No. 4377 was originally submitted upon written statements of fact and argument. By Decision No. 32288 of August 30, 1939, 42 C.R.C. 902, the Commission found, in effect, that the rates from Bly Quarry to Arguello were and for the future would be unjust and unreasonable to the extent that they exceeded or might exceed the unpublished southern California scale. Reparation was awarded and a rate for the future prescribed on the basis of that scale. Thereafter, upon petition of defendants, the Commission set aside the submission theretofore entered and reopened the proceeding for the purpose of receiving additional testimony. The record previously made was by stipulation made a part of the record in the reopened proceeding. Subsequently, a hearing was had in Case No. 4504, at which time the record made in Case No. 4377 was by stipulation made a part of the record in Case No. 4504. Case No. 4377 was heard before Examiner Bryant.

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Petitioners allege that certain exhibits concerning damage to cars used in handling riprap, waste rock and granite spalls which were received in evidence in this case over their objections are in rebuttal to evidence offered by them in Case No. 4377, which case has previously been submitted. They request that Case No. 4504 be reopened to afford them the opportunity of producing additional evidence in answer to these exhibits.

The shipments of riprap, waste rock and granite spalls<sup>3</sup> made by Shannahan Brothers, moved from Bly Quarry via the Union Pacific to Los Angeles, thence via the Southern Pacific to Arguello, a distance of 212 miles. The shipments of riprap made by Rohl-Connolly Company moved from Ormand via the Union Pacific to Los Angeles, thence via the Southern Pacific, a distance of 213 miles, and from Declezville to Arguello via the Southern Pacific, a distance of 210 miles.

The rates assessed on the shipments from Bly Quarry to Arguello are 9  $\frac{1}{4}$  cents on the waste rock, all of which moved prior to April 15, 1938, (the date on which the general increase authorized in Re Increases in Rates, 41 C.R.C. 215, became effective); 11 cents on the riprap which moved prior to that date, and 11.9 cents on the riprap which moved thereafter; and 10 cents on the granite spalls, which moved after April 15, 1938. On the shipments of riprap from Ormand and Declezville to Arguello, all of which moved after April 15, 1938, the rates assessed are 10 cents from Ormand, and 8  $\frac{1}{2}$  cents from Declezville.<sup>4</sup>

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<sup>3</sup> Riprap consists of large pieces of rock, usually weighing in excess of 1,000 pounds. Granite spalls are smaller than riprap and weigh from a few pounds to about 1,000 pounds. Waste rock consists of the residue resulting from blasting to obtain riprap and granite spalls; the separate fragments seldom weigh more than 1,000 pounds.

<sup>4</sup> The rates on shipments from Bly Quarry to Arguello which moved prior to April 15, 1938, are combination rates of 2.25 cents applicable to waste rock and granite spalls, and 4 cents applicable to riprap, from Bly Quarry to Los Angeles, (published in Union Pacific Tariff No. 7020, C.R.C. No. 327), and a rate of 7 cents applicable to the transportation of all three commodities from Los Angeles to Narlon, a point 19 miles beyond Arguello (published in Southern Pacific Tariff No. 330-F, C.R.C. No. 3112). On April 15, 1938, the 2.25-cent rate was increased to 2.5 cents, the 4-cent rate to 4.4 cents, and the 7-cent rate to 7.5 cents. The rate on the shipments of riprap from Ormand to Arguello is a joint rate (published in Pacific Freight Bureau Tariff No. 166-F, C.R.C. No. 628 of J.P. Haynes, Agent) applicable from Ormand to Arlight, a point 2 miles beyond Arguello; and that on shipments of riprap from Declezville to Arguello is a local rate (published in Southern Pacific Tariff No. 330-F, C.R.C. No. 3112) applicable from Declezville to Narlon.

Reparation is sought on the basis of a rate of 8 cents on the shipments which moved from Bly Quarry to Arguello prior to April 15, 1938; and on the basis of rates of 9 cents from Bly Quarry and Ormand and  $7\frac{1}{2}$  cents from Declezville to Arguello on the shipments which moved on and after April 15, 1938. Rates of 9 cents from Bly Quarry and Ormand and  $7\frac{1}{2}$  cents from Declezville to Arguello are sought for the future. These rates are of the level of the so-called "unpublished southern California scale,"<sup>5</sup> subject, as to shipments which moved on and after April 15, 1938, to the general increases authorized In Re Increases in Rates, supra.

The record shows that at the three quarries riprap is individually picked out by "clam shell" or derrick operation and lowered into place on flat cars furnished by the carriers. Spalls and waste rock are loaded by power shovel operation into gondola type cars.<sup>6</sup> At Ormand and Declezville the latter two commodities are loaded into the cars; at Bly Quarry direct loading is employed to some extent although most of the stone is first loaded into trucks which in turn dump the material from ramps into cars. With either method the material falls from 4 to 8 feet, although it appears that ramp loading involves the greater fall.

At Declezville and Ormand intraplant switching is performed by the quarries, each having its own switch engine; at Bly Quarry,

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<sup>5</sup> This scale is described in Union Rock Company v. The A.T. & S.F. Ry., et al., 27 C.R.C. 285, as follows (rates are stated in the quotation in cents per ton);

"This scale is unpublished, but is used by defendants as a means of arriving at the specific point to point rates. The rates on crushed rock and gravel are established on an equal basis, but on sand the rates are 10 cents lower than the rates on crushed rock and gravel. \* \* \* For distances under 25 miles the rate on crushed rock and gravel is set at 60 cents and on sand at 50 cents. For 35 miles and over 25 miles the rate is 70 cents on crushed rock and gravel and 60 cents on sand, 10 cents being added to the latter rates for each additional block of 20 miles up to and including 75 miles, then 10 cents for each block of 25 miles until 175 miles is reached, then 10 cents for the next block of 50 miles. For distances over 225 miles, but not over 250 miles, the latter distance being the maximum limit of the scale, an additional 30 cents is added."

Joint-line rates under this scale are 20 cents per ton higher than the single-line rates.

<sup>6</sup> These cars consist of ordinary gondola cars and gondola cars equipped with automatic dumping devices, sometimes referred to as "Clark air dump cars."

it is performed by the Union Pacific. Ormand has quarry trackage space to accommodate 20 or more cars for loading at one time; Bly Quarry has space for only from 10 to 13 cars. The precise capacity of the Declezville quarry is not of record.

Ormand and Bly Quarry traffic is handled by a Union Pacific switch engine stationed at Crestmore. This engine handles the two quarries, the balance of the traffic on the Crestmore Branch, switching at Riverside when time permits, and operates over 9 miles of track between Riverside on the one hand and Poole and Bloomington on the other. Empty cars for rock loading are set out of main line trains at Bly from which point they are taken to Bly Quarry or to Ormand. At Ormand empty cars are set in on one track and loaded cars, all coupled, are taken off of another. They are then hauled to Bly for handling by main line trains. At Bly Quarry empty cars are switched up a grade of from 4 to 6 per cent (as compared with 2 to 3 per cent at Ormand) into the plant, from which point they are set in on the loading tracks and the loaded cars are pulled out and taken to Bly. Switching at the Declezville quarry is performed by the Southern Pacific with an engine operating in local freight service between Los Angeles and Colton.

Arguello, the destination point, is a nonagency station. The shipments upon which reparation is sought were set in on a spur track extending off of a passing track. The spur track belonged to Shannahan Brothers and to Rohl-Connolly at the time their respective shipments moved. Switching was performed at Arguello by local freight service operating north from Santa Barbara.

Complainants maintain that for rate making purposes the defendant rail lines have for the past 15 years included in the rock material grouping "boulders, crushed rock, disintegrated rock, granite spalls, gravel, gutter rock, riprap, rubble, sand (except

moulding sand), waste rock." A rate witness testified that, with few deviations, rates for this transportation had been published at the level of the unpublished scale for hauling between points in southern California and also for transportation between points in adjoining states. He testified further that rates for transportation of rock materials in northern California were maintained on a somewhat lower level. Exhibits were submitted to corroborate his testimony. The witness pointed out that the assailed rate on riprap from Bly Quarry to Arguello was based upon a combination of local rates published to apply from Bly Quarry to Los Angeles and from Los Angeles to Narlon (a point 19 miles beyond Arguello), and that as published the local rates were on the scale level for single-line hauls, distance considered. Similarly, he said the assailed rate from Declezville to Arguello as published (to apply to Arlight, a point two miles beyond Arguello) was on the scale level and exceeded that level at Arguello only because of the intermediate application of the rate.

A comparison of earnings produced under the assailed rates with earnings produced from rates on other commodities for transportation between various California points was submitted to show that defendants transported higher valued commodities comparable distances for substantially less revenue.<sup>7</sup> Ton-mile earnings were not shown. A witness for the railroads testified that in practically all instances, the compared rates had been established to meet truck competition.

According to complainants, the various rate and earning comparisons just reviewed or referred to demonstrate the reasonableness of the unpublished scale as a basis for reparation and rates for

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<sup>7</sup> These commodities included butter, cheese, coffee, fresh meats, flour, beverages and tonics, etcetera.

the future, and show also that while the defendant railroads have opened their lines to joint-rate arrangements with other carriers, they have generally refused to establish joint rates as between themselves for the movement of rock traffic. Complainants acknowledged that the assailed rate in Case No. 4504 of 10 cents, published to apply from Ormand to Arlight (and to Arguello through intermediate application), represented an exception to the rule but contended that the Union Pacific joined in the publication of the 10-cent rate only because shipments had commenced to move wholly via the Southern Pacific from Declezville.

Executives of the three quarries testified extensively concerning rock material values; however, their statements were not wholly in agreement. The reason for the variance may have been explained by one of the executives who states that it is difficult to calculate an average price on riprap, waste rock and granite spalls because quarry costs vary with the specifications required on each job and with the condition of the quarry at the particular time (whether the rock desired is readily available or whether extensive blasting operations are first required). From the testimony and documentary evidence submitted by complainants riprap, waste rock and granite spalls separately range in value from 60 cents to \$1.25 per ton at the quarry and collectively have an average value of about 90 cents per ton. Riprap has an average value of about 95 cents per ton. While these estimates were compared by complainants with prices of 72 cents and 83 cents per ton submitted by the defendant railroads as evidenced of the value of crushed rock, sand and gravel the defendants asserted that these prices included unloading at destination whereas prices on the commodities involved herein were quarry quotations. A railroad traffic witness testified, moreover, that a crusher price of 25 cents per ton on crushed rock, sand and gravel had been recently established as minimum by court

order in the Los Angeles area, that this sum generally represented the maximum price being quoted, and that it, rather than the previously mentioned quotations, was the proper measure for comparing values in these proceedings.

The Plant Superintendent of Shannahan Brothers testified that no substantial damage occurred to cars in loading. He acknowledged, however, that the Union Pacific had complained that unduly large rocks were being dumped into the gondola cars and that equipment had at times been overloaded. He acknowledged also that flat car deck-planking may have been occasionally damaged by falling riprap. The witness stated that both gondola and flat cars were in poor condition when furnished for loading, attributed any damage caused at the quarry to the latter circumstance, and testified that a substantial number of flat cars were furnished either without proper top decking or with no decking whatsoever.<sup>8</sup> He expressed the opinion, moreover, that the decking on cars which were properly equipped was several years old.<sup>9</sup> The Superintendent of Rohl-Connolly stated that flat cars furnished his company were generally double-decked (although the Declezville cars had not been so protected), and that some of the decking was of new material. He stated further

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The decking referred to, according to the record, consists of 16 fir planks, 3 inches x 12 inches x 20 feet, laid double over the regular car flooring, lengthwise of the flat cars, with a center opening to enable derrick slings to be released after riprap is loaded in place.

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Counsel for complainants corroborated the superintendent's testimony. He stated that according to data furnished by the Union Pacific, the flat cars used in the Bly Quarry-Arguello operation were last double-decked in 1935, and that from a personal check it appeared to him that decking utilized was several years old.



that "run of the mill" gondola cars had been furnished the Ormand quarry.<sup>10</sup>

Counsel for complainants summed up the position of the quarries with respect to car requirements. He contended that cars normally used in other revenue service might be used to advantage in rock service and in fact were used by defendants. He testified that of a total of 266 flat cars used on three movements from Bly Quarry and Ormand,<sup>11</sup> 105 cars were used but once, leaving a total of 161 cars which reasonably might have consisted of assigned equipment. He stated, moreover, that of the 93 carloads shipped from Bly Quarry to Arguello, 48 cars were used only once, 18 cars were used only twice, and 3 cars were used only 3 times, with the consequence that from a use standpoint, it was unnecessary to assign cars for this movement.

Finally, complainants cited seven proceedings wherein they stated the Commission had recognized the unpublished scale as representing a level of maximum reasonableness and had awarded reparation to such rate level.<sup>12</sup> They conceded that the cases cited were not recent and dealt with crushed rock, sand and gravel, but contended that they afforded precedent for similar action in these proceedings where kindred commodities were in issue.

Traffic officers of the Union Pacific and the Southern

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This witness testified that the Clark air-dump cars shipped from Ormand to Arguello and listed in Exhibit No. 2 of Case No. 4504 were loaded with granite spalls. The complaint in Case No. 4504 is limited to riprap shipments.

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The three movements were: Bly Quarry to Arguello, Ormand to Arguello, and Bly Quarry to Long Beach.

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Cases cited by complainants are:

Macco Lumber Co. vs. Southern Pacific Co., 37 C.R.C.254; E.T. Carter vs. Southern Pacific Co., 38 C.R.C. 791; Union Pipe and Concrete Co. vs. Pacific Electric Ry. Co., et al., 35 C.R.C. 946; Dillon vs. A.T. & S.F. Ry. Co., 35 C.R.C. 937; Jahn and Bressi Construction Co. vs. Holton Inter-urban, et al., 38 C.R.C. 54; Western Harvester Co. et al., vs. Southern Pacific Co., 35 C.R.C. 943; and Valley Lumber Co. et al., vs. A.T. and S.F. Ry. Co., et al., 33 C.R.C. 903.

Pacific conceded that rock commodities had been grouped for rate-making purposes since the inception of the unpublished scale but stated that the unpublished scale was predicated upon the large volume of crushed rock, sand and gravel then moving by railroad. No consideration, they stated, was given as to whether the commodity grouping included individual commodities such as riprap, waste rock or granite spalls, the transportation of which might prove burdensome at the unpublished scale level.

These witnesses testified that in recent years the preponderance of rock material tonnage had gravitated to truck transportation,<sup>13</sup> that the tonnage retained by the railroads had moved mainly for the account of governmental agencies at less than the published tariff rates, and that the commercial business remaining had been transported at rates reduced in many instances because of carriers operating by truck. Lower rates on waste rock and granite spalls than on riprap from Bly Quarry and Ormand to Los Angeles, they asserted, were examples of the effect of truck competition on the rate structure. Riprap, they testified, is not particularly suited to truck movement and has been retained by the railroads.

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A Southern Pacific witness testified that 1938 statistics compared with 1928 statistics disclosed a decline of 82 per cent in the commercial tonnage handled of the commodities involved in the rock commodity grouping. The following summary was submitted as evidence of the decline and deals with crushed rock, sand and gravel, assertedly the rate-making commodities in the rock grouping:

Source of Traffic	1928		1937		1938	
	Cars	Tons	Cars	Tons	Cars	Tons
Local	18,927	1,101,518	4,654	257,843	4,008	221,850
Received from Connecting carriers	90	4,982	71	3,442	108	49,188
Delivered to Connecting carriers	966	53,993	72	3,327	144	7,104
Total	19,983	1,160,493	4,797	264,612	4,260	278,148

The traffic officers stated that while the unpublished scale had served as a guide in determining rock material rates in the past,<sup>14</sup> they were of the opinion that, in view of the circumstances just outlined, the scale more properly represented a reasonable minimum rate basis for rock transportation instead of a maximum basis as contended by complainants.

Witnesses for the Union Pacific testified that Bly Quarry switching is without parallel as a difficult and costly operation. The Terminal Yard Superintendent stated that the limited trackage in the quarry,<sup>15</sup> the undue amount of shuttling of cars required to get empty cars set and loaded cars in position for outbound movement, and the undue amount of coupling and handbraking required in aligning equipment were factors which made this switching an expensive operation. The witness estimated that whereas 20 loaded cars and 20 empty cars could be switched at Ormand in 2½ hours, 4½ hours were required to switch half that number of cars at Bly Quarry. He testified that in addition to the switch engine crew, a mechanic, car inspector and supervisor were required to handle the Bly Quarry

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On this point, counsel for the defendants cited in his brief the statement of the Commission in the Union Rock Cases, supra, 32 C.R.C. 291, 295, that "The southern California scale has never been rigorously adhered to by defendants but has been used as a measure to establish the maximum rates in the absence of some compelling conditions requiring either a lower or higher rate." Counsel then argued that while reparation had been awarded down to the basis of the unpublished scale in the cases cited by complainants, those cases, in view of the foregoing and in view of the changed transportation conditions now obtaining, could not be considered as controlling.

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Complainants through cross-examination and rebuttal evidence contended that sufficient trackage was available in the quarry vicinity for storing cars so that trips to Bly were not required each time the quarry was switched, although they conceded that certain of the tracks to which they referred had not been used over a period of years and were in a state of disrepair.

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 operations. Switching at Ormand and Declezville was described as not unusual or difficult.

Contrary to the position taken by complainants, defendants contend that car maintenance and repair costs encountered with the transportation of riprap, waste rock and granite spalls far exceed those encountered with the transportation of crushed rock, sand and gravel. Witnesses testified that gondola type cars were regularly damaged from falling rocks in the normal course of loading and that flat cars were likewise damaged from riprap slipping out of the slings in which they were loaded and falling on to the cars. Many photographs were submitted to show the damage caused to the mechanism, safety apparatus, flooring and structural parts of the cars.

The General Car Foreman of the Union Pacific testified that 44 Clark air-dump gondola cars were placed in rock service in 1926 and that repairs had been required on practically every trip at an average annual per car cost in excess of \$80. The witness stated that in 1934 \$300 per car was spent in heavy repairs and that by 1938 the equipment was no longer fit for service.<sup>17</sup> He stated that the cars were about to be repaired at an estimated cost of \$1,000 per car, exclusive of the cost of changing the trucks be-

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The services of a mechanic and supervisor, it appears, are required for all operations conducted by the Crestmore switching crew. However, this witness explained that Bly Quarry and Ormand were the only places in southern California where it was necessary to maintain a car inspector whose duties were to check for overloading and for damage to equipment that had to be repaired before cars were switched into main line operations.

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The witness stated that the cars were formally withdrawn from revenue service October 27, 1939.

cause of safety requirements and rules referred to by complainants. The witness estimated that annual repair costs to ordinary gondola cars utilized in hauling crushed rock, sand and gravel averaged about \$20 per car.

The Car Foreman testified that 164 flat cars were double-decked in 1935 and that 104 flat cars were double-decked in 1938, all for use in southern California quarry service at a cost in excess of \$36 per car. The witness stated that ordinary maintenance costs encountered with these cars in rock service exceeded \$40 per car, that base floor replacements were often required at a cost of \$76 per car, and that the cost of rehabilitating flat car equipment for other revenue service exceeded \$75 per car.<sup>19</sup> In response to the contention of complainants that weight records reflected repair dates and showed that a substantial portion of equipment had not been renovated over a long period of time, the witness stated that cars were light-weighted at the time of original overhauling, but were not weighed when subsequent repairs were made unless the repairs altered the car weights.

A Southern Pacific research engineer stated that freight trains delivering the tonnage here involved could not be operated efficiently because of the absence of tonnage north of Arguello to compensate for loaded cars set out at that point. He stated also

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Complainants took the position that the Clark air-dump gondola cars had been removed from service not because of their poor condition but because they were equipped with arch bar trucks, prohibited in joint-line service by the Association of American Railways. The car foreman testified, however, that the cars were not removed from service because of these safety requirements. The record shows that the rule of the Association prohibiting arch bar trucks did not become effective until January 1, 1940.

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The witness explained that repair expenses were not segregated with the consequence that it was necessary to estimate maintenance expenses, based upon the total sums expended for material and labor. In this respect, he stated that repairs to flat cars, gondolas, and air-dump equipment were under his direct supervision.

that switching delays were often encountered, that because of limited unloading facilities loaded cars were often set out prior to reaching Arguello for hauling to destination by subsequent trains, and that due to the absence of freight originating in the Arguello territory it was impossible to obtain revenue from the equipment in return movement. The witness testified that due to storm conditions prevailing at the time of movement additional expense was encountered in handling shipments from Ormand.<sup>20</sup>

Both the Union Pacific Railroad Company and the Southern Pacific Company have voluntarily grouped for rate-making purposes commodities ordinarily referred to as rock materials, and over a long period of years these railroads have, with minor exceptions, maintained single and joint-line rates for the transportation of such commodities between points in southern California on a level comparable with the unpublished scale, distances considered. Moreover, they have generally maintained rates of the volume of the unpublished scale for the transportation of rock commodities (including riprap, waste rock and granite spalls) between points in adjoining states.

The record discloses that with the advent of the unpublished scale practically all of the rock material tonnage, consisting preponderantly of crushed rock, sand and gravel, was transported by railroad. Consequently these commodities were given paramount consideration in fixing the rate level. The evidence is unmistakably clear, however, that the major portion of crushed rock, sand

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The added expenses were attributed to overcrowding of Santa Barbara Yard facilities because spur track facilities at Concepcion, Sudden and Arguello were full, and to the fact that extra trains were required to be operated. A witness for complainants stated that in his opinion the Ormand shipments were not so frequent as to overburden either yard or main line facilities. He stated also that demurrage was paid on the cars delayed at Arguello.

and gravel shipments have since been diverted from rail transportation. That the diversion of tonnage applies to practically all of the rock commodities is evidenced by the fact that the Southern Pacific Company experienced a decline in rock tonnage handled of 82 per cent over a 10 year period. Statistics covering the years 1938 and 1939 which were submitted in evidence show that of the tonnage which the defendant railroads have retained (said to approximate 10 per cent of the total volume), a substantial portion is moving at government rates or at truck-compelled rates lower than the level of the unpublished scale for comparable distances. These circumstances have produced a substantial decline in revenues of the defendant rail lines.

The record also discloses that unlike conditions experienced with the handling of other traffic the movement of riprap, waste rock and granite spalls is sporadic and car requirements frequently cannot be determined in advance.

With respect to loading it appears that riprap, waste rock and granite spalls possess comparable loading characteristics even though riprap is loaded on to flat cars whereas waste rock and spalls are loaded into gondola type cars. Both flat cars and gondola cars have been severely damaged by the sheer weight of falling rocks experienced with loading cars at the quarries. These circumstances have produced substantially higher maintenance expense in hauling riprap, waste rock and granite spalls than in hauling crushed rock, sand and gravel which according to the record causes little damage to equipment and practically no maintenance expense. While complainants questioned the need for decking flat cars it is noteworthy that of the 104 cars doubled decked in October 1938 at a cost stated to be in excess of \$36 per car all but one of these cars were immediately used in the transportation of Rohl-Connolly shipments from Ormand to Arguello. Also, complainants asserted that cars utilized

in hauling rock materials were seldom left in service for more than one or two trips and that from a use standpoint assignment of equipment for rock service is unnecessary. Analysis of the record discloses, however, that of the 104 cars just referred to half were used for three or more trips from Ormand to Arguello and but few cars were used only once.

Riprap, waste rock and granite spalls were shown by the record to range from about one-half to four times greater in value than crushed rock, sand and gravel. The precise difference is difficult to measure due to the extent to which testimony of the various witnesses was controverted. In our opinion, however, it is a matter which must be considered along with other evidence as weighing in favor of a higher basis of rates on the higher valued commodities.

The evidence adduced herein discloses that switching operations at Bly Quarry are more complex and costly than at Ormand or Declezville. However, the per-month cost assignable to the Bly Quarry operation, due to overtime activities and delays, is not of such an amount as to warrant a difference in rates at these points. Whether from the standpoint of operations or costs, switching conditions at different points are rarely the same. In the final analysis, however, and to use the language of counsel for Shannahan Brothers, "They all average up." Apart from the matter of switching it was not contended that circumstances surrounding the transportation of riprap, waste rock and granite spalls at Bly Quarry differ from those obtaining at Ormand.

Upon consideration of all the facts of record, we are of the opinion and find that the complainant in Case No. 4504 has not shown the rates therein assailed for transportation from Ormand and Declezville to be unjust or unreasonable. We are of the further opinion, however, that complainant in Case No. 4377 has shown the rates for the transportation of riprap, waste rock and granite spalls



from Bly Quarry to Arguello, to be unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent that they exceeded a rate of 9 cents on shipments moving prior to April 15, 1938, and to the extent that they exceeded and exceed a rate of 10 cents on shipments moving thereafter. The conclusions, findings and order previously issued in Decision No. 32288 of August 30, 1939, in Case No. 4377 will be superseded by the conclusions, findings and order reached herein.

In the course of the hearings conducted herein it was made apparent that certain of the shipments listed in Case No. 4504 as riprap consisted of waste rock or granite spalls upon which higher rates applied and should have been assessed and collected. It is assumed, counsel for defendants having raised the point in the course of the proceedings, that necessary steps have been taken to collect any outstanding undercharges. In the event that they have not, defendants will be expected to take such steps forthwith.

The exact amount of reparation due is not of record. Complainant in Case No. 4377 will submit to defendants for verification a statement of the shipments made and upon payment of the reparation defendants will 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 attention and the entry of a supplemental order should such be necessary.

O R D E R

These cases being at issue upon complaints and answers on file, full investigation of the matters and things involved having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that defendants Southern Pacific Company and Union Pacific Railroad Company, according as they participated in the transportation, be and they are hereby ordered and

directed to refund to complainant Shannahan Brothers, Incorporated, all charges collected in excess of those found reasonable in the preceding opinion, together with interest at 6 per cent per annum.

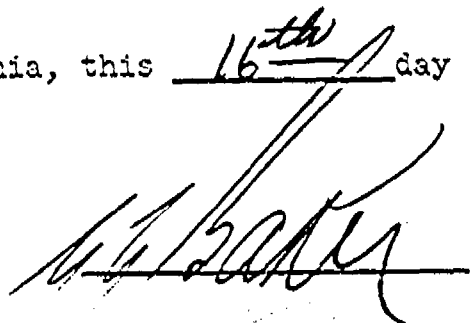
IT IS HEREBY FURTHER ORDERED that said defendants be and they are hereby ordered and directed to establish on or before thirty (30) days from the effective date of this order, and on not less than five (5) days' notice to the Commission and to the public, and thereafter to maintain for the transportation of riprap, waste rock and granite spalls from Bly Quarry to Arguello, rates not to exceed 10 cents per 100 pounds.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint filed in Case No. 4377 be and it is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the petition of said defendants for the reopening of Case No. 4504 be and it is hereby denied and the complaint filed therein be and it is hereby dismissed.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of December, 1941.

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Justus P. Caseman  
Francis L. Havenor  
Arthur L. Kachue  
Commissioners.