

ORIGINAL

Decision No. 35210.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Rohl-Connolly Company, Incorporated,)
Complainant,)

vs.)

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

Case No. 4504

BY THE COMMISSION:

OPINION AND ORDER DENYING PETITION FOR MODIFICATION

By Decision No. 34857 in the above entitled proceeding the Commission found that Rohl-Connolly Company, Incorporated, had not shown rates assailed for transportation of riprap from Ormand to Arguello to be unreasonable or unlawful in violation of Section 13 of the Public Utilities Act and dismissed the proceeding. While the complaint was directed only to rates on shipments of riprap, the record disclosed that numerous carloads of waste rock or granite spalls, or both, had been shipped and that charges had been collected on those shipments on basis of rates applying to riprap. The rates on riprap were lower than those concurrently maintained for the transportation of waste rock and granite spalls and defendants were admonished to collect outstanding undercharges.

Thereafter, complainant filed a petition seeking modification of said Decision No. 34857 by removing the direction to collect undercharges. It alleges that in the same decision the Commission, in disposing of a related matter (Case No. 4377) had found transportation characteristics of riprap, waste rock and granite spalls to be generally similar; that in view of these circumstances complainant should be

accorded the same basis of rates for all three commodities even though the complaint may have been limited to shipments of riprap; and that the testimony upon which the direction to collect undercharges was based had been misconstrued.

The complaint in Case No. 4504 was confined to riprap shipments and, having found that defendants had failed to collect their lawfully published rates for the transportation of waste rock and granite spalls, our duty was to direct that the carriers observe the provisions of their tariffs by collecting outstanding undercharges. A review of the record does not disclose that the evidence was misconstrued. Unless and until the question of the lawfulness and propriety of rates for the transportation of waste rock and granite spalls from Ormand to Arguello is brought before us in an appropriate proceeding the reasonableness of such rates and the propriety of their being adjusted to the same basis as those applying for transportation of riprap, similar to that accorded in Case No. 4377, are not in issue. The petition will be denied.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that the petition for modification of Decision No. 34857 in Case No. 4504 filed by Rohl-Connolly Company, Incorporated, be and it is hereby denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 31st day of March, 1942.

Ray L. Riley

W. H. Baker

Francis R. Havens

Commissioners.