

Decision No. 57427

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

UNITED-HECKATHORN, )  
 Complainant, )  
 vs. )  
 SOUTHERN PACIFIC COMPANY, )  
 Defendant. )

Case No. 6113

Wigle and Larimore, by William M. Larimore,  
 for complainant.  
Charles W. Burkett, Jr., for defendant.

O P I N I O N

By complaint, United-Heckathorn, a corporation, alleges that charges assessed by Southern Pacific Company for the transportation of five carloads of a commodity described as "mineral mixture", from Florin to Vanguard, were unjust and unreasonable.<sup>1</sup> Reparation is requested.

Defendant, in its answer, admitted the allegations of the complaint.<sup>2</sup>

Public hearing of the complaint was held before Examiner Carter R. Bishop at San Francisco on August 13, 1958, at which time evidence was adduced by complainant's secretary-treasurer and by a rate expert retained by complainant. No evidence was offered by defendant.

<sup>1</sup> Three of the shipments in issue moved in 1956 (June 19 and 26 and July 2); the remaining two carloads were forwarded on June 7 and July 16, 1957, respectively.

<sup>2</sup> The matter here in issue has been previously considered on the Commission's "special docket" under No. 734-49. On January 27, 1958, the relief sought therein was denied for lack of sufficient justification and without prejudice to further consideration of the same issue in a formal proceeding.

The record discloses that the commodity here in issue consists of a mixture of not less than 90 per cent of soapstone and of not more than 10 per cent of clay. It is used as a diluent in the manufacture of insecticides. The net value of the shipments of mineral mixture involved in this complaint was \$18 per ton at point of origin. The weight of each carload was 101,000 pounds.

Charges were assessed on the basis of a combination of rates made over Lemoore, as follow: a commodity rate of 18½ cents per 100 pounds, minimum weight 100,000 pounds, from Florin to Lemoore, plus the Class "C" rate of 9½ cents per 100 pounds, minimum weight 36,000 pounds from Lemoore to Vanguard.<sup>3</sup> The latter factor was subject to a 7 per cent surcharge. The commodity rate was published under the description of "Mineral Mixture, consisting of Soapstone and Clay." The Class "C" factor was the rate of "talc, crude, ground or dust" applied by analogy to the mineral mixture.

Reparation is requested to the basis of a subsequently established commodity rate on "Mineral Mixture, consisting of Soapstone and Clay" of 18½ cents, minimum weight 100,000 pounds, which was published to apply from Florin to Vanguard, effective September 14, 1957.

Complainant's secretary-treasurer recounted the facts which led up to the filing of the complaint herein. Some time prior to the date on which the first shipment here in issue was made, complainant leased a portion of the old military airport located in the vicinity of Lemoore. A small plant was established on this leasehold, which

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<sup>3</sup> Florin is located eight miles south of Sacramento; Vanguard is ten miles west of Lemoore, both of which are located on defendant's Coalinga Branch.

was referred to as the Lemoore plant. Also, the post office address of the plant was Lemoore. When application was made with defendant to establish a commodity rate on mineral mixture from Florin to the Lemoore plant it was assumed that publication to Lemoore would take care of the prospective movement. The rate of 18½ cents to Lemoore was established effective February 16, 1955. At the same time commodity rates were established on mineral mixture from Florin to other consuming points, including Bakersfield, Soledad and Fresno.

In the course of a review of freight charges it came to complainant's attention that the Lemoore plant was not within the Lemoore switching limits and that the movement from Florin to Vanguard, at which latter rail station the "Lemoore" plant is actually located, necessitated the assessment of the combination of rates hereinbefore mentioned. Subsequent to the movement of the last car here in issue defendant extended the Lemoore rate to apply to Vanguard. This publication, as previously stated, became effective September 14, 1957.

Complainant contends that, in view of the fact that at the times of movement of the subject shipments, there was a commodity rate of 18½ cents applicable from Florin to Lemoore, a distance of 214.5 miles, it was unreasonable to charge an additional amount of approximately 9.2 cents for the added haul of only 10 miles from Lemoore to Vanguard.

The rate expert introduced exhibits purporting to establish, through rate comparisons, the unreasonableness of the lawfully applicable rate. The exhibits further purport to establish 18½ cents as a reasonable maximum rate for the shipments here in issue. In Table I, below, are set forth the assessed, sought and compared rates

on mineral mixture, together with distances and per-ton-mile and per-car-mile earnings.

TABLE I  
Mineral Mixture

<u>From</u>	<u>To</u>	<u>Miles</u>	<u>Rate*</u> <u>(Cents)</u>	<u>Ton-Mile</u> <u>Revenue</u> <u>(Mills)</u>	<u>Car-Mile</u> <u>Revenue</u> <u>(Cents)</u>
Florin	Vanguard	225	(Assessed) 28.7**	25.5	127.6
Florin	Vanguard	225	(Sought) 18½	16.5	82.3
(Comparisons)					
Florin	Lemoore	215	18½	17.2	86.2
Florin	Bakersfield	268	18½	13.8	69.2
Florin	Soledad	210	17	16.2	80.9
Florin	Fresno	160	15	18.8	90.4

\* Minimum carload weight is 100,000 pounds in all instances, except that the Class "C" factor from Lemoore to Vanguard in the combination rate assessed on the shipments in issue was subject to a minimum weight of 60,000 pounds.

\*\* Approximate; includes 7 per cent surcharge on the Class "C" factor from Lemoore to Vanguard.

The rate expert made additional rate comparisons involving rates on other commodities. These rates, together with distances and earnings, are set forth in Table II below. Rates on commodities which ✓

clearly are not comparable to mineral mixture in transportation characteristics have been omitted.

TABLE II

<u>From</u>	<u>To</u>	<u>Miles</u>	<u>Commodity</u>	<u>Rate (Cents)</u>	<u>Minimum Weight (Pounds)</u>	<u>Ton-Mile Revenue (Mills)</u>	<u>Car-Mile Revenue (Cents)</u>
Laws	Los Angeles	298	Soapstone	25	100,000	16.8	83.8
Bartlett	Los Angeles Harbor	252	Boracic Acid	20	80,000	15.9	63.5
Redwood City	Coalinga	272	Gypsum	20	40,000	14.7	29.5
Diamond Springs	Coalinga	303	Lime Rock	21	40,000	13.9	27.8
Redwood City	La Habra	465	Crude Salt	22½	100,000	9.7	48.4
Newark	Red Bluff	218	Lime Refuse	17	60,000	15.6	46.8
Florin	Bakersfied	268	Ground Clay*	18½	80,000	13.8	55.3

\* In closed cars.

All of the "comparison" rates in Table I were in effect at the time of movement of the subject shipments.<sup>4</sup> With the exception of two rates which took effect during the period of movement, all the rates in Table II likewise were in effect throughout the period of movement. With respect to the rates in the latter table, however, it should be pointed out that complainant adduced no evidence relative to the value of the commodities included therein, nor to the average loads of the shipments moving under the rates included therein which are subject to minimum weights of 40,000 to 80,000 pounds. While it would appear that the transportation characteristics of the commodities

<sup>4</sup> The effective date of these rates was February 16, 1955.

specified in Table II are similar to those of the mineral mixture involved in the proceeding, no affirmative evidence relative to that question was offered.

### Conclusions

It is apparent from the evidence that the combination rate legally applicable to the shipments involved herein was unreasonable. This follows particularly in the light of the compared rates on the same commodity, as shown in Table I.<sup>5</sup> It does not follow, however, that the sought rate of 18½ cents is a maximum reasonable rate for the shipments in question. The movement from Florin to Vanguard involves a branch line haul of 31 miles, extending from Goshen Junction to the destination point. It is well-established that maximum reasonable rates from and to branch line points may properly reflect higher revenues per mile for the movement over the branch line than for the main line haul. In many instances such rates have been determined by using a constructive mileage factor of 150 per cent of the actual distance involved in the branch line movement.

One of the "comparison" rates in Table I is that of 17 cents from Florin to Soledad, involving a distance of 210 miles, which is approximately the same as that from Florin to Vanguard. The Soledad rate reflects revenue of 16.2 mills per ton mile. If a constructive mileage factor of 150 per cent is applied to the actual mileage from Goshen Junction to Vanguard a through constructive distance from Florin to Vanguard of 241 miles is obtained. When the aforementioned per-ton-mile revenue of 16.2 mills is applied to this distance, the resulting rate is 19½ cents per 100 pounds.

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<sup>5</sup> According to the rate witness these four rates were the only ones in effect at time of movement from Florin to points in the general area in which Vanguard is located.

Upon careful consideration of all the evidence of record, we are of the opinion and hereby find that, under all the circumstances and conditions prevailing at the time the shipments involved herein were made, the rate assessed on said shipments was unjust and unreasonable to the extent that it exceeded a rate of 19½ cents per 100 pounds, minimum weight 100,000 pounds. We further find that complainant, United-Heckathorn, is entitled to recover from defendant, Southern Pacific Company, reparation to the extent of the difference between the legal rate, including surcharge, and said rate of 19½ cents. In all other respects the complaint herein will be denied.

O R D E R

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

IT IS ORDERED:

1. That defendant, Southern Pacific Company, be and it is hereby directed to refund to complainant, United-Heckathorn, a corporation, the sum of \$462.85, together with interest at 4 per cent per annum, as reparation for the unreasonable charges assessed on the shipments involved in this proceeding.
2. That in all other respects the complaint in Case No. 6113 be and it is hereby denied.

The Secretary is directed to cause a certified copy of this decision to be served on the Southern Pacific Company in accordance

with law and said decision shall become effective twenty days after such service.

Dated at San Francisco, California, this 7th day of October, 1958.

E. J. Fox  
President

Paul E. Galt

Ray B. Wick

William D. ...

Theodore J. ...  
Commissioners