

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Commercial Minerals Company, a
corporation,)
Complainant,)

vs.)

Case No. 5526

The Atchison, Topeka & Santa Fe
Railway Company, Southern Pacific
Company, and Union Pacific Railroad)
Company,)
Defendants.)

SUPPLEMENTAL OPINION AND ORDER

By Decision No. 57413, dated September 29, 1958, in this proceeding, the Commission found that complainant is entitled to recover from defendants reparation to the extent of the differences between the rate prescribed therein and those exacted by defendants with interest at four percent per annum. The defendants were ordered to make refund to the complainant, with interest.

Subsequently, by letter, the complainant has directed to the Commission's attention a difference of opinion between the complainant and the defendants as to the rates to be applied in computing the amount of refund. The basis prescribed by Decision No. 57413 referred, among other things, to the application of "Tariff of Increased Rates and Charges X-175-B during the statutory period." This tariff was, during a portion of the statutory period, applicable on interstate but not on intrastate traffic. This difference gave rise to a possible ambiguity and resulting difference of opinion as to the rates to be applied in computing the amount of refund.

To remove any uncertainty, the finding and order will be restated in accordance with their intended application.

Upon careful consideration of all of the facts and circumstances of record, we are of the opinion and find that the assailed combination rate was and for the future will be unjust and unreasonable to the extent that it exceeds a rate of 37 cents, minimum 80,000 pounds (subject to ex parte general increases to the extent that such increases were made applicable to the California intrastate rates of complainant's competitors for shipments of rough talc during the statutory period, and subsequently) for the movement of soapstone or talc, crude, rough-quarried, in blocks, pieces or slabs, from Dunn and Field to San Francisco via Union Pacific to Barstow thence The Atchison, Topeka and Santa Fe Railway Company. We further find that complainant is entitled to recover from defendants reparation to the extent of the difference between the rate prescribed herein and those exacted by defendants, with interest at four percent per annum.

The exact amount of reparation due is not of record. Complainant should submit to defendant for verification a statement of the shipments made and, upon payment of the reparation, defendants shall 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 action and the entry of a supplemental order should such be necessary.

Therefore, good cause appearing,

IT IS ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company and Union Pacific Railroad Company, be and they are hereby ordered and directed to refund to complainant, Commercial Minerals Company, all charges collected on the shipments of rough-quarried crude soapstone or talc here involved in excess of those which would have accrued on the basis of a rate of 37 cents, minimum weight 80,000 pounds, subject to general increases to the extent applicable as stated in the foregoing opinion, together with interest at four percent per annum.

The Secretary is directed to cause a certified copy of this decision to be served upon defendants in accordance with law and said decision shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 24th day of June, 1959.

E. Lynn Fox
President
Walter K. Mitchell
William J. Donahue
Theodore J. DeLuca
Ernest W. Page
Commissioners