

ORIGINALDecision No. 67769

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PERMANENTE CEMENT COMPANY,
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
a corporation; PACIFIC
ELECTRIC RAILWAY, a
corporation,

Defendants.

Case No. 7852
(Filed February 28, 1964)Frank Loughran, for complainant.Albert T. Suter, for defendants.O P I N I O N

Public hearing was held on this complaint June 19, 1964 before Examiner Thompson at San Francisco. The matter was submitted June 29, 1964 upon the receipt of briefs.

This is an action brought by Permanente Cement Company (Permanente) to recover reparation from Pacific Electric Railway (PE) and Southern Pacific Company (SP) on 100 shipments of cement in bulk transported by said railroads from storage at the Long Beach facility of Permanente to the plant of Consolidated Rock Products Co. (Consolidated) at Sun Valley, California. The traffic moved during the period June 27, 1962, to October 8, 1962, inclusive. At the time of the movement the applicable rate, published in PSFB Tariffs 88-U, 88-V and 88-W, Item 1705, was

15-1/2 cents per 100 pounds, minimum weight 60,000 pounds. The total charges for the movement of the 100 cars involved in the complaint, assessed at the 15-1/2 cent rate applied to the actual weight of the shipments, were \$23,656.71, which sum the complainant has paid to FE.

Permanente claims that the 15-1/2 cent rate was unreasonable and asserts that a rate of 12-1/2 cents per 100 pounds, minimum weight marked capacity of the car, was a reasonable rate. Application of the 12-1/2 cent rate to the traffic produces a total charge of \$19,083.36 for the movement of this traffic. Permanente seeks as reparation the difference between the charges made and the claimed reasonable charges, which is \$4,573.35. Interest is not requested.

Defendants admitted the events and circumstances relating to the transportation involved and did not present evidence. They deny that the rate assessed was unreasonable.

The following is a summary of the undisputed facts pertaining to this matter:

Consolidated has been a customer of Permanente for many years. Prior to June of 1962, Permanente supplied it from its Cushenbury plant, a point on The Atchison, Topeka & Santa Fe in Southern California. Cushenbury is located 148 miles from Sun Valley and the applicable rate from Cushenbury to Sun Valley is 12-1/2 cents per 100 pounds, minimum weight 60,000 pounds, via The Atchison, Topeka & Santa Fe to Los Angeles, and SP, Los Angeles to Sun Valley. In February of 1962, Permanente was advised that Consolidated would require more cement than Cushenbury could supply. It determined to ship the required product from its Redwood City.

plant to Long Beach by water and move it from this storage point to Sun Valley by rail via PE and SP joint through routing. It notified SP of this contemplated movement and requested the railroads to establish a lower rate. On February 28, 1962, SP filed a docket with the tariff bureau for publication of a rate of 11-1/2 cents per 100 pounds, minimum weight marked capacity of the car. Action on the docket was delayed beyond the time of the commencement of the movement, but on September 26, 1962, the docket was passed and a rate of 11-1/2 cents per 100 pounds, minimum weight marked capacity of the car, was published in Item 17053, PSFB Tariff 88-W, effective November 5, 1962.

Permanente has a large facility at the Long Beach origin point consisting of four cement silos, each having a 12,500 barrel capacity. At this point bulk cement is received from vessels, stored in the silos and moved in gondola cars loaded by gravity to Southern California. The Permanente witness who is familiar with movements from all Southern California origins testified that the involved traffic moved from Long Beach to Sun Valley in the same manner and in comparable volume with shipments that moved from points such as Cushenbury, Monolith, Colton and other Southern California points to Sun Valley. All of the cars used to transport the shipments involved in the complaint were covered hopper cars and, with one exception, were loaded in excess of the marked capacity of the cars used, and in fact were loaded to maximum carrying capacities of the cars.

The following tabulation compares the rates, mileages, revenues and car-mile revenues of carload cement traffic from

cement producing origins in Southern California to Sun Valley with the traffic here involved. The rates shown are subject to a minimum weight of 60,000 pounds and the revenue figures shown are based upon that weight.

Comparison of Rates and
Revenues on Carload Shipments
of Cement to Sun Valley From
Points Shown

<u>From</u>	<u>Rate</u>	<u>Mileage</u>	<u>Revenue</u>	<u>Car-Mile Revenue</u>
Long Beach	.15½	36	\$93.00	\$2.5833
Cushenbury	.12½	148	75.00	.5067
Victorville	.12½	118	75.00	.6355
Oro Grande	.12½	123	75.00	.6097
Crestmore	.12½	68	75.00	1.1029
Colton	.12½	71	75.00	1.0563
Monolith	.10½	103	63.00	.6116
Creal	.10½	96	63.00	.6562

As stated above, the rate from Long Beach to Sun Valley is applicable on a PE - SP joint through route. The rates from Cushenbury, Victorville, Oro Grande and Crestmore are joint through rates applicable to movements over SP and other railroads. The rates shown from Colton, Monolith and Creal are local rates applicable to transportation via SP. PE is a wholly owned subsidiary of SP.

It is apparent from the number of shipments transported and the tonnage hauled that the traffic tendered by complainant from Long Beach constituted a major movement of cement. The rate paid by complainant was higher than rates contemporaneously maintained on like traffic moving to Sun Valley from points in the same general territory.

We find that:

1. The rate of 15-1/2 cents per 100 pounds was unreasonable to the extent that it exceeded a rate of 12-1/2 cents per 100 pounds, minimum weight marked capacity of the car used.

2. The complainant made the 100 shipments as described in the complaint and paid to PE charges, computed on the basis of the 15-1/2 cent rate, which totaled for all traffic covered by the complaint \$23,656.71.

3. The charges on the traffic covered by the complaint computed at the rate of 12-1/2 cents per 100 pounds, minimum weight marked capacity of cars used, amounts to \$19,083.36.

4. The complainant was damaged in the amount of the difference between these two sums, which is \$4,573.35.

5. No discrimination will result from an award of reparation to complainant of \$4,573.35.

We conclude that complainant should be awarded reparation in the amount of \$4,573.35.

O R D E R

IT IS ORDERED that defendant, Pacific Electric Railway, within sixty days after the effective date of this order shall refund to complainant, Permanente Cement Company, the amount of \$4,573.35.

The Secretary is directed to cause a certified copy of this order to be served upon complainant and defendants and the effective date of this order shall be twenty days after the service upon defendant Pacific Electric Railway.

Dated at San Francisco, California, this 25th day of August, 1964.

Frederick B. Holbeuff
President

Walter H. Page

George H. Hoover

William W. Bennett
Commissioners