

Decision No. 12216.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Pacific Portland Cement Company, Consol-  
idated, a Corporation.

Complainant,

vs.

Southern Pacific Company, a Corporation.

Defendant.

CASE NO. 1644.

In the Matter of Petition of Pacific  
Portland Cement Company, Consolidated,  
for an order instituting an investig-  
ation on the Commission's own motion  
and suspending rates.

Pacific Portland Cement Company, Consol-  
idated.

Complainant,

vs.

Central California Traction Company,  
Southern Pacific Company,  
Sacramento Northern Railroad Company,

Defendants.

CASE NO. 1648.

In the Matter of the Investigation of  
cement rates of  
The Atchison, Topeka & Santa Fe Railway  
Company,  
Bay Point & Clayton Railroad Company,  
California Central Railroad Company,  
Cement, Tolenas & Tidewater Railroad Com-  
pany,  
Sacramento Northern Railroad,  
Southern Pacific Company,  
Western Pacific Railroad Company.

CASE NO. 1774.

Jas. A. Keller and Sanborn, Roehl & DeLancey C. Smith,  
for Complainant.

J. F. Saunders, H. W. Klein and Elmer Westlake, for  
Southern Pacific Company, Defendant.

R. M. Light and C. F. Bovee, for California Central  
Railroad Company.

R. B. Mitchell, for Henry Cowell Lime and Cement Company,  
Chas. R. Detrick and Heller, Ehrman, White & McAuliffe, and  
J. C. Stone, for Sacramento Northern Railroad Company.

R. M. Light and C. F. Bovee, for Old Mission Portland  
Cement Company, Intervener.

Gwyn H. Baker, for Santa Cruz Portland Cement Company.

James S. Moore, Jr. and Theodore Hart, for Western  
Pacific Railroad Company.

L. H. Rodebaugh, for San Francisco-Sacramento Railroad  
Company.

BY THE COMMISSION:

### O P I N I O N

It will serve no useful purpose here to detail the historical facts out of which this proceeding grows. It will suffice for the present to state that the Southern Pacific Company has proposed a new schedule of reduced rates on cement to Sacramento and points north and east thereof from the plants at Davenport and San Juan, hereinafter referred to as the southern mills, the admitted purpose of which is to enable those plants to market their product in the territory involved in more active competition with the mills more advantageously located at Cement and Cowell, hereinafter referred to as the northern mills. The proposed rates, some of which are local rates and others joint through rates published in connection with the industrial roads serving three of the cement plants and the Southern Pacific, Western Pacific, Atchison, Topeka & Santa Fe, Sacramento Northern and San Francisco-Sacramento, are

not only under suspension, but are involved in the investigation instituted by us on June 7, 1922. The consolidated proceedings involve a determination of the reasonableness of the rates on cement from the northern and southern mills to the destination territory here under consideration, as well as an allegation by the northern mills that the proposed rates from the southern mills unduly prefer the latter and fail to give to the former the advantage of their location. Rates are stated herein in amounts per ton of 2000 pounds. The words "present rates" refer to rates in effect prior to July 1, 1922; the words "proposed rates" refer to those now under suspension.

The proposal of the Southern Pacific to reduce the rates from the southern mills, while leaving unchanged the rates from the northern mills, thus narrowing the spread in rates as between the two groups, is strenuously opposed by the Pacific Portland Cement Company, hereinafter called the Pacific Company, which operates a plant at Cement.

The Henry Cowell Lime and Cement Company, hereinafter referred to as the Cowell Company, operates a plant at Cowell, also in the northern group, and although represented at the hearing, took no part in the proceeding. Appearances were entered by the southern mills, as interveners, in support of the rate adjustment proposed by the Southern Pacific, hereinafter sometimes referred to as the defendant. A brief statement of the location of the several plants and the rate adjustment in effect thereto will be helpful.

The Pacific Company in 1902 opened a plant at Cement, about 2 miles from Tolenas, on the main line of the Southern Pacific, 54 miles east of San Francisco and 5 miles from Suisun.

Cement is served by the Cement, Tolenas & Tidewater, an industrial line owned by the cement company. In 1903 the interests which now operate the Santa Cruz plant at Davenport built a plant at Napa Junction, 11 miles from Suisun. This plant, however, has not been operated for about three years and since its future operation is a matter of doubt it will be referred to only incidentally in this report. The Davenport plant, built in 1907, is on the Southern Pacific about 11 miles west of Santa Cruz. In 1909 the Cowell Company built a plant at Cowell on the Bay Point & Clayton, which it owns, and which connects with the rails of the Southern Pacific at Bay Point. The plant of the Old Mission Company, built in 1917, is located on the rails of its industrial line, the California Central, which connects with the rails of the Southern Pacific at Chittenden, between Gilroy and Watsonville Junction. Generally speaking, the northern mills are grouped for rate making purposes, as are also the southern mills. In the following table are shown the mileages, short line and operating, from the five mills to Sacramento, which for the purpose of this report will be regarded as the key points, together with the rates, present and proposed:

	<u>MILEAGE TO SACRAMENTO</u>		<u>RATES</u>	
	<u>SHORT LINE</u>	<u>OPERATING</u>	<u>Present ; Proposed</u>	
Bay Point	67.8 (a)	109.4 (c)	\$ 1.80	\$ 1.80
Tolenas	36.9	36.9	1.80	1.80
Napa Jct.	53.1	53.1	1.80	1.80
Average	52.6	66.4		
Davenport	171.8 (b)	206.8 (d)	3.30	2.80
Chittenden	165.9	166.9 (e)	3.30	2.80
Average	168.8	186.8		
Difference	116.2	120.4		

(a) Via Benicia  
 (b) " Glenwood  
 (c) " Stockton

(d) Via Watsonville Jct.-Oakland-Benicia  
 (e) " Oakland-Benicia.

The above figures were taken from exhibits filed by the Southern Pacific Company. Using those figures it will be observed that for an average difference in distance as between the two groups of about 118 miles the present rate from the southern group to Sacramento is \$1.50 per ton higher than the rate from the northern group. Under the proposed adjustment this spread in rates as between the two groups, which for purposes of brevity will be hereinafter referred to as a differential, will be decreased to \$1.00 per ton. The rates and differentials, present and proposed, to four representative points north of Sacramento, are shown in the following table:

	<u>PRESENT</u>				<u>PROPOSED</u>		
	Rates in Cents:	Differ-	:	Rates in Cents:	Differ-	:	
	per 100 pounds:	ential	::	per 100 pounds:	ential	::	
Chico	.25	.17½	.07½	.21	.17½	.03½	
Red Bluff	.26	.19	.07	.22	.19	.03	
Redding	.30½	.22½	.08	.25	.22½	.02½	
Delta	.32½	.27½	.05	.27½	.27½	-	

An examination of the above table shows that as the distance increases the differential narrows and finally fades out entirely at Delta, in Northern California, 356 miles from San Juan, and 221 miles from Cement. The same situation is true as to points east of Sacramento. At the California-Nevada State Line, 311 miles from San Juan and 179 miles from Cement, the present rates are \$6.80 and \$5.00 respectively, and the proposed rate from San Juan \$5.50 per ton. At Inlay, Nevada, a point 356 miles from Cement the proposed rate from San Juan is the same as the present rate from Cement. The proposed basis is explained as follows:

Under the rate adjustment in effect prior to federal control the rates from the several northern mills were found to run together on the Coast Division, in Nevada, and in the San

Joaquin Valley at points about 356 miles from Cement, which basis in the proposed adjustment is extended north and east of Sacramento. At intermediate points the differential is faded out on the basis of mileage, except at Marysville, where the \$1.00 differential is continued, for the reason that the rate from Tolenas to that point is regarded by the defendant as already so low that the differential should not be lessened. (Tr.22). The Pacific Company is opposed to any decrease in the spread of rates as between its plant and the southern mills and urges that the rates now in effect from Cement to the destination territory in question are too high and should be reduced. Since cement prices are generally based upon the mill price, plus freight from the nearest mill, the location of the Pacific Company gives it an advantage in the Sacramento Valley of which it is unwilling to be deprived through the fixation of a rate adjustment from its competitors' mills which does not properly reflect the difference in transportation conditions as between the two groups of mills. The Sacramento Valley territory is an important consuming section. The manager of the Santa Cruz Company testified (Tr.78) that in the order of their importance the primary markets for the distribution of cement in Northern California are: San Francisco and the Bay territory; Sacramento Valley, north and east, and the San Joaquin Valley. The northern and southern cement mills are on a rate parity in the San Francisco territory, which is blanketed from San Jose to Richmond. The rates now in effect to the San Joaquin Valley territory, while not directly involved in that proceeding, were recommended by us in connection with our decision in Case No.232, decided on October 25, 1912. We there said, (I.C.R.C.809-815):

"Recommendations of the Commission \* \* \* \* \*:

- "4. Many informal complaints have been made to the Commission concerning excessive cement rates between the mills of northern and southern California and San Joaquin Valley points. We have made a careful study of this situation and suggest to the carriers that the following rates from various cement plants to points in the San Joaquin Valley be published."

The adjustment there suggested or recommended provides a basis of rates from Davenport 20 cents per ton higher than from Cement, Cowell and Napa Junction, the haul from Davenport being approximately 40 miles greater than the average distance from the three other mills. This basis was established by the carriers in conformity with our recommendations and is in effect today except as modified by General Order No. 28 of the Director General of Railroads, by our action of August 26, 1920 and the general reductions made effective in the summer of 1922, but because of the manner of changing the rates and the disposition of fractions the differentials in the San Joaquin Valley remain practically the same, being 20 cents per ton at most points. The rates from both the northern and southern mills to points on the Coast Line of the Southern Pacific are, generally speaking, but with some exceptions, on a mileage basis, thus giving the southern mills a rate advantage in that territory, the same as is now enjoyed by the Pacific Company at points in the Sacramento Valley. The consumption of cement in this territory, however, is inconsequential as compared with the consumption in the three other territories referred to. It will be seen, therefore, that both groups of mills are on a rate parity in the San Francisco territory; that the northern mills have the advantage over the southern mills in the two next most important consuming territories and that the southern mills have

the advantage only in the territory of lowest consumption, along the coast division of the Southern Pacific. At certain times of the year the four companies are apparently able to market their entire output without difficulty; at other times, the competition is very keen and the testimony indicates that a rate handicap of \$1.50, while probably not sufficient to entirely eliminate the southern mills from the Sacramento Valley markets, has a tendency to put the control of that territory in the hands of the northern mills. The disadvantage of the southern mills in this territory is one of location, a fact recognized by them as warranting somewhat lower rates from the northern mills. As was stated by counsel for the Old Mission Company: "It is conceded that the group of nearby mills is entitled to some advantage of rates over the group of more distant mills into the territory in question". On argument he stated:

"It is not for the moment disputed that if the rates are to be measured solely by mileage, or solely by cost, or solely by a combination of cost and mileage, the rates from the San Juan and Davenport mills proposed into the Sacramento Valley are too low as compared with the rates from Cement and Cowell and Napa Junction plants into the same territory".

On behalf of the Southern Pacific Company, counsel stated on argument:

"There is really no justification for the proposed rates except the question of market competition, and also in comparison with the rates into the San Joaquin Valley, and it is up to this Commission to say whether or not San Juan and Davenport are to get into the Sacramento Valley".

It is not contended that the proposed rates from Davenport and San Juan are reasonable. Indeed, the principal witness for the Southern Pacific Company admitted that the rates from Cement being



reasonable, the lower rates from San Juan for substantially the same distances are less than reasonable. In short, aside from the fact that the differential proposed to the Sacramento Valley is on a higher basis than that recommended by the Commission for application as between the northern and southern mills in Case 232, supra, the adjustment proposed is based on market competition. The Southern Pacific is here propounding a basis of rates from the southern mills which in the judgment of its traffic officials will enable the southern mills to compete in the Sacramento Valley, not on a rate parity with the northern mills, but which will enable them in a measure to overcome their disadvantage of location and compete more actively with the northern mills/they are able to do <sup>than</sup> under the differentials now in effect. The plan is not without advantage to the Southern Pacific, whose earnings are greater on the traffic handled into the Sacramento Valley from the southern mills because of the longer haul.

The real complaint of the Pacific Company is that their rates are too high as compared with the proposed rates from the southern mills and that no reduction should be made in the latter without at least a corresponding reduction in the rates from the northern mills.

Getting down to the fundamentals of the case, the question which all parties to the record wish us here to determine is how much more shall the southern mills pay than the northern mills to any given destination in the Sacramento Valley or points north and east thereof? Taking Sacramento as the key point, the present differential is \$1.50 and the proposed differential \$1.00. The southern mills stand solidly behind the Southern Pacific in its proposal to reduce the existing differentials, but the Pacific

Company takes the position that the differential of \$1.50 at Sacramento is fair today. The more the southern mills are obliged to absorb in the Sacramento Valley, the greater the advantage in that territory of the northern mills, and that is their real interest in this proceeding. Although the northern mills have the advantage of the southern mills in the San Joaquin Valley, this territory is said to be, especially at certain seasons of the year, the dumping ground for the mills in the southern part of the State; that is, south of Tehachapi. It is but natural, therefore, that the northern mills should strive to retain any advantage they may have in the Sacramento Valley territory, which they have come to look upon as their own, due to their more favorable location. The position of the Southern Pacific is that its rates from the northern mills are not more than reasonable and that the proposed rates from the southern mills are less than reasonable, but are necessary to enable the southern mills to compete. The southern mills and the northern mills are apparently agreed that the proposed differential basis cannot be defended from a transportation standpoint, and the controversy comes to us for settlement.

It is well recognized that a carrier may, in its own interest, publish rates lower than could be required of it by any regulatory body, but in so doing it is charged with the duty of seeing that the rates are not unduly discriminatory and cast no undue burden upon other commerce. In other words, assuming that the existing rates from the northern mills are reasonable, and they have not been shown to be otherwise, the proposed rates do not entirely reflect the difference in operating and other transportation conditions between the two groups of mills.

The proposed basis is subject to criticism from another

point of view. At Delta, 356 miles from San Juan, the proposed rates from the southern mills are the same as the present rates from the northern mills; that is, the differential is entirely wiped out at that station and points north to the California-Oregon line. At the first station in Oregon, however, a differential of \$1.00 in favor of the northern mills is in effect as the result of orders of the Interstate Commerce Commission. Certainly, from no standpoint of rate making can this incongruous situation be defended. It is apparently admitted by all parties that with the increase in distance the differential should be narrowed, but there is a wide difference of opinion as to just how the decrease in spread should be accomplished.

The record is voluminous and is supported by many exhibits, all of which have been studied with care, but it is unnecessary here to go into the details concerning them. However, as a result of the peculiar conflict of interest, the record is not helpful for there is relatively little real consideration given to the reasonableness per se of the cement rates or to their effect upon the different consuming centers which would best aid us in determining whether the entire rate structure needs readjustment and what that readjustment should be.

Consuming communities cannot prosper and grow, neither can different producing and manufacturing points, unless rates are so adjusted as to permit the carriers to properly serve all the various interests.

There is now an equality of rates from all four Northern California cement mills into the San Francisco Bay region voluntarily established by the carriers which appears to have proven satisfactory, and there is nothing in this record to indicate that the

consuming territory in the Sacramento Valley, and north and east thereof, should not be accorded similar rates voluntarily made by the carriers, to permit the movement of cement from all producing mills.

After a careful examination of all the facts of record we have reached the conclusion and so find, that a difference in the rates between the northern and southern mills at Sacramento of \$1.20 would more nearly reflect the difference in the transportation costs as between the two groups than the proposed differential of \$1.00 would preserve to the northern mills the advantage of their location and would, at the same time, give to the cement users in the Sacramento Valley the benefits of such competition as may exist in the cement trade where a difference in rate prevails as between two producing territories.

We will not enter an order at this time fixing the differential at all points, but the defendant carriers will be expected, within sixty (60) days, to submit for our approval a proposed adjustment of future rates from the four Northern California mills into the Sacramento Valley and points north and east thereof which will establish at Sacramento a spread between the two groups, northern and southern, of producing mills of \$1.20 per ton, the same to be narrowed with the increase in distance so as to gradually blend and harmonize with the interstate adjustment in effect at Oregon and Nevada points.

Dated at San Francisco, California, this 19<sup>th</sup> day of June, 1923.

C. Seaver  
H. B. ...  
Dwight Martin  
Ederton Shore  
J. P. Whittley  
Commissioners.