

Decision No. 18783.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Suspension by the Commission on its own motion of reduced rates on cement, published in Pacific Freight Tariff Bureau Tariff No. 88-K, C.R.C. 390, in Southern Pacific Tariff No. 584-D, C.R.C. No. 2861, and in Atchison, Topeka and Santa Fe Tariff No. 9788-K, C.R.C. No. 561.

Case No. 2389.

Platt Kent and Berne Levy, for Atchison, Topeka and Santa Fe Railway Company, Respondent.
J. E. Lyons, H. W. Klein and A. Burton Mason, for Southern Pacific Company and other Respondents not specifically represented.
N. E. Keller, R. B. Mitchell, and Sanborn, Roehl & Smith, by H. A. Sanborn, for Pacific Portland Cement Company and the Henry Cowell Lime & Cement Company.
Murray Bourne and McCutchen, Olney, Mannon & Greene, by Allan P. Matthew and John O. Moran, for Yosemite Portland Cement Corporation.
W. G. Higgins, for Santa Cruz Portland Cement Company.

BY THE COMMISSION:

O P I N I O N

By tariffs filed to become effective July 25, 1927, respondents proposed to establish from Merced on the Atchison, Topeka and Santa Fe Railway and from Merced Cement Plant on the Yosemite Valley Railroad Company, hereinafter referred to as Merced, a complete schedule of commodity rates applying to cement in car loads. Upon protest of certain interested manufacturers and shippers of cement who alleged that the rates proposed in the tariffs would unduly prefer the shippers at Merced and subject complainants to unreasonable prejudice and disadvantage, the tar-

iffs were suspended for 120 days from July 15, 1927, the date of the order. The Yosemite Portland Cement Corporation filed a petition in intervention, alleging that it had recently constructed at Merced and was now operating a mill for the manufacture and production of cement and was engaged in the shipping, distributing and marketing of the manufactured product at points throughout the State of California.

A hearing was held before Examiner Geary at San Francisco August 10, 1927, and the case having been duly submitted is now ready for our opinion and order.

Prior to the publication of the suspended cement rates there have been no commodity rates from Merced. The cement manufactured and shipped from Merced is now for the first time coming into competition with the cement manufactured at Cowell, Cement, Redwood City, North Branch, Davenport and San Juan. The rates in effect from the mills located at Cement, Cowell and Davenport are practically those recommended by this Commission in its Decision No. 300, Case No. 232, decided October 25, 1912, with the war-time changes, and the rates from North Branch, San Juan and Redwood City, subsequently established, are on the same general basis.

The Merced rates published to become effective July 25th apply to the same destination points throughout California where rates from the competing cement plants are now in effect, and our order suspends only a limited number of the rates in the San Francisco Bay territory roughly outlined by Bay Point, Giant, Gateley and points between, Niles, San Jose, Grant, Newark, Mayfield, Redwood City, Colma, Rup and points between. We did not suspend the rate of 9 cents from Merced to San Francisco, Oakland and other tidewater points.

The tabulation below, taken from respondents' exhibits, gives the distances and the proposed rates from Merced, also the present rates from the competing cement plants located at North Branch, Davenport, San Juan, Cowell and Cement. Only

representative destinations are shown.

FROM	Merced		North Branch		San Juan		Davenport		Cement Cowell	
	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
TO									*	(1) 7
Port Costa	120	#12	119	12	116	11	114	11	23	(2) 4
Martinez	116	#11	115	11	113	11	110	11	26	(1) 7 (2) 4
Bay Point	109	#11	108	11	113	11	110	11	33	(1) 7
San Jose	127	#11½	127	11½	49	9	47	9	90	9½
Mountain View	138	#11½	137	11½	60	9½	58	9½	90	9½
Los Altos	137	#11½	136	11½	68	9½	51	9½	90	9½
Redwood City	128	#11½	127	11½	71	9½	61	9½	79	9½
Colma	148	#11½	147	11½	90	8	81	8	62	8
Miles	110	#11	109	11	67	9½	65	9½	72	7½
Newark	116	#11	115	11	66	9½	62	9½	75	9½
Hayward	119	#11	118	11	76	9½	72	9½	64	7½

- # Suspended rates.
 * Cement mileage - Cowell mileage is slightly less.
 (1) Rate from Cement.
 (2) Rate from Cowell.

The rates from North Branch became effective June 5, 1926, and were established without protest from the competing cement mills. It is respondents' contention that all of the suspended rates from Merced were published with careful consideration to the rates from all other cement plants and are practically on the North Branch basis, this with a view of permitting all of the Northern California cement mills to enter the San Francisco Bay territory and the other consuming markets on as near a parity of rates as distance, water competition and market competition would justify.

It will be noted from the preceding tabulation that the distance from Merced, North Branch, Davenport and San Juan to the points

on the Port Costa line are practically the same. As illustrative, the distance to Port Costa from Merced is 120 miles, from North Branch 119 miles, from San Juan 116 miles, and from Davenport 114 miles, and the rate is 12 cents from Merced and North Branch and 11 cents from Davenport and San Juan. To points on the Coast Division of the Southern Pacific, San Jose to and including Colma, the distances from North Branch are the same as from Merced, and the rate of 11½ cents is blanketed over the entire territory of approximately 41 miles, and these rates are alleged to be depressed, responsive to the rates established into the San Francisco Bay region many years ago to meet the actual or potential water competition. To points on the Niles route the rate is 11 cents from both North Branch and Merced, the mileage being practically the same, and to the same points from Davenport and San Juan the rate is 9½ cents, the hauls being the same from both points but 50 miles shorter than from North Branch and Merced. It is also to be noted that the rates from Cement and Cowell are on a parity at most of the destination points and with but a few exceptions lower than from the other four shipping points.

Respondents particularly urged that it is the usual practice to maintain related rates from all cement plants in Northern California, that the proposed rates from Merced are reasonably compensatory, are not preferential or discriminatory, and that they conform to the adjustments generally in effect between the plants in Northern California. The entire record shows that the Merced rates are made to permit the manufacturers at that point to enter the consuming markets on practically the basis of the rates published from North Branch, which rates, as heretofore stated, became effective without protest June 5, 1926. Rates from producing mills to consuming markets may well be closely related, for the relationship is often of greater importance to the shipping and consuming public than the volume of

the rate itself.

The contention that the proposed rates will result in undue prejudice to protestants is not proven by this record, for the new competition to be met from Merced, where the rates are under suspension, is no different from the competition existing at the present time except that one additional manufacturing plant has entered the field.

No testimony was adduced on behalf of the protestants, and their only participation at the hearing was in the cross-examination of respondents' witnesses.

We find that the suspended rates do not result in unreasonable prejudice and disadvantage, that they have been justified, and an order discontinuing this proceeding will be entered. Our conclusions herein are without prejudice to any different conclusion that may be reached in the two formal proceedings (Cases 2393 and 2396) now before the Commission, which proceedings call into question the adjustment of the cement rates in Northern California.

O R D E R

It appearing that by order dated July 15, 1927, and as supplemented July 21, this Commission entered upon a hearing concerning the carload rates applying to the transportation of cement, stated in tariffs enumerated and described in said orders, and ordered the operation of said tariffs to be suspended for 120 days from the date of the order;

It appearing further that a full investigation of the matters and things involved has been had, and that this Commission on the date hereof has made and filed its opinion containing its findings of facts and conclusions thereon, which said opinion

is hereby referred to and made a part hereof, and has found that respondents have justified the tariffs under suspension,

IT IS HEREBY ORDERED that the order heretofore entered in this proceeding suspending the operations of the rates in the said tariffs be and it is hereby vacated and set aside and that this proceeding be discontinued.

Dated at San Francisco, California, this 13th day
September
of ~~August~~, 1927.

Edmund A. O'Sullivan
Commissioner

Thomas J. Routh

M. A. Curran
Commissioners.