

Decision No. 71297.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC PORTLAND CEMENT COMPANY,  
HENRY COWELL LIME AND CEMENT COMPANY,

Complainants;

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, SOUTHERN PACIFIC  
COMPANY, THE WESTERN PACIFIC RAILROAD  
COMPANY and YOSEMITE VALLEY RAILROAD  
COMPANY,

Defendants.

ORIGINAL

Case No. 2393.

PACIFIC PORTLAND CEMENT COMPANY,  
a corporation, and  
HENRY COWELL LIME AND CEMENT COMPANY,  
a corporation,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,  
a corporation,  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation,  
BAY POINT AND CLAYTON RAILROAD COM-  
PANY, a corporation,

Defendants.

Case No. 2396.

Sanborn, Roehl & Smith, and N. E. Keller, by H. E.  
Sanborn; and James A. Keller, for Pacific Portland  
Cement Company, complainant.  
Sanborn, Roehl & Smith and R. B. Mitchell, by H. E.  
Sanborn, for Henry Cowell Lime and Cement Company,  
complainant.  
James E. Mason, E. W. Klein and A. Burton Mason, for  
Southern Pacific Company, defendant.  
B. Levy and E. Platt Kent, for The Atchison, Topeka  
and Santa Fe Railway Company, defendant.  
Murray Bourne, C. F. Bovee; McCutchen, Olney, Mannon  
& Greene; A. P. Matthew and F. W. Mielke, for Yo-  
semite Portland Cement Company, intervener.

F. K. Clifford, for Calaveras Portland Cement Company, intervener.  
G. H. Baker and W. J. Higgins, for Santa Cruz Portland Cement Company, intervener.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations engaged in the manufacture, sale and distribution of Portland cement.

The complaint in Case 2393 alleges that the rate of 9 cents per 100 pounds established by defendants, effective July 25, 1927, for the transportation of cement from Merced and Merced Cement Plant, hereafter collectively referred to as Merced, to San Francisco, Oakland, San Leandro, Alameda, Fleming, Nobel, Vigorit, Bates, Stege, Richmond, Mallott, Dwight, Cerrito, Berkeley, Alcatraz, San Pablo and Rheem, hereafter collectively referred to as the San Francisco Bay district, are and for the future will be (a) unjust and unreasonably low in violation of Section 13 of the Public Utilities Act; (b) unduly prejudicial and disadvantageous to complainants and preferential of complainants' competitors located at Merced, resulting in an unreasonable difference in rates and charges as between complainants and their competitors, in violation of Section 19 of the Act; and (c) that the said rate is lower for longer distances than for shorter distances over the same line or route in the same direction, the shorter distance being included in the longer, in violation of Article XII Section 21 of the State Constitution and Section 24(a) of the Public Utilities Act.

In Case 2396 it is alleged that the rates maintained by defendants for the transportation of cement from Cowell and Redwood City to points in the San Joaquin Valley south of Stockton to and including Bakersfield and to points on the Valley

Springs branch of the Southern Pacific are excessive, unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and discriminatory and prejudicial in violation of Section 19 of the Act and Article XII Section 21 of the State Constitution.

We are asked to prescribe proper rates for the future. Unless otherwise noted, rates will be stated in cents per 100 pounds.

The Yosemite Portland Cement Corporation, with a mill at Merced, and the Calaveras Cement Company, with a mill at North Branch, intervened on behalf of defendants in support of the present rate adjustment. The Santa Cruz Portland Cement Company intervened on behalf of complainants and broadened the complaints by bringing into issue the rates from their mill at Davenport to the destination points here involved.

Public hearings were held before Examiner Geary, and the proceedings having been duly submitted and briefs filed, are now ready for an opinion and order.

By stipulation both proceedings were heard upon a common record and will be disposed of in one decision. It was also stipulated that the record in Case 2389, where pertinent to the issues here involved, should be considered a part of the record in these proceedings. Case 2389 was an investigation and suspension proceeding on our own motion bringing into issue the rates from Merced to points adjacent to the San Francisco Bay territory. Our decision in that case, 30 C.R.C. 352, found that the rates proposed were justified without prejudice to any different conclusions which may be reached in these proceedings.

The San Francisco Bay district and the San Joaquin Valley, the destination territories here involved, comprise in the order named the two most important cement consuming centers

in Central and Northern California. Cement mills are located in or contiguous to both sections. Complainants' plants are situated at Cowell, on the Bay Point and Clayton Railroad, 44 miles east of San Francisco, and at Redwood City on the Southern Pacific 25 miles south of San Francisco. The mills of the interveners are situated at Merced in the San Joaquin Valley, on the Atchison, Topeka and Santa Fe Railway and Yosemite Valley Railroad, at North Branch on the Valley Springs branch of the Southern Pacific, and at Davenport on the Davenport branch of the Southern Pacific, 139 miles, 138 miles and 87 miles respectively from San Francisco. In addition there are mills at Cement, on the Cement, Tolomas and Tidewater Railroad, 54 miles northeast of San Francisco, and at San Juan on the California Central Railroad 96 miles south of San Francisco. The volume of the freight rates from all of these mills largely determines their ability to reach the markets, hence their primary concern is with the relationship of the existing rates. Complainants and their competitors do not limit their markets to the particular section naturally tributary to their respective mills, but endeavor to, and do, with varying degrees of success, cross-ship into each other's consuming territories.

The rates under attack will for convenience be considered first with relation to the adjustment from Merced to the San Francisco Bay district and second with relation to the rates from complainants' mills to points in the San Joaquin Valley and to points on the Valley Springs branch of the Southern Pacific Company.

RATES TO THE SAN FRANCISCO BAY DISTRICT (CASE 2393)

To properly determine whether or not the rate of 9 cents from Merced to the San Francisco Bay district is unduly discriminatory, prejudicial or otherwise unlawful, it will be

necessary to briefly review the history of the cement rate adjustment from the various mills to this section. The present rates have evolved slowly over a long period of years and reflect an attempt on the part of defendants to so adjust them that all of the cement plants may successfully reach this market.

The first mill was established at Cement in 1902, was located near tidewater, and upon the threat of the owners to construct an industrial railroad to the water's edge and then re-ship by vessel to San Francisco the Southern Pacific established an all-rail rate of 3½ cents to San Francisco from Tolenas, the point of interchange with an industrial road extending from Cement. Subsequently the Tolenas rate was extended to Cement in compliance with our order in Cowell Portland Cement Company et al. vs. Southern Pacific Co., 1 C.R.C. 823. In 1903 a plant was opened at Napa Junction. This mill was also situated near tidewater, and upon the same threat being made to construct an industrial track to tidewater, thus affording a means, as in the case of the Cement plant, to reach San Francisco by vessel, the same rate was established as in effect from Tolenas. The plant at Napa Junction is not now being operated, and the rates from that point have been cancelled.

The establishment of these two plants was followed in 1907 by the erection of a mill at Davenport and in 1909 by one at Cowell. Bay Point on the San Francisco Bay was the interchange station connecting with an industrial line extending from Cowell, while Davenport was located on the ocean front, and the rail carriers, upon the representation that there was also potential water competition from these two mills, established the same rate to San Francisco as was in effect from Tolenas and Napa Junction. The Bay Point rate was later established from Cowell in compliance with our order in Bay Point and Clayton R.R. vs. A.T. & S.F. Ry., 1 C.R.C. 809, and Cowell Portland

Cement Co. vs. Southern Pacific Co. (supra). In 1917 another plant came into existence at San Juan and the rate from this point was originally made  $2\frac{1}{2}$  cents over the Davenport rate, but in 1919 during federal control it was reduced to the Davenport basis, thus permitting San Juan to compete in the San Francisco district at the same rate as in effect from the other mills. The general wartime increases and reductions raised the level of the  $3\frac{3}{4}$  cent rate to 7 cents. Until 1924 Cement, Napa Junction, Cowell, Davenport and San Juan, which at that time comprised all of the cement producing plants in Central and Northern California, were on a rate equality in reaching the San Francisco Bay district. This equality was disrupted by the publication in 1924 of a 5-cent rate from the mill at Redwood City, which defendants claim is a water-compelled rate, and this adjustment was followed a year later by a reduction in the Cowell rate to the same basis. At the time the Cowell rate was reduced, whatever potential water competition there may have existed when the rate was originally established, had become exceedingly remote, for litigation had prevented the use of the right of way of the Bay Point and Clayton Railroad from Cowell to tidewater. Defendants concede this to be true, but contend that Cowell was entitled to the 5-cent rate in view of the adjustment from Redwood City and the other mills.

In 1926 another plant was opened at North Branch on the Southern Pacific, and in order to allow the cement produced at this point to reach the San Francisco market in competition with the existing mills, defendants, without protest from any of the other cement plants, established a 9-cent rate to the San Francisco Bay points. Apparently this adjustment was satisfactory to all mills until the advent into the field, in 1927, of the Merced plant. At the time this latter industry commenced

operations defendants established to the San Francisco Bay district the same rate as in effect from North Branch, viz., 9 cents, to permit Merced to compete in the San Francisco market on a comparable basis with North Branch and on a relative basis with the other mills. The distance from Merced to San Francisco is approximately the same as from North Branch. Thus to the San Francisco Bay district, Cowell and Redwood City now have a rate of 5 cents; Cement, Davenport and San Juan 7 cents; and North Branch and Merced 9 cents. The rates from Cowell, Davenport, San Juan, North Branch and Merced are nonintermediate in application, authorized under the provisions of Section 24(a) of the Public Utilities Act because of water competition or to allow the competing mills not served by water lines to reach the San Francisco Bay district on a somewhat comparable basis with the water-compelled rates.

Complainants contend the establishment of the non-intermediate 9-cent rate from Merced to San Francisco resulted in an unreasonably low rate which is unduly prejudicial to them and preferential to Merced to the extent that defendants have not used it as measure for the rates from their mills to the San Joaquin Valley points. The record does not show that this rate is so low that it is a burden on other traffic, nor does the record show that it is unduly prejudicial or preferential. The underlying reasons for establishing the Merced 9-cent rate were to enable this producing point to reach the San Francisco market, and they are identical with the justification for establishing the nonintermediate rates of 9 cents from North Branch, 7 cents from San Juan, and 5 cents from Cowell. These rates in turn were published on the low basis due to the water-compelled rates from the other mills. The competition complainants meet in the San Francisco Bay district from Merced is no different from that

which they have heretofore encountered, with the exception that an additional plant has come into the field. However it cannot be held that this one plant creates undue prejudice in the San Francisco Bay district when it reaches the market on an adjustment of rates fairly related to the other mills.

The 9-cent rate from Merced to San Francisco has not been shown to be less than a reasonably compensatory rate, nor is it shown to be unduly prejudicial, or preferential. Complainants made no attempt to sustain their allegation that this rate was unlawful under Article XII Section 21 of the State Constitution and Section 24(a) of the Public Utilities Act.

SAN JOAQUIN VALLEY AND VALLEY SPRINGS  
RATES ADJUSTMENT (CASE 2396)

At the time defendants established the 9-cent nonintermediate rate from Merced to the San Francisco Bay district they also published rates from this plant to the principal points of consumption throughout the state. Included in this adjustment are rates to the territory surrounding the San Francisco Bay district, higher than the 9-cent nonintermediate San Francisco rate and which are free from any depressing influences except the effort to accord to Merced an equitable adjustment of rates. At Irvington and Dumbarton defendants published from Merced a rate of 11½ cents, blanketed south to and including San Jose and west to and including Redwood City, Rip and the points between, a minimum distance of 114 miles and a maximum distance of 148 miles. South of San Jose to Edenvale they have in effect a rate of 12½ cents for 134 miles, and at Gilroy 13 cents for 158 miles. To Watsonville a rate of 15½ cents for 179 miles is maintained and to Lyda a rate of 16½ cents for 181 miles. The latter rate is blanketed south to Gonzales, 212 miles from Merced.



The rates from Cowell and Redwood City to the San Joaquin Valley are not on as favorable a basis. From Merced to Redwood City, a distance of 128 miles, defendants have published a rate of  $11\frac{1}{2}$  cents, but in the opposite direction from Redwood City to Merced they maintain a rate of 15 cents and to Fresno for 183 miles a rate of  $20\frac{1}{2}$  cents. Numerous other inequalities of the same nature exist of which the following compiled from complainants' exhibits, using Redwood City and Merced as the representative points, are illustrative:

FROM Merced TO	Miles	Rate ( in ) (cents)	FROM Redwood City TO	Miles	Rate ( in ) (cents)	Differen- tial in favor of Merced
Bay Point	109	11	Delhi	110	$13\frac{1}{2}$	$2\frac{1}{2}$
Irvington	114	$11\frac{1}{2}$	Irvington	114	14	$2\frac{1}{2}$
Redwood City	128	$11\frac{1}{2}$	Merced	128	15	$3\frac{1}{2}$
Los Gatos	138	13	Athlone	138	16	3
Edenvale	134	13	Cluster	134	16	3
Morgan Hill	148	13	Chowchilla	146	18	5
Gilroy	158	13	Madera	162	$19\frac{1}{2}$	$5\frac{1}{2}$
Watsonville	179	$15\frac{1}{2}$	Fresno	183	$20\frac{1}{2}$	5
Salinas	195	$16\frac{1}{2}$	Sanger	198	$20\frac{1}{2}$	4

Defendants take the position that regardless of the rates established from Merced to the territory tributary to the San Francisco Bay district, they have published from Merced to the San Joaquin Valley rates based upon those from Cowell and the other mills, and as we are here considering only the San Joaquin Valley adjustment the rates established to the points adjacent to complainants' mills cannot be held to create undue or unlawful prejudice or preference. We do not however subscribe to this narrow view. The cement mills, as previously stated, cross-ship into the primary markets. Obviously the mills located in close proximity to these markets have a decided advantage, in so far as the freight rate is concerned, in disposing of their products. Merced is so situated with respect to the San Joaquin

Valley, while Cowell and Redwood City have a geographical advantage in reaching the territory contiguous to the San Francisco Bay district. But all mills in disposing of their products find it necessary to reach both markets.

Defendants have elected to establish rates for the Merced mill to the territory naturally tributary to complainants' mills to enable Merced to compete, but they have failed to treat complainants in the same manner in reaching the markets adjacent to the Merced mill. Instead they have erected a barrier around the San Joaquin Valley territory virtually forcing the mills at Cowell and Redwood City to seek an outlet for their surplus products elsewhere. Defendants attempt to further justify this practice upon the theory that the same circumstances and conditions surrounding the establishment of the Merced rates do not exist from Cowell and Redwood City into the San Joaquin Valley. This contention goes to the 9-cent nonintermediate rate to the San Francisco Bay district, which we have already found justified, but it ignores entirely the rates in effect to the territory naturally tributary to complainants' mills.

Manifestly it is unjust to establish favorable rates to allow complainants' competitor to reach the territory tributary to their mills and not extend as favorable a basis of rates to enable complainants to reach the territory adjacent to their competitor's mill. Where competing plants are cross-shipping into primary markets there should be a common basis for measuring the level of the rates unless there are controlling reasons for deviating from this principle, such as we have found in connection with the 9-cent rate from Merced to the San Francisco district. Spreckels Savage Tire Co. vs. A.T. & S.F. Ry. et al., 142 I.C.C. 507. Oklahoma Portland Cement Company vs. D. & R.G. W.R.R., 128 I.C.C. 63.

What has been heretofore said has related entirely to

the rates to the San Joaquin Valley. The rates to points on the Valley Springs branch of the Southern Pacific, likewise here assailed, were, subsequent to the filing of these complaints, voluntarily reduced by defendants to 11 cents from Cowell and 11½ cents from Bay Point. These new rates have not on this record been shown to be unlawful and are consistent with those we will prescribe from Cowell and Redwood City to San Joaquin Valley points.

After careful consideration of all the facts of record we are of the opinion and so find that the present rates from Cowell and Redwood City to points on the Valley Springs branch of the Southern Pacific are not unjust, unreasonable, preferential or prejudicial, but we do find that the rates from Cowell and Redwood City to points in the San Joaquin Valley are, and for the future will be, relatively unreasonable, prejudicial and preferential to the extent they exceed the following:

T O	Rate (in cents per 100 lbs.)	T O	Rate (in cents per 100 lbs.)
Modesto	11	Storey	13
Turlock	11	Fresno	15
Merced	11½	Hanford	17
Oakdale	11	Reedley	17
Hughson	11	Porterville	19½
Los Banos	11	Visalia	17½
Ingle	13½	Tulare	17½
Chowchilla	12	Earlimart	19½
Madera	13	Famoso	21

Defendants should establish rates to other points in the territory here involved not specifically shown above, which will be consistent with those prescribed.

There now remain for consideration the rates from Day-entport. The present rates from this point to the San Joaquin Valley are based 1 cent over the Cowell and Redwood City rates for a haul of about 65 miles farther than from Cowell. This

differential has been in effect since 1912 and was suggested by us as proper in Cowell Portland Cement Co. et al. vs. Southern Pacific Co., supra. The record is not sufficient to support a finding that the present Davenport rates are unlawful to the extent they exceed 1 cent over the Cowell and Redwood City rates herein prescribed, but defendants should give careful consideration to preserving the existing differential when publishing the rates herein prescribed.

O R D E R

This case being at issue upon complaint and answers on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendants, The Atchison, Topeka and Santa Fe Railway Company, Southern Pacific Company, The Western Pacific Railroad Company, Yosemite Valley Railroad Company and Bay Point and Clayton Railroad Company, according as they participate in the transportation, be and they are hereby ordered to cease and desist on or before thirty (30) days from the effective date of this order, and thereafter to abstain from applying, demanding and collecting for the transportation of cement, in carloads, from Cowell and Redwood City rates in excess of those prescribed in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, according as they participate in the transportation, be and they are hereby ordered to establish on or before thirty (30) days from the effective date of this order, upon not less than five (5) days' notice to the Commission and to the public and thereafter

to maintain for the transportation of cement, in carloads, from  
Cowell and Redwood City, the rates prescribed in the opinion  
which precedes this order.

IT IS HEREBY FURTHER ORDERED that in all other respects  
the complaints be and they are hereby dismissed.

Dated at San Francisco, California, this 28<sup>th</sup> day  
of June, 1929.

David S. Lowell

C. L. Seaver

Ernest W. ...

Leon Whitely

W. A. ...

Commissioners.