

Decision No. 22218.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA PORTLAND CEMENT COMPANY,  
RIVERSIDE CEMENT COMPANY,  
Complainants,

vs.

SOUTHERN PACIFIC COMPANY,  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,  
LOS ANGELES & SALT LAKE RAILROAD  
COMPANY,  
PACIFIC ELECTRIC RAILWAY COMPANY,

Defendants.

**ORIGINAL**

Case No. 2663.

- O. T. Helpling, P. H. Campbell, B. H. Carmichael and F. W. Turcotte, for complainants and for Riverside Cement Company, intervener on petition of Southwestern Portland Cement Company. Sanborn & Roehl and DeLancey C. Smith, by Harvey H. Sanborn, for intervener, Southwestern Portland Cement Company and for affirmative relief.
- W. D. Burnett, Coy Burnett, T. R. Larson and W. A. Gillette, for intervener, Monolith Portland Cement Company.
- N. E. Keller, for Pacific Portland Cement Company.
- W. G. Higgins, for Santa Cruz Portland Cement Company.
- Robert Brennan, Platt Kent and Berne Levy, for defendant, The Atchison, Topeka and Santa Fe Railway Company.
- James E. Lyons, Harry H. McElroy and J. L. Fielding, for defendant, Southern Pacific Company.
- A. S. Halsted, E. E. Bennett and J. P. Quigley, for defendant, Los Angeles & Salt Lake Railroad Company.
- C. W. Cornell, W. G. Knoche and R. E. Wedekind, for defendant, Pacific Electric Railway Company.

BY THE COMMISSION:

O P I N I O N

Complainants are corporations engaged in the manufacture, sale and distribution of Portland cement. By complaint filed March 4, 1929, it is alleged that the rates maintained by defendants for the transportation of cement, in carloads, from

Colton and Crestmore to main and branch line points west thereof to and including Santa Barbara, National City and points south of Monolith, are unjust and unreasonable in violation of Section 13 of the Public Utilities Act, unduly preferential of Monolith, Oro Grande and Victorville and unduly prejudicial and discriminatory to complainants, in violation of Section 19 of the Public Utilities Act and Article XIII Section 21 of the Constitution of the State of California.

The Southwestern Portland Cement Company and the Monolith Portland Cement Company intervened and broadened the issues by alleging that the rates from Victorville and Monolith to the destination territory involved in this complaint are unjust and unreasonable in violation of Section 13 of the Act, preferential of Colton and Crestmore and prejudicial and discriminatory to petitioners in violation of Section 19 of the Act and Article XIII Section 21 of the State Constitution.

We are asked to prescribe reasonable, non-preferential and non-prejudicial rates for the future. Unless otherwise specifically provided, rates will be stated in cents per 100 pounds.

Public hearings were held before Examiner Geary at Los Angeles on June 11 and August 20, 21 and 22, 1929, and the proceedings submitted upon briefs.

The complaint and petitions in intervention bring into issue the rates on cement from five of the six mills located in Southern California. The mill of complainant California Portland Cement Company is at Colton, on the Southern Pacific, Atchison, Topeka and Santa Fe Railway, Los Angeles & Salt Lake Railroad and Pacific Electric Railway, 57 miles east of Los Angeles. The complainant Riverside Cement Company has a mill at Crestmore, on the Los Angeles & Salt Lake Railroad 55 miles east of Los Angeles, and one at Oro Grande on the Los Angeles & Salt Lake

and the Atchison, Topeka and Santa Fe Railway 109 miles east of Los Angeles. The mills of the interveners Southwestern Portland Cement Company and Monolith Portland Cement Company are respectively at Victorville on the Atchison, Topeka and Santa Fe and Los Angeles & Salt Lake Railroad 104 miles east of Los Angeles, and at Monolith on the Southern Pacific Company 117 miles north of Los Angeles. The foregoing mileages are the short line distances. There is one other plant in Southern California manufacturing cement, at Los Angeles, from clinker imported by vessel from European ports. Clinker is a semi-manufactured cement which requires one grinding with the addition of a small amount of gypsum before it is commercially usable.

The normal consumption of cement in Southern California is approximately 8,000,000 barrels per year. About 80 per cent., or 6,400,000 barrels, are used at Los Angeles and the territory immediately contiguous thereto, so obviously it is in this market the mills dispose of the bulk of their products. To do this successfully it is essential they have rates to Los Angeles and surrounding points not only fairly adjusted as between the mills but also sufficiently low to meet the competition of cement imported by vessel or manufactured at Los Angeles from cement clinker obtained in European countries. During the past few years the latter competition has been the controlling force which guided the defendants in publishing the present rates to Los Angeles. In 1924 the importation of cement from Europe reached its apex when approximately 700,000 barrels were placed in the Los Angeles market at prices ranging from \$1.98 to \$2.00 per barrel. The freight rates at that time to Los Angeles from Colton and Crestmore were 9½ cents and from Oro Grande, Victorville and Monolith 10½ cents. The cement

manufacturers in 1924 urgently requested the railroads to lower these rates to enable them to meet the competition of foreign cement, and the railroads realizing the seriousness of the situation acceded to the request, and effective May 7, 1924, established to Los Angeles and adjacent points reduced emergency rates to continue in effect for a temporary period of about six months. The emergency rates were 2 cents lower than the then existing rates, thus giving to Colton and Crestmore a rate of  $7\frac{1}{2}$  cents, and to Oro Grande, Victorville and Monolith a rate of  $8\frac{1}{2}$  cents. Before the expiration date of the temporary rates the cement manufacturers asked that they be continued for another period of six months. The carriers complied with this petition and also responded to a similar one at the end of the second six months' period. The temporary rates to Los Angeles were continued for over 18 months, and upon the representation of the cement manufacturers that these rates were needed to successfully combat the competition of foreign cement, they were published as permanent rates, effective January 1, 1926. The Los Angeles rates were held as maximum at the intermediate points, but to points beyond Los Angeles they were based on arbitraries over that point, varying according to the length of haul and the point of origin from which the rates applied. The entire rate structure has been built up without a great deal of consideration to the length of the hauls or operating conditions surrounding the traffic. Particularly is this true of the rates from Oro Grande, Victorville and Monolith.

Although the complainants here before us were active in obtaining the present adjustment and were apparently satisfied with the rates when they were established, they are now advocating a mileage scale of rates to be applied from all plants which because of the geographical location of their

mills would obviously give them a decided advantage over the other mills in the territory where the consumption of cement is heaviest. They propose several bases for computing the mileage rates. One would result in a rate of 4 cents from Colton and Crestmore to Pomona,  $5\frac{1}{2}$  cents to Los Angeles, and to points beyond Los Angeles rates graded to  $7\frac{1}{2}$  cents at Saugus,  $11\frac{1}{2}$  cents at Santa Barbara and 10 cents at San Diego. From Oro Grande and Victorville the rates would be  $2\frac{1}{2}$  cents higher, and from Monolith, where the present rates now apply via Los Angeles, 5 cents higher, than the Colton-Crestmore rates.

In arriving at these rates complainants have arbitrarily assumed that the terminal expense is 40 cents per ton of 2000 pounds, but there was no attempt to show that this amount is even approximately correct for the service. Complainants then compute the ton mile revenue under the present rate of  $8\frac{1}{2}$  cents for the average distance from Monolith, Oro Grande and Victorville and use this as a base for the line haul charge. In this manner they arrive at rates varying from 4 cents for 30 miles to  $8\frac{1}{2}$  cents for 110 miles. The resulting rates are abnormally low in comparison with rates shown below, established by this Commission for comparable distances in Northern California (Pacific Portland Cement Company et al. vs. A.T. & S.F. Ry. et al., 33 C.R.C. 300), and by the Interstate Commerce Commission for comparable distances between Scale IV territory in Kansas, Nebraska, South Dakota, Colorado, Montana and Wyoming; between Kansas and Oklahoma (Western Cement Rates, 69 I.C.C. 644, 87 I.C.C. 451); and from Oklahoma and Kansas to Texas (Oklahoma Portland Cement Co. vs. D. & R.G.W.R.R., 128 I.C.C. 63).

Rates in cents per 100 lbs.

T O	From Colton				From Oro Grande				From Victorville				From Monolith			
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)		
Los Angeles	7½	5½	—	11½	8½	8½	11	14	8½	8½	11½	14½				
Pomona	7½	4	—	10½	8½	6½	11	12½	14	10½	13	16				
Puente	7½	4½	—	11½	8½	7½	11	13½	12	10	12	16				
Alhambra	7½	5½	—	11½	8½	8	11	14	9½	10	11½	15½				
Saugus	12½	7½	11	13½	15½	10	12	16	8½	7½	11	13½				
L.A. Harbor	9	7½	11	13	10	20	11½	15½	10	10	12	16				
Huntington Beach	11½	8	11	14	14	10½	13	16	12½	11½	13	16				
Newport Beach	11½	8½	11	14	14	11	13	16	12½	11½	15	16				
Somis	17	8½	11	14	19½	11	13	16	17	11	13	16				
Cavin	17	8½	11	14	19½	11	13	16	17	8½	11	14				
Ventura	17	10	12	16	19½	12½	15	16½	17	10	12	16				
Santa Barbara	13½	11½	13	16	16	14	17	18	15	11½	15	18				
Ravenna	22	8½	11	14	22	11	13	16	8½	6	—	12½				
Encinitas	11½	8½	11	14	12½	11	13	16	15	13½	17½	18½				
San Diego	11½	10	12	16	12½	12½	15½	18	15	15	19½	19½				

(1) Rates for comparable distances from Redwood City to various destinations prescribed by California Railroad Commission in Pacific Portland Cement Co. vs. A.T. & S.F. Ry., supra.

(2) Rates for comparable distances prescribed by the Interstate Commerce Commission in Western Cement Rates and Oklahoma Portland Cement Co. vs. D. & R.G.W.R.R., supra.

It is apparent from the above that the proposed rates are not only too low for maximum reasonable rates, but that the present rates except those from Colton, Crestmore, Victorville and Oro Grande to Somis, Cavin, Ventura and Ravenna and from Monolith to Somis, Cavin and Ventura are not unreasonable per se. However, from and to the

points just mentioned the present rates are out of line and will be adjusted to the basis hereinafter prescribed.

Aside from the fact that complainants' suggested rates have not been shown to be reasonable, the differentials proposed in the rates from Oro Grande, Victorville and Monolith would virtually force these producers out of the Los Angeles market if the complainants reduced the selling price of cement by the amount of the reduction in their freight rates. Complainants contend that by reason of their geographical locations they are entitled to rates materially lower than the other mills, and that the present differentials have subjected them to undue prejudice and have unduly preferred their competitors. If distance alone were the controlling guide complainants' theory would be sound, but as already pointed out the present rates to Los Angeles and the adjacent points were forced by the competition of foreign cement and the volume of the rates at that time was just as essential to the mills at Oro Grande, Victorville and Monolith to meet this competition in 1924 as it was for Colton and Crestmore. Moreover, the competition of foreign importations still prevails, the record showing that for the first three months of 1929 the equivalent of 125,826 barrels of cement was received at Los Angeles Harbor, and at the time the hearings in this proceeding were being held there were two vessels en route to Los Angeles loaded entirely with Belgian clinker.

The present differential of 1 cent between the rates to Los Angeles from Colton and Crestmore on the one hand and Oro Grande, Victorville and Monolith on the other, has been in effect for a number of years. Indeed it is the outgrowth of a differential recommended by this Commission as proper between Colton and Oro Grande in Golden State Portland Cement

Co. vs. A.T. & S.F. Ry., 6 C.R.C. 411, decided March 22, 1915.

In that proceeding, decided before the plants at Victorville and Monolith were constructed, the Commission suggested that defendants maintain from Oro Grande to Los Angeles a rate not to exceed  $1\frac{1}{2}$  cents over the Colton rate. This differential remained unchanged until the general increases of 1920, when it became  $1\frac{3}{4}$  cents. This was later voluntarily reduced by defendants to the previous basis of  $1\frac{1}{2}$  cents; and effective July 1, 1922, when rates in this territory were reduced 10%, the differential was further reduced to 1 cent, due to the disposition of fractions thereby authorized. When the Victorville and Monolith plants entered the field they were placed upon the same basis as Oro Grande.

The interveners contend that inasmuch as the present rates from all the mills to Los Angeles are admittedly compelled by the competition of foreign cement and defendants have largely disregarded distance, operating conditions and other factors ordinarily given consideration in establishing rates, defendants should eliminate entirely the present differential and establish to Los Angeles the same rate from all the mills. This proposal however cannot be considered seriously, as the disparity in distance and operating conditions between the mills is too great to warrant placing all on a rate parity.

The interveners also allege that the present rates to points beyond Los Angeles are prejudicial to them by reason of the fact that the arbitraries added to the Los Angeles rates are materially higher than those added to the Colton-Crestmore to Los Angeles rates to points equidistant beyond Los Angeles. They contend the rates from their mills to points beyond Los Angeles should not increase over the Los Angeles



rates by amounts greater than defendants have increased the rates from Colton and Crestmore. The following compiled from interveners' exhibits is illustrative of the present adjustment.

From	To	Advtl. : :haul be- :Arbi- :yond L.A. :trary: : Miles :Cents:	From	To	Advtl. : :haul be- :Arbi- :yond L.A. :trary: : Miles :Cents:
Crestmore	Beverly Hills	17 1½	Monolith	Beverly Hills	17 3
"	Santa Monica	16 2½	"	Santa Monica	16 4
"	Palms	11 1½	"	Palms	11 3
"	Ocean Park	16 2½	"	Ocean Park	16 4
"	Inglewood	18 1½	"	Inglewood	18 3
"	Seal Beach	23 3	"	Seal Beach	23 5
Colton	Roscoe	14 3	Victorville	Roscoe	14 5
Crestmore	San Fernando	20 3	"	San Fernando	20 5
"	Saugus	31 5	"	Saugus	31 7
"	Ventura	75 9½	"	Ventura	75 11

From the foregoing it is apparent there has been extended to Colton and Crestmore more favorable arbitraries than accorded Victorville and Monolith. Defendants contend they are justified in doing this because competition of foreign cement is not encountered in the territory beyond Los Angeles to the same extent it is at Los Angeles, and therefore the rates to points beyond Los Angeles should be on a more normal basis. However, these defendants cannot escape the fact that the rates to Los Angeles have been established not only from Victorville and Monolith but also from Colton and Crestmore to meet a competitive situation, and Colton and Crestmore, as well as the other mills, have derived low rates to which they would not otherwise have been entitled. While ordinarily we would not be disposed

to determine the question of undue preference and prejudice solely because of the factors comprising the through rates, we believe the present adjustment of rates to points beyond Los Angeles is preferential of Colton and Crestmore and prejudicial to Victorville and Monolith.

After consideration of all the facts of record we are of the opinion and so find:

1. That the present rates from Colton, Crestmore, Victorville, Oro Grande and Monolith are not unjust and unreasonable except to the extent they exceed the rates set forth below:

Rates in cents per 100 lbs.			
T o	: From : Colton : Crestmore	: From : Victorville : Oro Grande	: From : Monolith
Somis	11½	12½	12½
Cavin	11½	12½	11½
Ventura	12½	13½	12½
Ravenna	11½	12½	---

2. That the rates from Victorville and Monolith to points beyond Los Angeles where the rates are based on arbitraries over the Los Angeles rates, are unduly preferential to Colton and Crestmore and unduly prejudicial to Victorville and Monolith to the extent such arbitraries exceed for comparable distances the arbitraries contemporaneously added to the rates from Colton and Crestmore.

#### O R D E R

This case having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the

conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company and Pacific Electric Railway Company, according as they participate in the transportation, be and they are hereby ordered to cease and desist and thereafter to abstain from applying, demanding or collecting rates for the transportation of cement in carloads which exceed those set forth in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company and Pacific Electric Railway Company, 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 on not less than five (5) days' notice to the Commission and to the public rates which shall not exceed those set forth in the opinion which precedes this order.

IT IS HEREBY FURTHER ORDERED that in all other respects the complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 18<sup>th</sup> day of March, 1930.

Cl. Leamy

Leon Whitely

Thos. J. Lott

W. A. Lewis  
Commissioners.