

Decision No. 35678.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SOUTHWESTERN PORTLAND CEMENT COMPANY,  
a corporation,  
Complainant,

vs.

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

Defendants.

Case No. 3280.

In the Matter of the Suspension by the  
Commission on its own motion of certain  
reduced rates on cement named on pages  
34 and 35 of SOUTHERN PACIFIC COMPANY  
Local, Joint, Proportional and Trans-  
shipment Freight Tariff 584-D, C.R.C.  
2861, applying from Colton and Crest-  
more to points east thereof.

Case No. 3283.

MONOLITH PORTLAND CEMENT COMPANY,  
a corporation,  
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,  
a corporation,  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation,

Defendants.

Case No. 3289.

CALIFORNIA PORTLAND CEMENT COMPANY,  
a corporation, and  
RIVERSIDE CEMENT COMPANY,  
a corporation,

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation,

Defendant.

Case No. 3295.

ORIGINAL

CALIFORNIA PORTLAND CEMENT COMPANY,  
a corporation, and  
RIVERSIDE CEMENT COMPANY,  
a corporation,

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation, and  
SOUTHERN PACIFIC COMPANY,  
a corporation,

Defendants.

Case No. 3313.

CALIFORNIA PORTLAND CEMENT COMPANY,  
a corporation, and  
RIVERSIDE CEMENT COMPANY,  
a corporation,

Complainants,

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation,

Defendant.

Case No. 3334.

CALIFORNIA PORTLAND CEMENT COMPANY,  
a corporation, and  
RIVERSIDE CEMENT COMPANY,  
a corporation,

Complainants,

vs.

SOUTHERN PACIFIC COMPANY,  
a corporation,  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a corporation, and  
SAN DIEGO & ARIZONA RAILWAY COMPANY,  
a corporation,

Defendants.

Case No. 3361.

Sanborn & Roehl, by H. H. Sanborn, and Charles R.  
Boyer, for Southwestern Portland Cement Company.  
W. D. Burnett, Waldo A. Gillette and R. S. Vance,  
for Monolith Portland Cement Company.  
Call & Murphey, F. W. Tarcotte and William Guthrie,  
for California Portland Cement Company.  
O'Melveny, Tuller & Myers and William W. Clary, for  
Riverside Cement Company.  
T. A. Loretz, for Blue Diamond Corporation.

James E. Lyons and Burton Mason, for Southern Pacific Company, Holton Interurban Railway Company, and San Diego & Arizona Railway Company.  
E. E. Bennett, for Union Pacific Railroad Company.  
Berne Levy and G. E. Duffy, for The Atchison, Topeka and Santa Fe Railway Company.  
Richard E. Wedekind, for Pacific Electric Railway Company.

CARR, Commissioner:

### O P I N I O N

The above entitled proceedings bring into issue the lawfulness of the rates on cement from Colton, Crestmore, Victorville and Monolith<sup>1</sup> to (a) points in the Imperial Valley on the Southern Pacific Company and Holton Interurban Railway and to points intermediate thereto,<sup>2</sup> and (b) points on The Atchison, Topeka and Santa Fe Railway Company and San Diego & Arizona Railway south

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<sup>1</sup> At these four points are located respectively the cement plants of the California Portland Cement Company, Riverside Cement Company, Southwestern Portland Cement Company and Monolith Portland Cement Company.

<sup>2</sup> Case No. 3280 was filed by the Southwestern Portland Cement Company. It is alleged that the rates from Victorville to Ordway, Niland, Colorado, Holtville, Meloland and points between are unreasonable and that the rates to Owl, Calexico, Flowing Wells, Iris, Tortuga and points between are prejudicial to complainant and preferential of Colton and Crestmore. By petition in intervention asking for affirmative relief the Monolith Portland Cement Company alleges that rates from Monolith to the same points of destination are unjust, unreasonable and unduly prejudicial to complainants and unduly preferential of Victorville, Colton and Crestmore. The California Portland Cement Company and Riverside Cement Company intervened in behalf of defendants.

Case No. 3283 is a suspension proceeding on the Commission's own motion suspending a proposed rate of 15 cents per 100 pounds from Colton and Crestmore to points in the Imperial Valley and points intermediate thereto.

of Santa Ana.<sup>3</sup>

Public hearings were had at Los Angeles December 6, 7, 8 and 9. Cases 3280 and 3283 were orally argued at Los Angeles on December 16, 1932. The two cases involving rates to the Imperial Valley were consolidated and heard upon one record. The remaining cases, bringing into issue the rates south of Santa Ana, were consolidated and heard upon a separate record. Unless otherwise noted rates are stated in cents per 100 pounds.

Although a multiplicity of issues are raised by the complaints and the petitions in intervention, the main question for determination is the volume of the differentials<sup>4</sup> maintained by defendants between the inner mills (Colton and Crestmore) and the

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<sup>3</sup> Case No. 3289 was filed by the Monolith Portland Cement Company. It is alleged that the rates from Monolith to Aliso, National City and points between are unreasonable and unduly prejudicial to complainant and unduly preferential of Colton, Crestmore and Victorville. Petitions in intervention were filed by California Portland Cement Company and Riverside Cement Company alleging that these rates are unduly prejudicial to Colton and Crestmore and unduly preferential of Monolith.

Cases 3295, 3313, 3334 and 3361 were filed by the California Portland Cement Company and the Riverside Cement Company. These proceedings collectively alleged that the rates from Colton and Crestmore to Aliso, Tustin, Browning, Myford, Frances, Como, Escondido, Lakeside, National City and points between are unduly prejudicial to Colton and Crestmore and unduly preferential of either Monolith or Victorville. By petition in intervention filed by Monolith Portland Cement Company it is alleged that certain of these rates are unduly prejudicial to Monolith and unduly preferential of Victorville, Colton and Crestmore.

<sup>4</sup> The present rates from Colton and Crestmore to the Imperial Valley and points intermediate thereto are from 2½¢ to 4¢ lower than from Victorville and from 5½¢ to 7¢ lower than from Monolith. South of Santa Ana the rates from the inner mills are 1¢ lower than from Victorville and 4¢ lower than from Monolith to Aliso, Tustin, Browning, Myford, Frances, Como and Irvine, and 3½¢ lower than from Monolith to points south of Irvine. The differential between the inner mills and Victorville to points south of Santa Ana is the same as the differential to Los Angeles and contiguous points. In California Cement Company et al. vs. Southern Pacific et al., 34 C.R.C. 459, aff. 35 C.R.C. 904, the Commission found this differential not unlawful.

outer mills (Victorville and Monolith). The inner mills strongly contend that they should have a rail differential substantially under the rail rate from the outer mills. On the other hand the outer mills just as strongly urge the retention or the narrowing of the present differentials or their elimination entirely.

Because of their comparative nearness to the principal markets of Southern California the inner mills are in a strategic position to use truck transportation. Indeed they use this form of transportation adroitly. Although to most points they can obtain truck rates lower than the existing rail rates they have consistently maintained a policy of giving the rails approximately 40% of the traffic. Their reason for so doing is obvious. They fear, and with some logic, that if the entire tonnage were taken from the rails, the carriers would endeavor to regain the traffic by reducing the present rates, and this in turn would bring about reductions from the outer mills.<sup>5</sup> But if the carriers are able to retain approximately 40% of the tonnage from the inner mills they receive the same, and probably a little more, revenue than if they reduced the rates sufficiently to meet truck competition.<sup>6</sup>

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<sup>5</sup> The Atchison, Topeka and Santa Fe Railway is committed to the Victorville mill to maintain a 1¢ differential between Colton and Crestmore on the one hand and Victorville on the other hand.

<sup>6</sup> A witness for the Riverside Cement Company explained the policy of the inner mills as follows: "We are giving the railroads about 40% of our business. And the reason is this: as a result of our giving the railroads 40% of our business plus what they are sure to get from the outside mills, the railroads are getting today more than half of the cement business of Southern California on the present rates. Now, in order to force our business back onto the rails, the railroads will have to cut their rates in two. \* \* Now, having done that, if it was the policy of the railroads, let us say, to force this business back, by cutting their rates in two and maintaining that one cent differential on the outside mills, they would be cutting those rates in two, and what would be the result? In order to get 100% of the business they would have to cut their rates in two, whereas, they are getting half the business now at twice the rates. So they would be doing double the work for what they are getting now. It is an unanswerable situation. The railroads can not get this business back excepting by cooperation with the mills."

The inner mills are willing to return all of their tonnage to the rails provided they can obtain the differentials which they consider they are entitled to by reason of their geographical location and their ability to truck at lower rates than can be obtained by the outer mills. Although they prefer rail transportation<sup>7</sup> they have maintained a policy, and probably will continue this policy, of using trucks for approximately 60% of their traffic until the railroads spread the differential.

The inner mills now move all their traffic to the Imperial Valley by truck. The Southern Pacific Company, not being committed to any set differential between the inner and outer mills, decided to attempt to regain the lost tonnage. Assurance was given by the inner mills that if a 15¢ rate from Colton and Crestmore to the Imperial Valley was published, the traffic would be returned to the rails, provided, however, that the Victorville rates were not reduced by a corresponding amount. The 15¢ rate was published but was suspended by the Commission.<sup>8</sup>

There can be no question but what the inner mills hold the whip hand over the Southern Pacific. They now are able to obtain truck rates ranging from 10¢ to 15¢ per sack (95 pounds). The Southern Pacific is faced with two alternatives. They can either forego the business entirely or they can establish the 15¢ rate

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<sup>7</sup> Truck transportation is not as satisfactory as rail transportation. The reason for this is explained in the following testimony of a witness for the Riverside Cement Company: "There are commercial and marketing advantages to us in having a stable well-organized simple system of distributing our business by rail under established tariffs and we would make a concession in so far as our truck advantages are concerned to restore our whole marketing system of rail rates." This expression was concurred in by the other mills.

<sup>8</sup> Subsequent to the suspension of this rate the rail carriers offered to publish a rate of 20¢ per 100 pounds from Victorville and 24¢ per 100 pounds from Monolith. These rates are not objected to by the inner mills.

with a 20¢ rate from Victorville and a 24½¢ rate from Monolith. If they do the latter they are assured of the entire movement from Colton and Crestmore, and would probably hold the movement from Victorville and Monolith.<sup>9</sup> The commitment is made by the inner mills regardless of what the truck rates may be in the future.

It cannot be said that the proposed 15¢ rate is not reasonably compensatory or would burden other traffic.<sup>10</sup> The competition which respondent seeks to meet is unregulated and beyond its power to control. In such cases carriers have been, and should be, accorded a reasonable latitude to use their managerial discretion. Particularly during this period of economic stress, with uncontrolled competition diverting traffic from the regulated carriers, extreme caution should be used before anything is done to interfere with the initiative of railroad management. Theories of rate making, however, sound they may have been in the past, cannot prevail to hamper the carriers in their voluntary efforts to meet existing conditions so long as in so doing they do not create undue discrimination or otherwise adversely affect the public interest.

The record warrants the conclusion that the 15¢ rate is justified and that by the publication of a 20¢ rate from Victorville and a 24½¢ rate from Monolith it will not unduly prefer the inner mills nor unduly prejudice the outer mills.

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<sup>9</sup> While there was some evidence of sporadic trucking from Victorville and Monolith the record does not sustain the contention that these mills can consistently truck at rates lower than the proposed rail rates can be obtained. Apparently the best rate from Victorville is a combination truck and rail rate, using the rail to San Bernardino and truck beyond at a total cost of slightly over 20¢. The record does not show that Monolith could advantageously use trucks to the Imperial Valley.

<sup>10</sup> For the haul from Colton and Crestmore to Imperial Valley points the Southern Pacific would obtain, based upon the weighted average haul for 1932 and the minimum carload weight, a per car mile revenue of 55.5 cents and a per ton mile revenue of 18.5 mills.

While there was some evidence presented by the Victorville and Monolith mills relating to the unreasonableness of the rates to the Imperial Valley and points intermediate thereto, the evidence is insufficient to sustain their allegations.

The issues with respect to the rates to points south of Santa Ana are somewhat different than those relating to the Imperial Valley adjustment. Effective July 10, 1932, defendants voluntarily reduced the rates from Colton and Crestmore to Como, Escondido and points between, the reductions varying from  $1\frac{1}{2}\%$  to  $3\%$ . Effective August 18, 1932, reductions of  $4\frac{1}{2}\%$  were made in the rate to Lakeside, resulting in a rate of  $11\%$  which was held as maximum at points north thereof to and including Carlsbad. Concurrently with these reductions the rates from Victorville were reduced a corresponding amount to preserve the one-cent differential. Effective August 18, 1932, the rates from Monolith to Carlsbad and south were reduced to  $3\frac{1}{2}\%$  over Colton, and effective December 4, 1932, a separate adjustment was made in the rates from Monolith to main and branch line points north of Carlsbad whereby Monolith was accorded a differential of  $4\%$  to Aliso, Tustin, Browning, Myford, Frances and Como and a  $3\frac{1}{2}\%$  differential at the other points. In connection with the publication of these rates the tariffs carried a notation to the effect they were made to meet truck competition.

The inner mills contend that if the rates from Victorville and Monolith were made to meet truck competition, then they have been unduly prejudiced by defendants not according them the same treatment by meeting actual truck competition from their mills. In effect they ask us to force the rail carriers to spread the differentials by compelling the railroads to recognize



the actual truck competition existing from their mills.<sup>11</sup>

The record however shows that the notation in the tariff was not entirely correct. The reductions effective July 10, 1932, were made to meet truck competition from Colton and Crestmore to points adjacent to Escondido. The reductions effective August 18, 1932, were made to meet truck competition from the inner mills to the El Capitan dam near Lakeside. The corresponding reductions from Victorville were not made to meet truck competition but were made to preserve the one-cent differential to which the Atchison, Topeka and Santa Fe Railway was committed. The Monolith reductions were made to accord that mill differentials over Colton which defendants contend were found proper in California Portland Cement Co. vs. Southern Pacific, supra. As in the case of Victorville truck competition did not influence this adjustment.

It cannot be said that the rates published by defendants to points south of Santa Ana have unduly prejudiced the inner mills. While the Commission is not bound by the commitment of the Atchison, Topeka and Santa Fe Railway to the Victorville mill, differentials of long standing cannot lightly be set aside, unless some compelling reason is shown therefor.<sup>12</sup>

However, the Santa Fe in its desire to keep the Victorville plant on a one-cent differential over the inner mills to

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<sup>11</sup> The inner mills compiled elaborate studies of the cost of trucking from the various mills. These were based upon the average rate paid by them to the trucks over a period of approximately 18 months.

<sup>12</sup> In California Portland Cement Company vs. Southern Pacific, 35 C.R.C. 904, 906, the Commission, in refusing to disturb the one-cent differential between Colton-Crestmore and Victorville on traffic to Los Angeles, stated: "The history of the construction of the rates, long acquiescence in their basis, market and competitive conditions, the effect of change on carriers and shippers concerned, and tendency or effect of a change on rate structures long maintained and to which business has become adjusted, are to be considered."

points south of Santa Ana has unduly prejudiced Monolith. As heretofore stated, truck competition did not enter into the adjustments from either point. Both points are in direct competition for the cement business in Southern California. From Victorville to points west of Saugus on the Coast Division of the Southern Pacific Company Victorville has been accorded a one-cent differential over Monolith for added hauls varying from 43 miles to 51 miles. But from Monolith to points south of Santa Ana the differential is 2½¢ over Victorville for an added haul of 57 miles. Where competing mills are cross-shipping into competitive territory under substantially similar circumstances and conditions, they should be accorded equal treatment. Pacific Portland Cement Co. vs. A.T. & S.F. Ry., 33 C.R. C. 300, 306, and cases cited therein. The record does not sustain the allegation of the Monolith Portland Cement Company that the rates to points south of Santa Ana are unreasonable.

The Commission should find:

1. That the proposed 15¢ rate from Colton and Crestmore to points in the Imperial Valley and points intermediate thereto and the proposed rates of 20¢ from Victorville and 24½¢ from Monolith to the same points of destination are not unduly preferential of Colton and Crestmore nor unduly prejudicial to Victorville and Monolith.
2. That the rates from Victorville and Monolith to points in the Imperial Valley have not been shown to be unreasonable on this record.
3. That the rates from Colton, Crestmore, Victorville and Monolith to points on the Atchison, Topeka and Santa Fe Railway and San Diego & Arizona Railway south of Santa Ana are not unduly prejudicial to Colton and Crestmore; unduly preferential of Victorville and Monolith; unduly prejudicial to Monolith nor unduly preferential

of Colton and Crestmore except as set forth below.

4. That the rates from Monolith to points south of Santa Ana here under attack are unduly prejudicial to Monolith and unduly preferential of Victorville to the extent such rates exceed by more than one cent the rates concurrently in effect from Victorville.

5. That the rates from Monolith to Aliso, National City and points between have not on this record been shown to be unreasonable.

The following form of order is recommended:

#### O R D E R

These cases having been duly heard and submitted and being now ready for decision,

IT IS HEREBY ORDERED, that the order of suspension in Case 3283 be and it is hereby vacated and set aside as of February 25, 1933, provided that concurrently with the establishment of the 15¢ rate under suspension, rates not exceeding 20¢ from Victorville and 24<sup>1</sup>/<sub>2</sub>¢ from Monolith shall be established on not less than one day's notice to the Commission and to the public.

IT IS HEREBY FURTHER ORDERED that defendants shall establish on or before thirty (30) days from the effective date hereof, on not less than five (5) days' notice to the Commission and the public, rates on cement, in carloads, from Monolith to points involved in these proceedings south of Santa Ana which shall not be more than one cent per 100 pounds higher than the rates concurrently maintained from Victorville to the same points of destination.

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

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 20<sup>th</sup> day of February, 1933.

C. Deaver  
Leon White  
W. J. Lee  
M. B. Lewis  
W. H. Moore  
Commissioners.