

Decision No. 25968.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MONOLITE PORTLAND CEMENT COMPANY,  
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation;  
THE ATCHISON, TOPEKA & SANTA FE RAILWAY  
COMPANY, a corporation; VISALIA ELECTRIC  
RAILROAD COMPANY, a corporation; SUNSET  
RAILWAY COMPANY, a corporation; BAY POINT  
AND CLAYTON RAILROAD COMPANY, a corpora-  
tion; CALIFORNIA CENTRAL RAILROAD COMPA-  
NY, a corporation; and YOSEMITE VALLEY  
RAILROAD COMPANY, a corporation,

Defendants.

**ORIGINAL**

Case No. 3071.

W. D. Burnett and Coy Burnett, for complainant.  
James E. Lyons, for defendant Southern Pacific Company.  
E. C. Pierre and G. E. Duffy, for defendant The Atchison,  
Topeka and Santa Fe Railway Company.  
Ralph Mitchell and Thelen & Marris, by Max Thelen, for  
Bay Point and Clayton Railroad Company, and intervener  
Henry Cowell Lime & Cement Company.  
L. A. La Point, for Yosemite Portland Cement Company.  
F. K. Clifford, for Calaveras Cement Company.  
James A. Keller and N. E. Keller, and Sanborn, Roehl &  
Brookman, by H. H. Sanborn, for defendant California  
Central Railroad Company, and intervener Pacific Port-  
land Cement Company.  
W. J. Higgins and Gwyn E. Baker, for Santa Cruz Portland  
Cement Company, intervener.  
Call & Murphey and William Guthrie, for intervener Cali-  
fornia Portland Cement Company.

BY THE COMMISSION:

O P I N I O N

Complainant alleges that the rates maintained by defend-  
ants for the transportation of cement from Monolith to destinations  
in the San Joaquin Valley between Bakersfield on the south and

Manteca on the north were and are unjust and unreasonable in violation of Section 13 of the Public Utilities Act and unduly discriminatory in violation of Section 19 of the Act and of Article XIII Section 21 of the State Constitution. Just, reasonable and nondiscriminatory rates for the future and reparation are sought. Rates are stated in cents per 100 pounds.

Public hearings were held before Examiner Geary at San Francisco and Los Angeles and the matter submitted on briefs.

The Henry Cowell Lime & Cement Company, Yosemite Portland Cement Company, Calaveras Cement Company, Pacific Portland Cement Company and Santa Cruz Portland Cement Company, hereinafter referred to as the northern mills, and the California Portland Cement Company were permitted to intervene. These interveners are mainly interested in seeing that the existing rate relationship is maintained. The California Portland Cement Company furthermore alleges that the present rates subject it to prejudice and discrimination. No proof was offered in support of this allegation and it will therefore be considered as having been abandoned.

Complainant's plant is located at Monolith on both the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company 52 miles south of Bakersfield.<sup>1</sup>

No testimony was offered to show that the assailed rates were or are unreasonable per se. It is upon the relationship be-

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<sup>1</sup> The plants of the interveners are: At Cowell (Henry Cowell Lime & Cement Company), on the Bay Point and Clayton Railroad 9 miles south of Point Chicago, the junction with the Southern Pacific Company; at Kentucky House (Calaveras Cement Company), a point at the end of the Ione Branch of the Southern Pacific Company, 39 miles east of Ione; at Merced (Yosemite Portland Cement Company), on the Yosemite Valley Railroad; at Redwood City (Pacific Portland Cement Company), on the Southern Pacific Company; at Davenport (Santa Cruz Portland Cement Company), a point on the Santa Cruz Branch of the Southern Pacific Company, 12 miles west of Santa Cruz; and at Colton (California Portland Cement Company), on the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Los Angeles & Salt Lake Railroad Company.

tween these rates and those concurrently maintained from the northern mills (exclusive of Merced) that complainant's case rests.

The rates to Fresno, a point almost midway between Monolith and Bay Point, Cowell, Kentucky House and Redwood City, will serve to illustrate this relationship. Prior to August 18, 1929, the rate from Monolith to Fresno, a distance of 160 miles, was the same as those applying from Bay Point, Cowell, Kentucky House and Redwood City, distances of 163, 172, 175 and 183 miles respectively. From Chittenden, Davenport and San Juan, distances of 224, 230 and 232 miles, they were one cent higher during this period. On August 22, 1927, rates from Merced to points in the San Francisco Bay region were established. These rates were on a lower basis than those from Cowell and Redwood City to points in the San Joaquin Valley. In Pacific Portland Cement Company et al. vs. A.T. & S.F. Ry. Co. et al., 33 C.R.C. 300, this was found to be unduly prejudicial to shippers at Cowell and Redwood City and preferential of Merced. The preference and prejudice were removed on August 18, 1929, by reducing the rates from the northern mills (exclusive of Merced)  $5\frac{1}{2}$  cents. No reduction was made from Monolith until April 20, 1931, at which time, upon protest of complainant, this rate was likewise reduced  $5\frac{1}{2}$  cents. Thus the rate from Monolith was again the same as from Bay Point, Cowell, Kentucky House and Redwood City and one cent lower than from Chittenden, Davenport and San Juan. One month thereafter, however, further reductions of 2 cents were voluntarily made in the rates from all points except Merced and Monolith. With this adjustment complainant's rate from Monolith to Fresno became 2 cents higher than that of its competitors at Cowell, Kentucky House and Redwood City, with which it enjoyed equal rates for a long time and one cent

higher than applies at Davenport and San Juan, which rates formerly were one cent higher than those from Monolith.

Complainant contends that the circumstances and conditions attending movements from its plant to points in the San Joaquin Valley are substantially similar to those obtaining from the northern mills and that there is no reason for according lower rates to its northern competitors than those it enjoys. The same basis, mile for mile, as is accorded the northern mills is sought. It is immaterial to complainant whether the rates of its competitors are increased or whether its rates are reduced so long as the preference alleged to exist is removed. The present rates, it maintains, have disrupted an adjustment of long standing.

Defendants made no attempt to justify higher rates from Monolith to Fresno than were maintained to the same point from the mills north of Merced. They contend however that the present rates from the northern mills are unduly depressed and that whatever preference there may be should be removed by increasing these rates rather than by reducing those from Monolith.

Certain of the interveners introduced extensive testimony in an endeavor to show such a dissimilarity between a movement from Monolith to the San Joaquin Valley and one from the northern mills as to justify a higher scale of rates at Monolith. Great stress was placed on the topography between Monolith and Bakersfield. The record shows however that while certain factors attending the movement from the northern mills are undoubtedly more advantageous than those attending the movement from Monolith, there are other circumstances working to the disadvantage of those mills, as a result of which the advantages are largely counteracted.

Full consideration of all the facts of record leads to the conclusion that the rates from Monolith to the points involved have not been shown to be unjust or unreasonable but that they have been and are unduly prejudicial. The undue prejudice should be removed by reducing the rates from Monolith or increasing the rates from the northern mills by the amounts opposite the destination points shown below:<sup>2</sup>

Tulare	3¢ per 100 lbs.	Reedley	2¢ per 100 lbs.
Taft	2¢ " " "	Fresno	2¢ " " "
McKittrick	2¢ " " "	Madera	1½¢ " " "
Coalinga	2¢ " " "	Merced	4½¢ " " "
Exeter	3¢ " " "	Turlock	3½¢ " " "
	Manteca	3½¢ per 100 lbs.	

Note: Rates to points involved in this proceeding but not specifically shown above shall be adjusted in like manner.

Complainant also seeks reparation. As heretofore stated, however, there is nothing in the record to show that the rates were inherently unreasonable. To entitle a complainant to an award of reparation under Section 19 of the Public Utilities Act it is necessary that the fact, the amount and the proximate cause of the damage be proved. (Penn. R.R.Co. vs. International Coal Co., 230 U.S. 184.) Complainant has not made such proof and reparation will therefore be denied.

#### O R D E R

This case having been duly heard and submitted, full

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<sup>2</sup> If defendants elect to increase the rates from the northern mills an application under Section 63(a) of the Public Utilities Act should be filed and the proposed rates justified.

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, Visalia Electric Railroad Company, Sunset Railway Company, Bay Point and Clayton Railroad Company, California Central Railroad Company and Yosemite Valley Railroad Company, according as they participate in the transportation, be and they are hereby directed to cease and desist on or before thirty (30) days from the effective date of this order and thereafter to abstain from assessing, demanding and collecting for the transportation of cement from Monolith to points in the San Joaquin Valley (Bakersfield on the south and Manteca on the north) rates found unduly prejudicial 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, Visalia Electric Railroad Company, Sunset Railway Company, Bay Point and Clayton Railroad Company, California Central Railroad Company and Yosemite Valley Railroad Company, according as they participate in the transportation, be and they are hereby required and directed 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 the public, to remove the undue prejudice referred to in the opinion which precedes this order.

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

Dated at San Francisco, California, this 29<sup>th</sup> day of  
May, 1933.

O. P. Leavelle  
W. B. Harris  
W. B. Harris  
Commissioners.