

Decision No. 26348.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension by the Commission on its own motion of reduced rates on cement from Cowell, Davenport, Kentucky House and Redwood City to points on the Northwestern Pacific Railroad Company.

Case No. 3756.

James E. Lyons and E. E. McElroy for Northwestern Pacific Railroad Company.
G. E. Duffy and Berne Levy for The Atchison, Topeka and Santa Fe Railway Company.
McCutchen, Olney, Mannon & Greene, by Allan P. Matthew and F. W. Mielke, for Yosemite Portland Cement Company.

BY THE COMMISSION:

OPINION

By schedules filed to become effective December 24, 1933, in Supplement No. 25 to Pacific Freight Tariff Bureau Tariff No. 88-N, C.R.C. No. 504 of T. W. Comph, respondents proposed to reduce the rates on cement, in carloads, from Cowell, Davenport, Kentucky House and Redwood City to points on the Northwestern Pacific Railroad Company. Upon protest from the Yosemite Portland Cement Corporation the freight tariff was suspended. Protestant operates a cement plant at Merced and competes with the plant located at the four points mentioned. The rates herein will be stated in cents per hundred pounds.

Public hearing was held before Examiner Geary at San Francisco February 20, 1934, and the proceeding having been duly submitted is now ready for our opinion and order.

The following table compiled from the records shows the present and proposed rates:

| From | San Rafael | | Mill Valley | | Sausalito | | Reduction |
|----------------|------------|-------|-------------|-------|-----------|-------|-----------|
| | Present | Prop. | Present | Prop. | Present | Prop. | |
| Cowell | 9½ | 9½ | 11½ | 9½ | 11 | 9½ | 1½ |
| Redwood | 9½ | 9½ | 11½ | 9½ | 11 | 9½ | 1½ |
| Davenport | 11½ | 11½ | 13½ | 11½ | 13½ | 11½ | 2 |
| Kentucky House | 12 | 12 | 14 | 12 | 14 | 12 | 2 |
| Merced | 14 | 14 | 14 | 14 | 14 | 14 | None |

The distance from San Rafael to Sausalito is 9 miles with intermediate stations one mile apart. The proposed adjustment extends the San Rafael rates to Sausalito as a blanket from all of the cement mills except the one at Merced. The reductions are 1½ cents from Cowell and Redwood and 2 cents from Davenport and Kentucky House. At the present time the rate from Kentucky House and Merced to Sausalito is 14 cents, 3 cents higher than from Cowell and Redwood. Under the proposed adjustment Kentucky House would have its differential reduced from 3 cents to 2½ cents while Merced would have its differential increased from 3 cents to 4½ cents. The short line distance to Sausalito is 172 miles from Kentucky House and 168 miles from Merced.

The main objective of respondents in proposing these reductions is to permit the cement dealers at Mill Valley, Sausalito and the other points to compete with the merchants at San Rafael, which point, due to its lower rates and the short truck hauls to the consuming jobs, now controls the business. It is further pointed out that if the Merced rate was reduced from 14 to 12 cents, as is proposed from Kentucky House, it would cut the rate to Suisun and other intermediate points on the Southern Pacific.

Protestant by its exhibit and testimony asserts that be-

cause of its geographical location and the established practice of defendants' maintaining a parity of rates from these two mills into the territory in dispute, the higher rate of 14 cents from Merced would unduly prejudice its interests and unduly prefer its competitor at Kentucky House and the other mill points. The Atchison, Topeka and Santa Fe Railway Company stated it was willing to reduce the rate from Merced to 12 cents if its connecting carriers would concur in the reduction.

The burden of showing that the proposed reduced rates would be lawful is placed upon respondents. They have failed to sustain that burden.

We find that the suspended schedules have not been justified. An order will be entered requiring their cancellation and the discontinuance of this proceeding.

O R D E R

This case having been duly heard and submitted, full investigation of the matters and things having been had, and basing this order on the findings of fact and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that respondents, Bay Point and Clayton Railroad Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Northwestern Pacific Railroad Company, be and they are hereby ordered and directed to cancel on or before March 24, 1934, the reduced rates on cement from Cowell, Davenport, Kentucky House and Redwood City to points on the Northwestern Pacific Railroad Company, carried in Index No. 3235 Ross to No. 3275 Sausalito, both numbers inclusive, as shown in Supplements Nos.

25 and 26 to Pacific Freight Tariff Bureau Tariff No. 28-N, C.R.
C. No. 504.

IT IS HEREBY FURTHER ORDERED that upon the cancellation thereof this proceeding be and it is hereby discontinued and our suspension order of December 22nd, 1933, be vacated and set aside.

Dated at San Francisco, California, this 5th day of March, 1934.

Ch. Sealey
Leon Whitwell
W. J. Lee
M. B. Harris
Walter Moore
Commissioners.