

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 named in tariffs of the Southern Pacific Company, Pacific Electric Railway Company, Los Angeles & Salt Lake Railroad Company, The Atchison, Topeka and Santa Fe Railway Company and Pacific Freight Tariff Bureau applying from Monolith, Colton, Crestmore, Oro Grande and Victorville to points in Southern California.

**ORIGINAL**

Case No. 3836.

- W. D. Burnett, for Monolith Portland Cement Company.
- H. H. Sanborn and Chas. E. Boyer, for Southwestern Portland Cement Company.
- James E. Lyons and A. Burton Mason, for Southern Pacific Company.
- G. E. Duffy and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Company.
- R. E. Wedekind, for Pacific Electric Railway Company.
- O'Melveny, Tuller & Myers, by W. W. Clary, for Riverside Cement Company.
- William Guthrie, for California Portland Cement Company.
- T. A. Loretz, for Blue Diamond Corporation.
- E. E. Bennett and Edw. C. Renwick, for the Union Pacific Railroad Company.
- Chas. A. Bland, for Board of Harbor Commissioners of the City of Long Beach.
- W. A. Dart, for Graham Bros., Inc., Long Beach.

CARR, Commissioner:

O P I N I O N

Reduced rates filed with the Commission by respondents for the transportation of cement in carloads from Colton, Crestmore, Victorville, Monolith and Oro Grande to various points in Southern California have been suspended until September 30, 1934, upon protests of the Monolith Portland Cement Company and Southwestern Portland Cement

Company, which operate mills at Monolith and Victorville respectively.<sup>1</sup> Protestants alleged that the proposed rates if permitted to become effective would completely disrupt the relationship now existing and would subject them to undue prejudice and disadvantage.

Public hearings were had at Los Angeles August 7, 8, 9, 10, 21, 22 and 23, 1934, for the purpose of determining the propriety of the suspended rates.

The issue presented is primarily one of relationship between the rates from Colton and Crestmore (the inner mills) on the one hand and those from Victorville, Monolith and Oro Grande (the outer mills) on the other.<sup>2</sup> The question of the actual volume of the rates has by all parties been relegated to a subordinate position.

#### History of Cement Rates in Southern California

A knowledge of the history of the cement rates in this territory is essential to a proper understanding of the controversy here. Briefly it is as follows: A scale of rates applicable from Colton, the first of these plants, was later extended to embrace Crestmore, which is located but a short distance therefrom. When the plant at Oro Grande came into the picture rates  $1\frac{1}{2}$  cents per 100 pounds higher

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<sup>1</sup> The proposed rates are contained in the following tariffs:  
Southern Pacific Company Special Local and Joint Freight Tariff No. 3147, C.R.C. No. 3511.  
Thirteenth Revised Page 34 of Pacific Electric Railway Company Local, Joint and Proportional Freight Tariff No. 120-C, C.R.C. No. 289.  
Seventh Revised Page 76 and Item 975-C, Seventh Revised Page 28 of Los Angeles & Salt Lake Railroad Company's Local, Joint and Proportional Freight Tariff No. 7020 (old No. 133-E), C.R.C. No. 327.  
The Atchison, Topeka & Santa Fe Railway Company's Local Freight Tariff Cal.R.C. No. CL 1362.  
Supplement No. 33-A to Pacific Freight Tariff Bureau Tariff No. 88-N, Supplement 32-A to C.R.C. No. 504.

<sup>2</sup> At Colton and Crestmore, respectively, are located the California Portland Cement Company and the Riverside Cement Company. At Victorville, Monolith and Oro Grande are located respectively the Southwestern Portland Cement Company, the Monolith Portland Cement Company and the Riverside Cement Company. This latter mill is not now in operation.

than the Colton and Crestmore rates were established. The rates from Oro Grande were published to enable the new mill to compete with the mills at Colton and Crestmore and with little regard to the actual distance involved. Rates of the volume of those accorded to the Oro Grande mill were subsequently established from Victorville<sup>3</sup> and Monolith. Thus from their inception the five mills fell into two rate groupings. By successive increases and reductions the 1½-cent differential in favor of the inner mills in 1922 became one cent. From 1922 to 1924 the rate from the inner mills to Los Angeles, for example, was 9½ cents and from the outer mills 10½ cents. In 1924 they were reduced to 7½ and 8½ cents to meet the competition of foreign cement then being imported through Los Angeles Harbor. The Los Angeles rates were held as maximum at intermediate points and as factors in constructing rates to points beyond.

In March 1929 the inner mills filed a complaint alleging that the rates from Colton and Crestmore were unjust, unreasonable, unduly prejudicial and discriminatory to them and preferential of the outer mills.<sup>4</sup> The Commission found the rates to Somis, Cavin, Ventura and Ravenna unreasonable and those from Victorville and Monolith "to points beyond Los Angeles where the rates are based over the Los Angeles rates" unduly preferential to Colton and Crestmore and unduly prejudicial to Victorville and Monolith to the extent that they exceeded for comparable distances the amount contemporaneously added to the rates from Colton and Crestmore. The inner mills, it was found, had not shown the one-cent differential then obtaining to be unduly

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When the Southwestern Portland Cement Company was considering the creation of a plant at Victorville representatives of the freight department of the Santa Fe promised to "maintain not to exceed a 25-cent a ton differential from Victorville over Colton and Crestmore".

<sup>4</sup> California Portland Cement Co. et al. vs. Sou. Pac. Co. et al., 34 C.R.C. 459, 35 C.R.C. 904. By petitions in intervention the rates from all of the mills here involved were brought in issue.

prejudicial to them. In 1933 at the request of the protestants here the Commission suspended reduced rates filed by the Southern Pacific Company for the transportation of cement from Colton and Crestmore to points east thereof, which had the effect of increasing the then existing differential. After full hearing of this and related complaint proceedings with which it had been consolidated, rates 5 cents lower from the inner mills than from the outer ones were permitted to become effective.<sup>5</sup>

By the schedules here in issue respondents propose to establish a uniform differential of 2 cents in lieu of the existing one- and five-cent differentials just referred to, thus increasing the differential into the Los Angeles area while reducing it as to other destinations. No objection is advanced by the protestants against that portion of the suspended rates which reduces the now existing differential.

#### Decline of Rail Movement

The rail movement in carloads of cement from Southern California mills to Southern California destinations for the years 1929 to 1933 inclusive, and for the first five months of 1934, as shown by respondent's Exhibit 31, is as follows:

TABLE I.

<u>Mill</u>	<u>1929</u>	<u>1930</u>	<u>1931</u>	<u>1932</u>	<u>1933</u>	<u>5 mo. 1934</u>
Colton	8145	3492	1919	1022	1022	246
Crestmore	8901	4307	2347	921	722	233
Monolith	3157	4320	3053	2008	1517	708
Oro Grande	139	-	-	-	-	-
Victorville	5267	4474	2903	1324	619	178
Total	25609	16593	10222	5275	3880	1365

It will be noted that the shipments from the inner mills in 1930 dropped to less than one half of the 1929 figure and that

<sup>5</sup> Southwestern Portland Cement Co. vs. A.T.& S.F.Ry. et al. and related proceedings, 38 C.R.C. 473.

they continued to decrease substantially thereafter. Those from Monolith and Victorville decreased likewise but at a somewhat later date.<sup>6</sup> Operations at the mill at Oro Grande were discontinued in 1929. That a substantial portion of this decline is due to general business conditions is admitted, but the record clearly shows that a large portion thereof is attributable directly to a transition to highway transportation.

#### Advantages of Truck and Rail Movements

Movement of cement by truck into the Los Angeles metropolitan area and to other points affected by the proposed adjustment has certain advantages over movement by rail. It is more flexible. Deliveries by truck are made directly from the mill to the job, while the movement by rail is from mill to rail head and a second movement by truck from rail head to job frequently is necessary. Movement by truck is somewhat faster than by rail and may be timed so that cement is delivered at the job to suit the requirement of the purchaser. Demand of the trade for sales in less than carload quantities has been met by the mills and this has worked in favor of the trucks.<sup>7</sup>

Notwithstanding these advantages, the responsible executives of each of the mills testified to a preference for rail movement, apparently because of the stability and publicity of rail transportation charges and the effect of this upon the stability of marketing conditions. A translation of this declared preference into a

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Following the publication of rates to the Imperial Valley 5 cents lower from the inner than from the outer mills, nearly all of the traffic of the outer mills has been diverted from the rail lines. One of the witnesses for the outer mills testified that this adjustment "contributed to stimulating" trucking.

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In February 1934 the Monolith Company republished its price list providing for a drop in the minimum quantity of sales of from 160 barrels to 100 barrels. In April the California Portland Cement Company reduced the minimum to 75 barrels. Other mills of course had to make corresponding reductions in the minimum. 160 barrels represents a minimum carload shipment.

substantial patronage of the rails has been frustrated by the long standing controversy between the inner and the outer mills respecting the volume of the differential in the rail rates as between the two groups.

#### Effect of Controversy over Rail Differential

It is this factor, intangible in nature, which probably furnishes the real explanation of why cement tonnage has almost completely vanished from the rails. In 1929 the inner mills attacked the 1 cent per hundred pounds differential in the Los Angeles area as being unduly prejudicial to them. (California Portland Cement Co. et al. vs. Southern Pacific Co. et al., supra.) Following the decision of the Commission in which it was concluded that the complainants had not, under the record, established the differential to be prejudicial to them, the inner mills shifted a large part of their tonnage to the trucks, claiming, with considerable show of reason, that in this way and because the cost of truck transportation was less than rail they could thus attain, on the average, a differential as against the outer mills of around 3 cents per hundred pounds and thus give effect to what they assert is their favorable geographical location.<sup>8</sup>

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<sup>8</sup> In Southwestern Portland Cement Co. vs. A.T.& S.F.Ry.Co., supra, decided in February 1933, the Commission commented upon this as follows:

"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 per cent. 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. But if the carriers are able to retain approximately 40 per cent. 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."

The railroads sought to meet this situation by proposing an adjustment into the Imperial Valley and other points by which the differential to certain destinations was increased. (Southwestern Portland Cement Co. vs. A.T. & S.F. Ry. Co., supra.) Following the decision in this and in related cases, the outer mills, alarmed at the possibility of the long standing one cent differential being increased, turned rapidly to the trucks, until as to the Los Angeles business of the Monolith Company some 90% is now being moved by truck. The same is true of the tonnage from the Victorville plant.

Thus the railroads, seeking to hold the business of these two groups of mills, have succeeded in antagonizing each and lost the tonnage of each, so that at the present time the volume of cement moving by rail to the points involved in the present adjustment is negligible.<sup>9</sup>

#### Basis of Proposed Adjustment

The present proposed adjustment represents a natural effort by the respondent carriers to regain a part of their lost traffic. The theory upon which they proceeded in constructing the proposed rates is that it costs 1.7 cents per ton mile to truck cement. For the distance from Victorville to Los Angeles, 105 miles, this would amount to \$1.78½ per ton. From this, they reasoned, 40 cents per ton should be deducted to offset the cost of delivery from railroad or warehouse to the job. They thus reached a figure of 7 cents per 100 pounds from Victorville to Los Angeles as a rate to meet truck compe-

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<sup>8</sup> Cont'd. Subsequently, the disproportion between the traffic allocated to the rails as against that allocated to the trucks increased until at present the rail traffic is inconsequential. The explanation for this probably lies in the frankly admitted purpose of the inner mills, through the use of trucks, to club the railroads into giving them a differential to which they think their geographical position entitled them.

<sup>9</sup> Occasionally a customer insists upon rail delivery, in which case this agency of transportation is used.

tion. The same rate was made applicable from Monolith. While on the same basis of calculation the rail rate from the inner mills would be less than 5 cents per 100 pounds, assurances received from the inner mills were such that the 5-cent rate was adopted.<sup>10</sup>

#### Positions of Two Groups of Mills

About this proposal, the two groups of mills have staged a battle which could hardly have been more intense had they been patrons of the rails and really affected by altered rail rates. The position of the inner mills is in substance that they will return their tonnage to the rails provided the adjustment forces the outer mills to the rails or to published and stabilized truck rates of like volume.<sup>11</sup> The outer mills, by their responsible executives, say that if the adjustment is approved they will not return any of the lost traffic to the rails, insisting that by use of trucks they can maintain a differential over the inner mills of not to exceed the present 1 cent per 100 pounds.<sup>12</sup>

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<sup>10</sup> The highway distances from the various mills to Los Angeles are approximately as follows: Colton and Crestmore 61 miles, Victorville 105 miles, Monolith 119 miles. There is some variation in the estimated distances according to the road used. Victorville for instance has an alternative route via Palmdale.

<sup>11</sup> Thus Mr. John Treanor, President of the Riverside Cement Company, testified his mill will "retain freedom to use the trucks in case the outer mills continue to use the trucks". Mr. E. E. Duque, Vice-President and General Manager of the California Portland Cement Company, testified as follows:

"Q. Mr. Duque, in the event this proposed adjustment is permitted to become effective, will you tell us what you expect to be the position of the California Company with reference to the movement of its traffic? A. Yes; if this schedule becomes effective I would say that the California Portland Cement Company would go back on the rails provided that the outer mills use transportation, definitely established, which gives us a reasonable advantage in our geographical location, whether it is by truck or whether it is by rail is not a matter of importance, but if by truck they have established a definite schedule and it reflects a reasonable differential, or a part of a reasonable differential that we are entitled to, we would expect to use the rails. If it doesn't, we don't."

<sup>12</sup> Mr. Coy Burnett, President of the Monolith Portland Cement Company, testified that his company "would not go on the rails \* \* \* if there



The position of the Monolith Company is somewhat fortified by the possession of a contract running for several years for the purchase of butane, a cheaper fuel than gasoline, at a price substantially less than now obtainable. It is the openly expressed purpose of the outer mills to establish trucking service as a plant facility, should the adjustment be approved.

#### Predicament of Railroads

While the rates proposed by the carriers are sought to be justified as necessary to meet truck competition, it is perfectly apparent that truck costs are not the controlling factor in the allocation of traffic. The volume of the rate is of little consequence to the mills. The inner mills are willing to pay a rail rate higher than their truck costs if they can have their way in widening the present differential. On the other hand, the outer mills indicate a willing-

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12 Cont'd. is a 2 cent differential. So that is absolute, so far as I am concerned." The traffic manager of this mill, Mr. Gillette, testified, "We can actually truck to Los Angeles for no more than one cent over that which Colton can do. We have conducted enough experiments from our mills to give us that assurance." Representatives of the Victorville plant were no less positive. Mr. C. C. Merrill, manager of the Southwestern Company, in response to a question as to what his company would do if the proposed adjustment went into effect, testified:

"A. My Company has definitely decided that we will, if that does take place, we will not move one barrel by rail that we can prevent; that we will put on our own truck equipment, Diesel engine truck equipment, as a plant facility, and do our own delivering and go into the transportation business for all time.

"Q. Well, let us assume for the purpose of the question that that does not fully protect you, due to some changes in the manner of making cement prices, then what would be your attitude? A. If that doesn't protect us we will then move, which we have the plans all prepared for, move 50 per cent of our Victorville plant to the Torrance property. We have from the Cement Institute, which is necessary under the Code of Fair Competition for the cement industry, permission to move 50 per cent to Torrance.

"Q. And if you move 50 per cent of your plant to Torrance, which I understand is approximately 20 miles from Los Angeles, do you expect to use the rails for any appreciable delivery of your traffic? A. I don't think we would even have a rail connection."

And Mr. Merrill feels that his plant "will be able to meet and beat a 7-cent rail rate to Los Angeles. Six cents per hundred pounds is the trucking cost he has in mind.

ness to pay for rail transportation more than they claim it costs them to truck if they can have their way in freezing the present one-cent differential.

The respondent carriers recognize the difficult, if not impossible, situation in which they find themselves. At the conclusion of the hearing they tendered a statement of their position, which illustrates how conditions have changed from the day when the railroads monopolized the means of transportation and could make and unmake by the structure of their rates. So far as material here the statement runs:

" \* \* \* we have been and we now are ready to publish any adjustment upon which all the mills can agree, provided only it does not involve a needless sacrifice of revenue. However, the mills have never been able to agree and, because of that fact, we have been compelled to go forward with the publication of an adjustment which we think will best accomplish the end to be desired; that is to say, a return of the traffic to the rails, and which we feel at the same time will not injure either set of mills.

"It may be that the proposed rates will not accomplish the result that we hope. However, one thing is certain - these rates can hardly result in any shrinkage of rail traffic or revenue, for there is practically no cement traffic today from these mills.

"This investigation has placed the essential facts before the Commission as fully as possible.

"We realize that it is not the Commission's function to manage our railroad or to tell us in advance what steps to take as to meeting our competition; but we know that the Commission is concerned with the welfare of the regulated rail carriers and we feel that it can act here with absolute impartiality and with full knowledge of the facts. In this particular case, therefore, and in the event the Commission feels, after reviewing this record, some adjustment other than that proposed would meet the legal requirements and at the same time be more effective in meeting truck competition which we face, we propose and request that the Commission in the decision indicate the adjustment which it believes to be most desirable, not merely from the bare legal standpoint but from the standpoint of the best and the soundest rate-making policy it is to follow."

#### Function of Commission

The last portion of the statement plainly invites the

Commission to assume the role of management and say what steps should be taken to regain the lost business.

The invitation, of course, cannot be accepted.

It is for the managements of the carriers to devise and propose rates to meet the situation which confronts them. The Commission's function is to pass upon the propriety and lawfulness of their proposals. Even though the present adjustment may appear to the Commission to be futile and to hold little or no prospect of attracting tonnage to the rails, unless the rate structure proposed is unlawful it must be allowed to go into effect.

#### Proposed Adjustments not Unlawful

The only ground of attack is that it will disturb existing rate relationships and effect unlawful discrimination. That it disturbs existing relationships is clear. But these relationships are largely paper relationships, as the mills are not now patronizing the rails to any appreciable extent. The advent of the truck into the field of transportation has rendered this, and indeed many of the old rate relationships, obsolete.

Do the proposed rates effect an unlawful discrimination? That the railroads are justified in meeting competition cannot of course be questioned. It is however claimed that they have gone further in meeting competition from the inner than from the outer mills. On this issue a mass of testimony was adduced on truck costs from the various mills. A satisfactory conclusion from the testimony is not easy to reach. Many factors enter into these costs - volume and regularity of movement, character of fuel used, traffic conditions, whether trucking is a plant facility or not, the amount, if any, of assistance indirectly rendered by the shipper and absorbed in mill costs, the efficiency of the truck operations and others which might be men-

tioned. The respondents have clearly made a bona fide effort to meet competition of the trucks. The outer mills claim they can truck at less than the rate proposed. The inner mills make the same claim. Certainly the evidence does not show that the carriers have intentionally favored the inner mills in seeking to approach existing truck costs, nor that in fact, though mistakenly, they have thus favored the inner mills.

#### Protestants not Prejudiced

Nor is it clear where the adjustment, if allowed to become effective, will affect or prejudice the protestants in any of the respects as to which this Commission may take cognizance. It is true that the reductions will probably mean a reduction in the delivered price of cement.<sup>13</sup> And this seems to be the most, if not the only, tangible objection of the protestants to the rates proposed.<sup>14</sup> While they insist that delivered prices are based upon a mill net at Colton of \$1.72 a barrel plus the rail freight, and that hence an increase in the rail differential further reduces their mill net below that of the inner mills by the amount of the increase, this in reality is an outgrowth of conditions which prevailed before the advent of truck competition. The actual realization of the several mills depends upon actual transportation costs. As transportation is now almost entirely by truck, the mill net to which they refer is theoretical and an out-

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<sup>13</sup> The evidence shows that the Riverside Company publishes a general price list and that the other mills conform to it. Prices are delivered prices and are identical for all the mills. It is fairly deducible from the evidence that present prices will be reduced by the amount of the reduction of rates to the inner mills if the adjustment is approved.

<sup>14</sup> Mr. Burnett of the Monolith Company, when asked to assume the proposed adjustment became effective and that no change in published prices were made, testified, "During the period before they do (change) we are not hurt", and later testified as follows:

"Q. Your real objection is that you think this adjustment if put into effect will lower the prices to the consumers? A. Yes.

"Q. That is your real objection? A. That is it."

growth of years now gone rather than being anything representative of present day actualities.<sup>15</sup>

If the protestants, as they stoutly claim, are able to transport cement by truck at a cost of not to exceed one cent per 100 pounds over the truck costs of the inner mills and since they are not now patronizing the rails to any appreciable extent, it is hard to see how they will be injured or prejudiced by the adjustment except as the reduction in rail rates may be reflected in the price of cement to the public. The Commission would not, of course, be justified in denying the carriers the right to reduce their rates because this would reduce the price of cement to the public. If, on the other hand, the trucking differential between the two groups of mills is greater than the one-cent rail differential, then there is no legal objection to the carriers making their rates conform to conditions as they exist; and the evidence does not lead to the conviction that the differential proposed fails to reflect actual conditions.

#### Profitlessness of Existing Controversy

It is not easy to see where any of the participants, the inner mills, the outer mills, the railroads, are gaining by this triangular struggle which has been going on for years and which at regular intervals is forced before this Commission in one form or another. Each group of mills expresses dissatisfaction with the situation which has developed. The railroads have lost the cement business. The latter, in their desperation, make the astonishing offer to allow the mills in effect to write their own ticket, but unfortunately the mills

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<sup>15</sup> Mr. Partridge, sales manager of the Southwestern Company, considers any saving by the use of trucks as "an additional earning", apparently as distinguishable from an increase in mill net through the use of trucks.

cannot agree between themselves upon an adjustment. The present effort of the railroads to solve the predicament in which they find themselves, while not unlawful and hence within the sphere of management, seems to hold little prospect of attaining the desired end, namely, a return of this traffic, from both groups of mills, to the rails. If the struggle goes on, it seems almost inevitable that the railroads will be forced to choose between the inner or the outer mills and propose rates for the one group which will regain the traffic, while the movement of the other will remain definitely with the trucks. If the expressions here made by responsible executives mean anything such an outcome would not be a pleasing one to any of the participants in the controversy.

Under the conditions disclosed by the record there is nothing the Commission may do except to allow the carriers to try out their proposed adjustment.

I recommend the following form of order:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that the Commission's order of May 15, 1934, and as extended, suspending until September 30, 1934, reduced rates for the transportation of cement from Colton, Crestmore, Victorville, Monolith and Oro Grande to various points in Southern California, be and it is hereby vacated and set aside and this proceeding discontinued as of September 15, 1934.

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 11<sup>th</sup> day of  
September, 1934.

Leon C. Kelly

W. J. Carr

W. B. Harris

Walter J. ...

Commissioners.