

Decision No. 27980.

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 COMPANY,  
a corporation; YOSEMITE VALLEY RAILROAD COM-  
PANY, a corporation; AMADOR CENTRAL RAILROAD  
COMPANY, a corporation; THE ARCATA & MAD  
RIVER RAILROAD COMPANY, a corporation,  
CALIFORNIA WESTERN RAILROAD & NAVIGATION  
COMPANY, a corporation; CENTRAL CALIFORNIA  
TRACTION COMPANY, a corporation; GREAT  
NORTHERN RAILWAY COMPANY, a corporation;  
HOBART SOUTHERN RAILROAD COMPANY, a corpora-  
tion; McLOUD RIVER RAILROAD COMPANY, a  
corporation; MODESTO & EMPIRE TRACTION COMPANY,  
a corporation; NEVADA COUNTY NARROW GAUGE  
RAILROAD COMPANY, a corporation; NORTHWESTERN  
PACIFIC RAILROAD COMPANY, a corporation;  
PENINSULAR RAILWAY COMPANY, a corporation;  
PETALUMA & SANTA ROSA RAILROAD COMPANY, a  
corporation; SACRAMENTO NORTHERN RAILWAY  
COMPANY, a corporation; SANTA MARIA VALLEY  
RAILROAD COMPANY, a corporation; SIERRA  
RAILWAY COMPANY OF CALIFORNIA, a corporation;  
STOCKTON TERMINAL & EASTERN RAILROAD COMPANY,  
a corporation; TIDEWATER SOUTHERN RAILWAY COM-  
PANY, a corporation; WESTERN PACIFIC RAILROAD  
COMPANY, a corporation; and YREKA RAILROAD  
COMPANY, a corporation,

Defendants.

MONOLITE PORTLAND CEMENT COMPANY,  
a corporation,  
Complainant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation,  
et al.,  
Defendants.

ORIGINAL

Case No. 3934.

Case No. 3987.

W. D. Burnett, for Monolith Portland Cement Company.  
 William Guthrie, for California Portland Cement Company.  
 O'Melveny, Tuller & Myers, by William W. Clary, for Riverside Cement Company.  
 James E. Lyons and A. Burton Mason, for Southern Pacific Company, Visalia Electric Railroad Company, Yosemite Valley Railroad Company, McCloud River Railroad Company, Northwestern Pacific Railroad Company, Central California Traction Company, Peninsular Railway Company, Petaluma & Santa Rosa Railroad Company, Santa Maria Valley Railroad Company and Yreka Railroad Company.  
 G. E. Duffy and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Company and the Modesto & Empire Traction Company.  
 L. N. Bradshaw, for The Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway Company, Stockton Terminal & Eastern Railroad Company and Great Northern Railway Company.  
 Sanborn & Roehl, for California Western Railroad and Navigation Company.  
 E. O. Erickson, for Amador Central Railroad Company.  
 R. B. Mitchell, for Henry Cowell Lime and Cement Company.  
 N. E. Keller, for Pacific Portland Cement Company.  
 Thomas A. Stiles, for Calaveras Cement Company.  
 W. G. Higgins, for Santa Cruz Portland Cement Company.  
 A. H. Van Slyke, for Yosemite Portland Cement Company.

CARR, Commissioner:

### O P I N I O N

Complainant alleges that the rates maintained by defendants for the transportation of cement from Monolith to destinations on defendants' lines north and northwest of Santa Barbara, San Francisco, Manteca and Sacramento to the Oregon line, and east and northeast of Sacramento to the Nevada line<sup>1</sup> are unjust and unreasonable in violation of Section 13 of the Public Utilities Act and unduly preferential, prejudicial and discriminatory in violation of Section 19 of the Act and of Article XII Section 21 of the State Constitution.

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<sup>1</sup> During the hearing complainant stated that as to San Joaquin Valley it was not its intention to attack any rate south of Manteca which was interpreted as eliminating the Modesto & Empire Traction Co. and Tidewater Southern Railway from the list of defendant carriers herein.

Just, reasonable and non-discriminatory rates are sought.

The California Portland Cement Company and the Riverside Cement Company, herein sometimes called interveners, in Case 3987 intervened in behalf of complainant, bringing into issue the rates from their mills at Colton and Crestmore respectively, to points herein. The Santa Cruz, Pacific, Calaveras, Yosemite companies and the Henry Cowell Lime and Cement Company appeared in support of the existing adjustment applying from their respective mills in Northern California to the destination territory here involved.

Public hearings were had on April 16 and 17, 1935, and the cases were submitted.

Complainant's plant is located at Monolith on the main line of Southern Pacific Company 52 miles south of Bakersfield,<sup>2</sup> The Atchison, Topeka and Santa Fe Railway Company operating over the Southern Pacific tracks.

Complainant and the interveners seek through routes and joint rates from Monolith, Crestmore and Colton to rail destinations hereinbefore described, in certain of which territory there are no through or joint rates from Monolith, Colton or Crestmore, the rates

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<sup>2</sup> The plants of the interveners are: At Cowell (Henry Cowell Lime and Cement Company), on the Bay Point and Clayton Railroad 9 miles south of Port 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; at Colton (California Portland Cement Company), on the Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, 57 miles east of Los Angeles or 174 miles south of Monolith, and at Crestmore (Riverside Cement Company), on the Los Angeles & Salt Lake Railroad Company 55 miles east of Los Angeles or approximately 172 miles south of Monolith.

being on a combination basis. They point to the existence of through routes and joint rates from the Northern California mills to destinations in Southern California and request a similar adjustment from their mills to destinations in Northern California.

Defendants concede that complainant is entitled to through routes and joint rates.

Three proposed bases of adjustment were offered, as follows:

1. Complainant's "maximum proposed rates from Monolith" to all destinations involved, variously based on distances, arbitraries, and differentials, whichever best served its purpose.

2. Complainant's proposal of a constant scale of rates based on 7.5 mills per ton mile, which it claims will return the greater portion of the cement tonnage to the railroads.

3. Defendants' proposed through routes and joint rates constructed in conformity with existing differentials of the northern mills to the destination territories here involved.

Proposal 1 discloses certain technical defects which render its adoption impractical. The history of the cement rate adjustments in this State shows the difficulties in attempting to apply a uniform distance scale of rates. "Mileage is but one of the factors entering into a composite and intricate picture of railroad rates and is not to be given the predominant weight here contended for." California Portland Cement Company v. Southern Pacific Company, 35 C.R.C. 904, 906. Among the criticisms of complainant's "maximum proposed rates from Monolith" is the fact that numerous violations of the 24th Section of the Public Utilities Act would be created. Moreover, disregarding as it does the relationships heretofore prescribed<sup>3</sup> between

<sup>3</sup> In Re Application of the Cowell Portland Cement Co. and Bay Point & Clayton Railroad Co., 1 C.R.C. 809, for the establishment of a through route and joint rates in connection with The Atchison, Topeka & Santa Fe Railway Company; Pacific Portland Cement Co. vs. Southern Pacific Co. et al., 23 C.R.C. 568.

the northern mills and the destination territories here considered, it would be necessary to reduce the rates from all of the latter mills in order to reflect the present differences in rates between Monolith on the one hand and other California mills on the other hand.

Proposal 2 is of course to be considered only as a suggestion to the management of the carriers and is of doubtful materiality in the instant proceeding.

Proposal 3 is an offer of through rates to points some of which now have only combinations of locals. The proposed joint rates constitute substantial concessions by the defendants, the rates being materially lower than the present existing rates. The proposed rates are constructed with due regard for existing differentials prescribed by previous orders of this Commission in the fixing of rates from the northern mills, and avoid numerous 24th Section violations and otherwise objectionable disruptions of the northern mills rate structure. Under proper authorities<sup>4</sup> defendants are proposing to publish a run-out of rates from Monolith to points served by the Northwestern Pacific Railroad Company and Sierra Railway Company of California. Certain of these rates are even lower than those proposed by complainant. Defendants and

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3 (Cont'd.)

30 C.R.C. 352, Decision No. 18783 of September 13, 1927, Case 2389, In the Matter of the Suspension by the Commission of reduced rates on cement, published in Pacific Freight Tariff Bureau, Southern Pacific and Atchison, Topeka & Santa Fe tariffs.

33 C.R.C. 300, Decision No. 21297 of June 28, 1929, in Cases 2398 and 2396, Pacific Portland Cement Company, Henry Cowell Lime and Cement Company vs. Southern Pacific Company et al.

38 C.R.C. 739, Decision No. 25968 of May 29, 1933, in Monolith Portland Cement Company vs. Southern Pacific Company et al.

<sup>4</sup> Gomph's Applications Nos. 8411, 1464 and 8395, being C.R.C. Nos. 15-19898, 24(a)-3839 and 63-11053 respectively of April 18, 1935; and Southern Pacific Company's Application No. 127, C.R.C. No. 15-19911 of April 18, 1935.

intervener northern mills concur in this proposed adjustment, which will not disrupt the existing structure from the northern mills to the same destination territories, and meets complainant's demand that Monolith have differentials over branch line points not greater than the differentials from the northern mills. The testimony further shows the situation to be more a matter of relationship of rates between the various cement shipping points to a common destination than the precise volume of such rates. Owing to the insufficiency of the record in the instant case the Commission is not warranted in prescribing and cannot now undertake to prescribe a completely revised relationship of rates for the transportation of cement from shipping points of complainant and interveners on the one hand and competing points of origin in California (including all northern mills) on the other hand, to the destination territories embraced herein, particularly when the adjustment from the northern group, for the moment at least, appears to be working satisfactorily.

As to Colton and Crestmore, it is to be noted that no similar run-out of rates has been provided in defendants' foregoing proposal No. 3, although the record supports the conclusion that should through routes and joint rates be published from Monolith to Northern California territory a similar adjustment should likewise be provided from these southern mills.

The record is insufficient to enable the Commission to determine the reasonableness of the proposed rates or the extent to which they might prove preferential, prejudicial or discriminatory between the various mills. However, any inadequacy of the record should not preclude complainant from sharing in the advantages of defendants' voluntary proposal of through routes and joint rates which appear logical in construction.

Under the circumstances the defendants should immediately

publish their voluntary adjustment herein proposed from Monolith to the destination territory involved, together with properly related rates from interveners' Colton and Crestmore mills to the same destinations, and upon receipt of the proper tariff filings by said defendants the remaining matters herein should be dismissed but without prejudice to a further review of such rates upon appropriate proceedings in the future.

I recommend the following form of order:

O R D E R

These matters having been fully heard and submitted,  
IT IS HEREBY ORDERED that upon the publication and filing of the proper tariffs, in accordance with the foregoing findings and opinion, by the said defendant carriers, these proceedings shall be dismissed without prejudice.

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 18<sup>th</sup> day of  
May, 1935.

Leon Aubrey  
M. A. Lee  
W. B. Lewis  
W. H. Mason  
Frank R. Pugh  
Commissioners