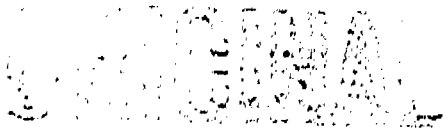


Decision No. 28334.



BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension by the Commission on its own Motion of various rates of the LOS ANGELES & SALT LAKE RAILROAD COMPANY, PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, PACIFIC FREIGHT TARIFF BUREAU, F. W. GOMPH, AGENT, for the transportation of cement and cement clinkers, carloads, from Colton, Crestmore, Victorville, Oro Grande, Monolith, Los Angeles and Wingfoot to points in Southern California.)

Case No. 3981.

In the Matter of the Investigation by the Commission on its own motion into the rates, rules, regulations and practices of every highway carrier doing business within the State of California, in so far as said rates, rules, regulations and practices relate to the transportation of cement and cement clinkers from Colton, Crestmore, Victorville, Oro Grande, Monolith, Los Angeles and Wingfoot, California, to points in Southern California.)

Case No. 4071.

- G. E. Duffy and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Company.
- J. E. Lyons, for Southern Pacific Company.
- E. E. Bennett and E. C. Renwick, for Los Angeles & Salt Lake Railroad Company.
- W. D. Burnett, for Monolith Portland Cement Company.
- Chas. R. Boyer and H. E. Sanborn, for Southwestern Portland Cement Company.
- Frank Kerr and C. W. Cornell, for Pacific Electric Railway Company.
- William Guthrie and J. L. Dertt, for California Portland Cement Company.
- T. A. L. Loretz, for Blue Diamond Corporation, Ltd.
- N. E. Keller, for Pacific Portland Cement Company.
- W. G. Higgins, for Santa Cruz Portland Cement Company.
- O'Melveny, Tuller & Myers, by W. W. Clary, for Riverside Cement Company.
- J. B. Whittingham, for Victorville-Berstow Truck Line and B. & L. Truck Company.

A. Myers, for Motor Truck Association of Southern California.
Don Field, for Field Transportation Company.
Frank Hewson, for Belyea Truck Company.
Thomas A. Stiles, for Calaveras Cement Company.
Charles A. Bland, for Long Beach Harbor District.
L. M. Phillips, Attorney for Crozen Trucking Company, F. J.
Moran, Joseph H. Hansen, Don Petriti, F. J. Fullam, J.
Hominghausen, O. W. Wells, Van Velsor Trucking System, M.
Vandiest, Citizens Trucking Company, Dan Lomis, E. B.
Overholser, L. D. Barnes, Van Velsor & Lomis.

CARR, Commissioner;

O P I N I O N

On February 7, 1935, the various rail carriers filed with the Commission, effective March 16, 1935, reduced rates on cement and clinker, carload lots, from Colton, Crestmore, Victorville, Monolith, Oro Grande, Los Angeles and Wingfoot to various points in Southern California.¹ By this filing rates from the mills at Colton and Crestmore, herein sometimes termed the inner mills, to Los Angeles were reduced from 5 cents per 100 pounds to 3½ cents, and from Monolith, Victorville and Oro Grande, herein sometimes termed the outer mills, from 7 cents to 5½ cents.² Rates for the movement of clinker were placed on a parity with the cement movements. The filed schedules contained rates to other points in Southern California generally based on the Los An-

¹ At Colton and Crestmore, respectively, are located cement mills of the California Portland Cement Co. and the Riverside Cement Co. At Victorville, Monolith and Oro Grande, respectively, are located the cement mills of the Southwestern Portland Cement Co., the Monolith Portland Cement Co. and the Riverside Cement Co. This latter mill is not now in operation. There is at present no mill operating at Wingfoot. At Los Angeles is located the plant of the Blue Diamond Corporation, Ltd. The railroad distances from these various mills to Los Angeles are as follows: Colton, 59 miles; Crestmore, 58 miles; Victorville, 107 miles; Monolith, 115 miles; and Oro Grande, 112 miles. The corresponding highway distances are: Colton, 56 miles; Crestmore, 53 miles; Victorville, 98 miles; Monolith, 119 miles; Oro Grande, 104 miles.

² Except where otherwise noted in the decision, rates are stated in cents per 100 pounds.

geles scale.³ Reductions were flagged as being made for the purpose of meeting competitive conditions.

Protests against the proposed reductions in rates having been received, the Commission on March 4, 1935, ordered their suspension. Hearings were had in the suspension case on August 6, 7 and 8 and September 10 and 11, 1935.

The legislature of 1935 enacted two laws which had a bearing upon transportation charges for the cement movement in the Southern California territory. By Chapter 223 the Commission was given jurisdiction to establish minimum rates for private highway carriers. By Section 10 of this act it was provided that:

"In establishing * * * such rates the commission shall take into account and give due and reasonable consideration to the cost of all of the transportation services performed, including length of haul, any additional transportation service performed, or to be performed, to, from, or beyond the regularly established termini of common carriers or of any accessorial service and the value of the commodity transported and the value of the facility reasonably necessary to perform such transportation service.

"In event the commission establishes minimum rates for transportation services by highway carriers, such rates shall not exceed the current rates of common carriers for the transportation of the same kind of property between the same points."

By Chapter 700 two new sections were added to the Public Utilities Act, numbered 13 $\frac{1}{2}$ and 32 $\frac{1}{2}$, as follows:

"Sec. 13 $\frac{1}{2}$. Nothing herein contained shall be construed to prohibit any common carrier from establishing and charging a lower than a maximum reasonable rate for the transportation of property when the needs of commerce or public interest require. However, no common carrier subject to the jurisdiction

³ The proposed rates are contained in the following tariffs: Los Angeles & Salt Lake Railroad Company's Tariff No. 7020, C.R.C. No. 327; Pacific Electric Railway Company's Tariff No. 120-C, C.R.C. No. 289; Southern Pacific Company's Tariff No. 584-D, C.R.C. No. 2861 and Tariff No. 3147, C.R.C. No. 3511; The Atchison, Topeka and Santa Fe Railway Company's Tariff No. 979E-L, C.R.C. No. 601; Pacific Freight Tariff Bureau Tariff No. 82-O, C.R.C. No. 564 of F. W. Gomph, Agent.

of the California Railroad Commission may establish a rate less than a maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which shall be less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as may be required by the commission and a finding by it that said rate is justified by transportation conditions; but in determining the extent of said competition the commission shall make due and reasonable allowance for added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency of transportation."

"Sec. 32½. Whenever the commission, after a hearing had upon its own motion or complaint, shall find that any rate or toll for the transportation of property is lower than a reasonable or sufficient rate and that said rate is not justified by actual competitive transportation rates of competing carriers, or the cost of other means of transportation, the commission shall prescribe such rates as will provide an equality of transportation rates for the transportation of property between all such competing agencies of transportation. When in the judgment of the Railroad Commission a differential is necessary to preserve equality of competitive transportation conditions a reasonable differential between rates of common carriers by rail and water for the transportation of property may be maintained by said carriers and the commission may by order require the establishment of such rates."

In view of this new legislation the Commission, on September 16, 1935, being the first day on which the new legislation was effective, ordered an investigation of the rates of highway carriers for the transportation of cement and clinker in the territory affected by the suspended rates and set the case for hearing on October 1, 1935. On that date this case and the suspension case were ordered consolidated and the record previously developed in the suspension case, by agreement and order was imported into the record of the consolidated cases. Hearings on the consolidated cases were had on October 1, 3, 4, 8, 9 and 10, on which latter date the matter was submitted on concurrent briefs due October 24.

An outline of the present situation respecting the movement of cement in Southern California is incomplete without at least a

sketchy background of the long continued struggle over the volume, but mostly over the differential, in rates as between the inner and outer mills into the great Los Angeles consuming center - a struggle marked by the adroit and sometimes ruthless use, now by one mill and now by another, of various means of transportation in order to advance or to enforce its particular policy or contention. The usual and customary factors influencing the allocation of traffic have been largely overshadowed by this bitter contest between the mills. In its earlier stages the railroads were the victims and the highway carriers the beneficiaries. With the advent of plant facility trucks at one mill and the threat of a spread of this form of transportation to the other mills, the private truck carriers find themselves in much the same position as the railroads, each seeking a rate adjustment which may yield to them some cement business at a compensation slightly above cost as against the competition of proprietary trucks, as to which, of course, there is no public control or regulation.

The early history of cement rates in Southern California is given in some detail in the opinion of the Commission in Case 3836, Decision 27350, dated September 11, 1934, in what is generally designated the 1934 Southern California Cement Rate Case. Suffice it to say that after various slight fluctuations in the differential as between the inner and the outer mills and a steady decline in volume, the rates apparently came to rest about 1929 at $7\frac{1}{2}$ cents per hundred pounds from the inner mills into Los Angeles and $8\frac{1}{2}$ cents from the outer mills. Up to this time almost the entire cement movement was by rail.

The inner mills, however, had gradually been developing the idea that because of their proximity to Los Angeles, which constituted the major market for cement, they should enjoy a somewhat

greater rate differential as against the outer mills, in order that what they termed the geographical advantage of their location might properly be evaluated and recognized. Hence in 1929 the inner mills filed a complaint with the Commission directed at the then existing differential. Other issues were involved besides that of the differential, but in the main the case centered around that issue. The inner mills contended that the differential should be at least 3 cents, while the outer mills urged that they should be blanketed with the inner mills and should receive the same rate as did the latter. This case was heard originally by Examiner Geary and the Commission declined to change the existing differential, concluding that the complainants had not met the burden of proof which rested upon them to establish its unlawful character. (California Portland Cement Co. et al. vs. Southern Pacific Co. et al., 34 C.R.C. 459.) Vigorous petitions for a rehearing in this decision having been made, the petitions were granted and extensive hearings on rehearing were had before Commissioners Carr and Harris. Here the influence of truck transportation first appeared as a serious factor. The Commission however adhered to its first conclusion. (Id. 35 C.R.C. 904.) This decision was made on March 9, 1931. From about this time truck transportation of cement acquired increasing importance. The inner mills were thoroughly dissatisfied with the decision of the Commission and their first rather vague and tenuous ideas upon the advantage of geographical location rapidly became crystalized into fixed plant policies. The advent and development of truck transportation furnished a ready weapon with which to enforce their positions. This weapon they used astutely and effectively. Trucking rates from the inner mills into Los Angeles were somewhat lower than the 7½ cents per hundred pounds rail rate, and the inner mills deliberately diverted sufficient of their

cement traffic from the rails to the trucks so that their combined transportation charges, rail and truck, represented a differential in cost of 2 cents per hundred pounds, or slightly more under the rail transportation costs of the outer mills. In addition to this, the inner mills apparently worked with great persistence and astuteness upon the railroads to alter the contested differential from the then existing 1 cent to 2 cents, or more. Finally the railroads yielded. At first they established a higher differential as between the mills to points east and south. In general, the Commission declined to interfere with this effort of the railroads to regain or retain cement tonnage from the inner mills. (Southwestern Portland Cement Co. vs. A.T. & S.F. Ry. Co., 38 C.R.C. 473, decided on February 20, 1933.)

Following this decision, the outer mills, alarmed at the possibility of the long standing 1 cent differential being increased, turned rapidly to the use of trucks for the transportation of their cement, until, as to the Los Angeles business of the Monolith Company, some 90 per cent. was turned over to the trucks, the same being largely true of the plant of the Southwestern Portland Cement Company at Victorville.

In 1934 the railroads, seeing their cement business in Southern California rapidly vanishing and having already elected to seek the business of the inner mills, proposed rates of 5 cents per hundred pounds from the inner mills to Los Angeles and 7 cents from the outer mills, thus finally abandoning the old 1 cent differential into Los Angeles. Over this proposal extensive hearings were had, in which the several mills, with an almost brutal frankness, outlined their respective positions. These positions are referred to in some detail in the decision in the 1934 Southern California

cement rate case, supra. It is enough to summarize this position from the opinion there as follows:

"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. 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."

The Commission permitted the railroads to try out their plan for regaining traffic. The result of the new rate adjustment was disappointing to the railroads. The little business still remaining to them from the outer mills continued to decline. Their traffic from the inner mills increased for a few months, but quickly declined into insignificance.⁴

The unfortunate situation of the railroads is graphically displayed in a table showing the extent of the railroad movement from the various southern mills, contained in the 1934 Southern California cement rate case decision. The record here indicates that the railroad movement has declined still further.

The proposal here made by the railroads represents a desperate effort to regain their lost cement traffic. The rates proposed are admittedly greatly depressed rates. However, elaborate studies were presented to indicate they would yield more than out-of-pocket cost. The showing thus made by the railroads was not contested. The inner mills, it appears from the record, have agreed to return and

⁴ For the first part of 1935 the rail movement from the various plants was as follows: Colton 46%, Crestmore 31%, Victorville 7.8%. The Colton percentage since the first of 1935 has declined rapidly. In May it was 16-3/4%. The same has been true of the Crestmore plant. In May the rail movement was 8% and in June 13%.

give to the rails from 90 to 95% of their traffic if the suspended rates are allowed to go into effect. Apparently these mills believe that the outer mills cannot move cement either by plant facility trucks or by private truck carriers into the Los Angeles area at an over-all transportation cost less than 2 cents per hundred pounds in excess of the costs of the inner mills under the proposed rail rates.

To complete the picture with which the Commission must deal, a few further features as portrayed by the testimony must be added.

The Blue Diamond Company hauls clinker from the various mills to its plant in Los Angeles, where it manufactures cement. It does this largely through its own proprietary trucks. It seeks a rail rate somewhat less than the corresponding rate on cement, contending that clinker can be transported at a lesser cost than cement, and holds forth some assurance that if its position is recognized it will patronize the rails.⁵

At the present time cement moves from the various mills to warehouses and also to particular jobs in quantities of not less than 75 barrels. Warehouses are not always located upon railroad spur tracks, but the instances in which they are not are negligible. Where not, deliveries to them may, for convenience of treatment, be considered as job deliveries. The relative movement from the various mills to warehouse and to job are as follows:

| | <u>Warehouse</u> <u>Per Cent.</u> | <u>Job</u> <u>Per Cent.</u> |
|-------------|--------------------------------------|--------------------------------|
| Crestmore | 50 | 50 |
| Colton | 70 | 30 |
| Monolith | 54 | 46 |
| Victorville | 64 | 36 |

5. N. J. Redmond, Secretary-Treasurer, Blue Diamond Corporation, testified in part:

"Q. (Mr. Lyons) Are you prepared to state now what rate would have to be published on clinker * * * to attract your business back to the rails * *?"

"A. I am not really prepared to make a definite statement of what we would do * * * but I would say if a reasonable differential were established we would undoubtedly give the business to the rails."
(Transcript, p. 323)

The railroad minimum has long been 60,000 pounds. Competition between the mills and pressure by the trade for smaller direct mill deliveries have broken the former mill delivery minimum from 150 barrels to 75 barrels. Private carrier trucks and plant facility trucks move cement in quantities ranging from 300 to 420 sacks.⁶

Delivery of cement from a warehouse to the job costs from $\frac{1}{2}$ cent to 3 cents per sack, depending upon the distance. It was quite generally conceded that the average cost of this service was 2 cents a sack. It is the general custom for private truck carriers to unload the cement at destination, whether warehouse or job. The railroads do not unload. The prevailing truck rates from the various mills are at present the railroad rates. The Colton mill, however, is moving some cement into the Los Angeles area at a rate of 1 cent per hundred pounds under the prevailing rail rate, or at 4 cents per hundred pounds. The Monolith Company also has two private carriers, in part financed by the mill, who are moving cement into the Los Angeles area at 2 cents under the rail rate, or at 5 cents. The evidence tends at least to show that the low rates for these particular movements are partially compensated for by movements to other localities at more favorable rates of compensation.

The Southwestern Portland Cement Company has recently installed plant facility trucks which now move approximately 32 per cent. of its cement, practically all of the balance moving by private truck carriers at present rail rates. Additional units have very recently been acquired and the percentage moving by plant facility trucks will soon be at least 40 per cent. The Victorville

⁶ A sack weighs 95 pounds. There are four sacks of cement in a barrel.

plant insists, and presented considerable testimony in support of its contention, that it can thus move cement into the Los Angeles area at a cost to it of not over 5 cents per hundred pounds. In addition it disclosed rather complete plans for combining a movement of cement from the mill to the Los Angeles area with a return movement of plant fuel from Los Angeles to the mill, which it was claimed would effect a considerable saving in over-all transportation costs. The mill claimed that the use thus far of plant facility trucks for the movement of cement had been agreeably received by the trade.

The Crestmore mill has made quite detailed estimates of the cost to it of plant facility trucking, and, by its responsible officers, indicated very clearly that it would move over to such facilities if not satisfied with rate volumes and relationships for movement by rail or by private carrier truck. The Colton mill assumed a similar position. Indeed, the history of the long standing controversy over cement rates indicates that these two inner mills stay together in any policy affecting transportation costs.

Toward the close of the hearing the railroads, frankly recognizing that the costs of transportation by truck constituted a decisive factor in fixing the level of rail rates, tendered certain revised rates for points north and west of Los Angeles where highway mileages departed from railroad distances.⁷

Numerous estimates of a highly conflicting nature were presented respecting the cost of moving cement by private carrier and proprietary trucks. Engineers on the Commission's staff made rather complete and detailed studies of trucking costs. It is utterly impos-

⁷ Saugus, for instance, is almost equi-distant by highway from each of the four mills. Previously, rates north and east of Los Angeles had been built up largely from the Los Angeles rate and having in mind railroad mileage only.

sible to reconcile all of these estimates.⁸ The following conclusions however seem reasonably clear:

1. The differential in trucking costs, whether by private carrier or by plant facility truck, as between the inner and the outer mills into Los Angeles, is not less than 2 cents per 100 pounds. There is evidence which tends to show a somewhat larger spread as between the two groups of mills and also a small differential as between movements from Monolith and Victorville.

2. Even under the most favorable conditions cement may not be moved by plant facility trucks from the inner mills to Los Angeles at a cost of less than 4 cents per 100 pounds but may be moved at approximately that cost. From the outer mills it may not be moved at a cost of less than 6 cents per 100 pounds. It is possible but doubtful if it can be moved at that cost, particularly from Monolith.

3. Contract carriers cannot operate at any profit at 4 cents per 100 pounds from the inner mills or at 6 cents from the outer mills.

4. One half cent per 100 pounds is a reasonable charge for the accessorial service of unloading usually rendered by the private carrier but not by the railroad.⁹

5. The cost of transporting clinker by truck,

⁸ Powerful interests, not only those concerned immediately with charges for the movement of cement but others concerned with any decision here as a precedent, entered the field of estimating. Thus interests concerned with the transportation of gasoline in tank trucks were vigilant and active in seeking to guard against an acceptance by the Commission of trucking costs which might prove embarrassing to them in a frankly admitted purpose to seek under the new legislation a higher level of rates for the movement of gasoline. Hence in appraising the weight proper to be accorded the various estimates, it has been necessary to keep ever in mind the interests in whose behalf they were advanced.

⁹ On brief L. M. Phillips, counsel for several highway contract carriers, uses a figure of $\frac{1}{2}$ cent per sack as the cost of performing this service, and the rail lines argue that the cost is .54 cents per 100 pounds.

whether private carrier or proprietary, is slightly less than the corresponding cost for transporting cement.

This is the picture from which the Commission must spell out a sane answer to the railroads' attempt to place in effect the greatly reduced and depressed rail rates under suspension, and in exercising its newly conferred authority to establish minimum rates for private carrier trucks. Broadly speaking, the railroads and the private carrier trucks find themselves in the same category, each being threatened by the competition of proprietary trucks. As expressed by counsel for a large group of highway carriers:

"If the rates established are too high, then the mills, as a matter of good business, will be driven to the necessity of providing themselves with plant facility (trucks) for the transportation of their cement; on the other hand, if the rates are too low, then both railroads and trucks will be forced to operate at a loss in handling the business."

After a level of rates adequate to repel the common competitor has been hit upon, the railroads and highway carriers will find themselves competing with each other for the business. Hence, the Commission is confronted with the task first of fixing rate levels which will discourage the spread of proprietary trucking and next that of prescribing rail and highway carrier rates just and lawful as to each.

RAIL RATES

That the railroads may and have the clear right to lower their rates to meet competitive conditions may not be questioned. Lang vs. Railroad Commission, 89 Cal. Ad. Dec. 283; Mississippi Valley Barge Line Co. vs. U.S., 292 U.S. 282; Texas & Pac. Ry. Co. vs. U.S., 289 U.S. 627; Interstate Com. Com. vs. Chicago Great Western Railway Company, 209 U.S. 108. The right to meet a competitive rate is recognized in the new Section 13 $\frac{1}{2}$ of the Public Utilities

Act. (Chapter 700, Statutes of 1935). It is further recognized in the amended Unfair Practices Act passed by the last legislature (Chapter 477, Statutes 1935), where the right to meet the rate or charge of a competitor is specifically accorded. In meeting a competitive condition they may not of course burden other traffic. No claim is here made that the proposed rates do this. Nor may reductions to meet competition accomplish a discrimination. The existence of competition may, however, make rates otherwise unlawfully discriminatory not subject to such characterization. (See Modesto Irrigation District vs. Pacific Gas & Electric Co., 36 C.R.C. 766 and cases cited.) They may not for the purpose of destroying competition reduce rates to meet a fancied competition which might never occur. They are not, however, forced to wait until competition is actually in operation and their traffic lost to them, perhaps permanently.

Here the real competitive factor is not the private carrier truck but the plant facility truck. One mill has already carried out its threat to establish such a facility. The others threaten to do so. The history of cement rate controversies before this Commission negatives the idea that such threats by the mills are mere idle gestures. Rather must they be considered so real and so imminent that the railroads are fully justified in acting before such competition becomes a reality and the cement business is lost to them irretrievably.

So far as the cement movement from the inner mills to rail head destinations in Los Angeles is concerned, the evidence does not justify the railroads in going as far as they have. A rate of 4 cents per 100 pounds is a sufficient reduction to meet proprietary truck competition. As to the outer mills 6 cents per 100 pounds is the limit to which they may properly go. It is none too clear that they need go that low, particularly as to Monolith. Respecting the rates pro-

posed to points north and west of Los Angeles, they obviously must be revised. This the carriers recognize. With rates constructed on the basis thus indicated, so far as the record shows, the railroads will have fairly met competition existing and reasonably to be anticipated, for the movement from mill to warehouse located on the rails.

Consideration of the right of the railroads partially to meet the competition of highway carriers for business destined to the job in minimums of 75 barrels may best be considered in connection with highway carrier rates.

HIGHWAY CARRIER RATES.

While Chapter 223 empowers the Commission to prescribe "maximum or minimum or maximum and minimum rates" for highway carriers, prudence dictates that the Commission here limit the exercise of its authority to fixing minimum rates only. It will then be proceeding on safe legal ground.

In fixing such minimum rates there must be recognized the tendency for minimum rates to become going rates. Hence, if they are placed at too low a level the private carriers will, in practical effect, be forced to operate without a profit, or perhaps at a loss.

If there were no pressure of competition, the evidence would tend toward a minimum rate for the highway carriers (including the accessorial service of unloading and sometimes return of empty sacks) of 5 cents from the inner mills and not less than 7 cents from the outer. These are the presently prevailing rates. They are somewhat higher than the rates indicated as proper by the testimony of engineers on the Commission's staff. These estimates, however, were premised upon an assumption respecting continuity of movement which does not prevail in the case of contract hauling. Making reasonable allowance because of this, it is not unreasonable to conclude that the estimates of these engineers point to the pre-

vailing rates as the reasonable minimum rates.

As to the movement from mill to rail head, the statute commands that the minimum rate for the highway carrier shall not be higher than the rail rate. This applies only to the transportation service. The accessorial service of unloading performed by the highway carrier and not by the railroad clearly calls for an added charge. As to this portion of the business, then, competitive conditions necessitate a depressed minimum for the highway carrier.

The mill to the job movement presents a somewhat different picture. Depressed rates for the rail head movement undoubtedly will weaken the pressure of proprietary truck competition for the mill to job business. Some consideration and weight, then, must be given to "the cost of * * * any additional transportation service performed, or to be performed, to, from, or beyond the regularly established termini of common carriers." The position of the highway carriers, as expressed by their counsel, is as follows:

"It is our thought that in the fixing of both rail and truck rates 'the threat of plant facility operations' as expressed by Mr. Commissioner Carr above quoted, is the base rate upon which both rail and truck rates must be predicated; that the common carrier or rail rate must be fixed at a point which will not be inducive to the establishment of plant facility; and that thereafter the minimum contract carrier rate must be fixed at the rail rate, plus an additional charge for the additional transportation services performed by the truck carrier and for the accessorial services performed. The rate fixed for the truck carrier must be based on two elements: First, a minimum rate which cannot exceed the common carrier rate under the law, and; second, an additional charge, the amount of which is discretionary with the Commission, and which is composed of a charge for the 'additional transportation beyond the railway terminus and for the accessorial services.'"

The position thus assumed may well be accepted. Becoming more concrete, counsel for these carriers suggests:

"a charge of 1/2 cent per sack above the rate of the common carrier, as a special charge for unloading and delivery anywhere within a radius of 2 1/2 miles from the railroad point and with an additional charge of 1/2 cent per sack for each 5 miles thereafter."

This, it is urged, would justly compensate for the additional trans-

portation and for the accessorial service performed.

The general result thus sought may be attained in a simpler and more practical way by prescribing a 1/2 cent per hundred pounds minimum charge for unloading when and if performed (whether at warehouse or job) and a 1/2 cent per hundred pound minimum charge for transportation to the job within a radius of 2½ miles from the nearest rail facility and an additional charge of 1/2 cent per hundred pounds for each 5 miles thereafter. In addition to this there should of course be a charge for the return of empty sacks.

With highway carrier minimums constructed on this basis, these carriers will for the mill to job minimum be required to charge approximately the presently prevailing rates. For their mill to warehouse movement their minimums will be less. For either movement they are of course free to charge more if they can get it, for minimums only are being established.

The only remaining question has to do with the right of the railroads to compete with the highway carriers for the mill to job movement. To place the two means of transportation upon an absolute equality as to this movement would depress the rail rate to a point beyond all reason. Indeed, the carriers do not propose a rate low enough to place them on an equality with the truck carriers for the job deliveries. Have they a right to go part way in the quest for such equality? In principle it is impossible to answer this otherwise than in the affirmative.

To give recognition to this legal right does not necessarily mean that the carriers are entitled to put into effect in full their proposed rates. The right is sufficiently recognized if they be given the privilege, if they so elect, to file appropriate provisions for absorbing up to ½ cent per 100 pounds the cost of moving cement from mill to job through the warehouse in minimums of not less than 75 barrels.¹⁰

¹⁰ Such an absorption would not reduce the compensation to the mills below that specified in their proposals.

With such an absorption the highway carrier would still have in substance a rate advantage over the railroad.¹¹

A careful study of the record as developed justifies the conclusion that rate levels such as outlined should repel and forestall the spread of proprietary truck competition. As between rail and highway carrier, the pattern of rates indicated accomplishes as nearly as may be equality of treatment. It is utterly impossible to place rail and truck transportation upon an absolute equality. As to a portion of the business, namely, the mill to job movement, the trucks have an advantage over the railroads for which neither this nor any reasonable adjustment for the railroads will fully compensate. On the other hand, the rates from the mills to spur track facility being so greatly depressed because of competitive conditions, render such traffic relatively unattractive to the private truck carrier.

It must be borne in mind that any arrangement, however reasonable and just, is subject to the play of plant rivalry and that these various mills may, for purposes of plant policy, shift and direct traffic to carry out their particular policies. All that this Commission may do is to prescribe a scale of rates just and reasonable as between the agencies under its jurisdiction and not so high as to provoke a spread of proprietary truck competition. Should the rates approved and particularly the minimums for highway carriers fail to prevent the spread of proprietary truck competition, the Commission upon appropriate application will be disposed to permit even lower rates.

I recommend the following form of order:

¹¹ The cost of moving cement from the inner mills to the job in Los Angeles by highway carrier in minimums of not less than 75 barrels would be $4\frac{1}{2}$ cents per hundred pounds or 5 cents if the highway carrier unloads. The same movement via warehouse (the rail minimum is 60,000 pounds) would be 4 cents less $\frac{1}{2}$ cent absorption, plus, on the average, not less than 2 cents for transportation warehouse to job, or around $5\frac{1}{2}$ cents.

O R D E R

Public hearings having been had in the above entitled cases, the Railroad Commission of the State of California finds that -

1. The rates for transportation of cement proposed by the rail carriers and under suspension as modified by Exhibit 63 as to rates north and west of Los Angeles, all modified by adding $\frac{1}{2}$ cent to each rate, are justified by transportation conditions. A limited absorption as indicated in the opinion is also justified.

2. The rates for the transportation of clinker as proposed by the rail carriers and under suspension are justified by transportation conditions.

Based upon the foregoing findings and the findings in the opinion,

IT IS HEREBY ORDERED:

1. That respondents Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company be and they are hereby ordered and directed on or before thirty (30) days from the effective date of this order, on not less than ten (10) days' notice to the Commission and the public, to cancel the rates here under suspension for the transportation of cement from Colton, Crestmore, Victorville, Monolith, Los Angeles, Wingfoot and Oro Grande to the points involved in these proceedings, without prejudice to the publishing of rates consistent with finding No. 1 above.
2. That upon the cancellation of the suspended rates referred to in the next preceding paragraph, the Commission's Order of March 4, 1935, suspending the rates on cement and clinker here involved be and it is hereby vacated and set aside and Case 3981 discontinued.
3. That highway carriers operating between the points involved in these proceedings shall not charge or receive for the transportation of cement and/or clinker from Colton, Crestmore, Victorville, Los Angeles, Wingfoot, Monolith and/or Oro Grande to the points involved in these proceedings any lesser rate than those shown in Exhibit "A" attached hereto and hereby made a part hereof.
4. That for the accessorial services of unloading, highway carriers shall charge and collect $\frac{1}{2}$ cent per 100 pounds in addition to the transportation charge referred to in paragraph 3.
5. That for the accessorial service of returning empty sacks, highway carriers shall charge and collect rates

equivalent in cents per 100 pounds to the rates for the transportation of cement between the same points in the opposite direction, subject to a minimum charge of 50 cents per shipment.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission, in addition to mailing copies of this opinion and order to each appearance, mail a copy to highway carriers engaged in the transportation of cement, clinker and empty cement sacks returning over the public highways of this State, between the points involved in this proceeding.

The effective date of this order shall be twenty (20) days from the date hereof.

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 4th day of November, 1935.

Don Ahlberg
W. A. Cunn
M. B. Harris
Walter Hays
Grace K. Reilly
Commissioners.

EXHIBIT "A"
 MINIMUM RATES TO BE OBSERVED BY HIGHWAY CARRIERS ON AND AFTER THIRTY DAYS
 FROM THE EFFECTIVE DATE OF THE ORDER HEREIN.

Rates are in Cents per 100 Pounds.

Cement, Portland Building, in lots of not less than 28,500 pounds.

| | From Colton Crest- more | Oro Grande Victor- ville | Mono- lith | From | Colton Crest- more | Oro Grande Victor- ville | Mon- olith |
|---------------------|-------------------------------|-----------------------------------|---------------|--------------------------|--------------------------|-----------------------------------|---------------|
| To rail facility at | | | | To rail facil- ity at | | | |
| Los Angeles | 4 | 6 | 6 | Pasadena | 4 | 6 | 7 |
| Glendale | 4½ | 6 | 6 | Pomona | 3½ | 6 | 9½ |
| Burbank | 5 | 6 | 6 | Colton | 3½ | 5 | 11½ |
| San Fernando | 5½ | 6 | 6 | San Bernardino | 3½ | 5 | 11½ |
| Oxnard | 8½ | 9 | 8½ | Riverside | 3½ | 5 | 11½ |
| Ventura | 9 | 9 | 9 | Redlands | 3½ | 5½ | 12 |
| Santa Barbara | 11½ | 11½ | 11½ | Indio | 9½ | 11 | 19½ |
| Long Beach | 4½ | 6½ | 6½ | Niland | 15 | 17 | 24½ |
| Los Angeles Harbor | 4½ | 6½ | 6½ | Brawley | 15 | 17 | 24½ |
| Whittier | 4 | 6 | 7½ | El Centro | 15 | 17 | 24½ |
| Fullerton | 4 | 6 | 9 | Calexico | 15 | 17 | 24½ |
| Anaheim | 4½ | 6 | 9 | Colorado | 27 | 29½ | 30½ |
| Santa Ana | 4½ | 6½ | 9 | | | | |
| San Diego | 9½ | 11½ | 13½ | | | | |

Minimum rates for the transportation of cement by highway carriers from Colton, Crestmore, Monolith, Victorville, Oro Grande, Los Angeles and Wingfoot to rail facility at points in Southern California, Santa Barbara and Mojave and south, Daggett and west not named above shall be the common carrier rail rates on cement in carload lots from and to the same points.

Minimum rates for the transportation of cement by highway carriers from Colton, Crestmore, Monolith, Victorville, Oro Grande, Los Angeles and Wingfoot to other than rail facility shall be the rates prescribed for delivery at rail facility plus an additional charge of 1/2¢ per 100 pounds for the first 2½ miles of the distance from the nearest rail facility to point of delivery, and, 1/2¢ per 100 pounds for each five miles or fraction thereof thereafter.

Clinker, cement

| | From | Colton | Monolith Oro Grande Victorville |
|-------------------|------|--------|---------------------------------------|
| To Los Angeles | | 3½ | 5½ |