Decision No. 32280

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

California Portland Cement Company, a corporation, Complainant, vs. Southern Pacific Company, a corporation, and Pacific Electric Railway Company, a corporation, Defendants.	Case No. 4425.
Riverside Cement Company, a corporation, Complainant, vs. Southern Pacific Company, a corporation, and Pacific Electric Railway Company, a corporation, Defendants.	Case No. 4427.
Associated Contract Truckers, a corporation, Complainant, vs. Southern Pacific Company and Pacific Electric Railway Company, Defendants.	Case No. 4428.
In the Matter of the Investigation and suspension by the Commission on its own motion of reduced rates published by the Southern Pacific Company and Pacific Freight Tariff Bureau, J. P. Haynes, Agent, for the transportation of cement from Monolith to Los Angeles, Pasadena, Long Beach, Los Angeles Harbor, Santa Monica, San Fernando and other points.	Case No. 4430.

BY THE COMMISSION:

APPEARANCES

R. E. Wedekind and E. L. H. Bissinger, for Southern Pacific Company and Pacific Electric Railway Company.
William Guthrie, for California Portland Cement Company.
O'Melveny, Tuller & Myers, by L. M. Wright, for Riverside Cement Company.
C. R. Boyer, for Southwestern Portland Cement Company.
T. A. L. Loretz, for Blue Diamond Corporation, Ltd.

Raymond Tremaine and Franklin L. Knox, Jr., by Raymond Tremaine, for Associated Contract Truckers.
R. L. Vance and the law firm of Black, Hammack & McWilliams, by Alfred L. Black, Jr., and Joseph T. Enright of counsel appearing, for the Monolith Portland Cement Company.
W. G. Higgins, for Santa Cruz Portland Cement Company.

O P I N I O N

Cases Nos. 4425, 4427, and 4428 are complaint proceedings by which California Portland Cement Company, Riverside Cement Company and Associated Contract Truckers, respectively, allege that certain proposed reduced rates filed with the Commission by and in behalf of Southern Pacific Company and Pacific Electric Railway Company for the transportation of cement in carload lots from Monolith to Los Angeles, Long Beach, Los Angeles Harbor, Santa Monica, Pasadena, San Fernando, and other destinations in southern California, are unjust, unreasonable and discriminatory, in violation of Sections 13 and 19 of the Public Utilities Act. Complainants ask that the proposed rates be suspended and, after due hearing and investigation, ordered cancelled.[1] Case No. 4430 is an investigation proceeding by which the Commission suspended the proposed reduced

---

1 The complaint of California Portland Cement Company alleges also that the rates and charges published, exacted and collected, and being exacted and collected, by defendants for the transportation of cement in carloads from complainant's cement plant at Colton to a wide range of destinations were and are unjust and unreasonable in violation of Section 13 of the Public Utilities Act. Evidence was not received relative to, and this decision does not deal with, the lawfulness of rates from Colton to destinations other than those to which the suspended rates were published.

rates pending hearings to determine their lawfulness.[2]

The proceedings were consolidated for hearing and decision. Public hearings were had before Examiner Howard C. Freas at Los Angeles on June 28 and June 29, and July 12 and 13, 1939, and oral argument was had at Los Angeles on July 20, 1939, before Commissioner Craemer, Director of Transportation Warren K. Brown, and the Examiner. The matters are now ready for decision.

Rates for the transportation of cement between points in southern California have been the subject of extensive proceedings before this Commission in recent years, and proper evaluation of the issues and the evidence now before us requires that more than passing consideration be given to the history of these rates.

History of Cement Rates in Southern California:

There are six cement plants in southern California, situated at Colton, Crestmore, Oro Grande, Victorville, Monolith and Los Angeles.[3] The first mill established was at Colton. The scale of rates applicable from Colton was later extended

---

[2] The suspended rates were published in Supplement No. 31 to Pacific Freight Tariff Bureau Tariff No. 88-P, C.R.C. No. 606 (L. F. Potter series); Items Nos. 2660 to 2690, inclusive, of Pacific Freight Tariff Bureau Tariff No. 88-Q, C.R.C. No. 28 of J. P. Haynes, Agent; Seventeenth Revised Page 30, Twenty-third Revised Page 31, Sixteenth Revised Page 32, Fourteenth Revised Page 33 and Twenty-first Revised Page 40 of Southern Pacific Company's Freight Tariff No. 584-D, C.R.C. No. 2861 to become effective June 15, 1939; and Eighteenth Revised Page 30, Twenty-fourth Revised Page 31, Seventeenth Revised Page 32, Fifteenth Revised Page 33 and Twenty-second Revised Page 40 of said Southern Pacific Company's Freight Tariff No. 584-D, C.R.C. No. 2861, to become effective July 20, 1939.

[3] At Colton and Crestmore, respectively, are located the mills of California Portland Cement Co. and Riverside Cement Co., commonly known as the "inner mills." At Victorville, Monolith and Oro Grande are located the mills of Southwestern Portland Cement Co., Monolith Portland Cement Co. and Riverside Cement Co., known as the "outer mills." The latter mill has not been in operation for a number of years. 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 approximately as follows: Colton, 56 miles; Crestmore, 53 miles; Victorville, 98 miles; Monolith, 119 miles; Oro Grande, 104 miles. In addition to these mills there is located at Los Angeles the plant of Blue Diamond Corporation, Ltd., which manufactures cement from clinker supplied by these various mills.

to apply from Crestmore, which is located but a short distance therefrom. When the Oro Grande plant was established, it was accorded rates 1½ cents per 100 pounds higher than the Colton and Crestmore rates. 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 and Monolith. Thus from their inception the five mills fell into two rate groupings.[4]

By successive increases and reductions the 1½-cent differential in favor of the inner mills became, in 1922, one cent.[5] 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. The Los Angeles rates were held as maximum at intermediate points, and as factors in constructing rates to points beyond. The one-cent differential remained constant for a number of years, although the rates themselves were subject to various changes. Up to 1929, at which time the rates were 7½ cents from the inner mills to Los Angeles and 8½ cents from the outer mills, 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 recognition of the geographical advantage of their location. In 1929 they filed a complaint with the Commission

---

[4] See Decision No. 27350 of September 11, 1934, in Case No. 3836, unreported.

[5] All rates are stated herein in cents per 100 pounds. Rail rates are subject to a minimum weight of 60,000 pounds.

in which they contended that the differential should be at least 3 cents. The outer mills on the contrary urged that they should receive the same rate as the inner mills. After hearing and rehearing the Commission declined to change the existing one-cent differential, concluding that complainants had not met the burden of proving its unlawful character. (Calif. Portland Cement Co. et al. vs. Southern Pacific Co. et al., 34 C.R.C. 459, decided March 18, 1930, and 35 C.R.C. 904, decided March 9, 1931.)

The inner mills were dissatisfied with these decisions of the Commission. Their ideas about the advantage of geographical location soon developed into fixed plant policies, and the rapid development of truck transportation at about that time supplied the weapon with which they enforced their positions. Trucking rates, then largely unregulated, were somewhat lower from the inner mills into Los Angeles than the 7½-cent rail rate, and the inner mills deliberately diverted sufficient of their tonnage to the trucks so that their combined transportation charges, rail and truck, represented a differential of 2½ cents, or slightly more, under the rail transportation cost of the outer mills. Finally the railroads yielded and increased the differential to points east and south of Los Angeles. The outer mills, apparently disturbed at the possibility of the long-standing one-cent differential being increased, turned to the use of trucks for the transportation of their own cement, with the result that by 1933 some 90 per cent of the movement from Monolith to Los Angeles was by truck, and the same was largely true of the Victorville plant.

In 1934 the railroads, seeing their cement business in southern California steadily diminishing and having already elected to seek the business of the inner mills, proposed rates of 5 cents from the inner mills and 7 cents from the outer mills to Los Angeles, thus finally abandoning the one-cent differential. The rates were suspended, and after extensive hearings were had the Commission allowed the rates to become effective and thus permitted the railroads to endeavor to regain a portion of the lost traffic (Decision No. 27350, supra). However, the results of this new adjustment were disappointing to the rails. The little business still remaining to them from the outer mills continued to decline, and their traffic from the inner mills, after increasing for a few months, again followed the downward trend.

At this point the rails made a rather desperate effort to regain their lost cement traffic. From the record in the instant proceedings it appears that they at that time told the inner mills to "write their own ticket." The inner mills offered to return from 90 to 95 per cent of their traffic to the rails if the latter would establish rates of 3½ cents from the inner mills and 5½ cents from the outer mills to Los Angeles, with related rates to other southern California destinations. The rail carriers agreed, and the rates were filed in February, 1935. Protests were received, and the Commission suspended these rates pending an investigation to determine their lawfulness. Thereafter the Commission 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 in October, 1935, consolidated public hear-

ings were held in this highway carrier case and the rail suspension case.[6]

The outcome of these proceedings was that the Commission permitted the rails to establish rates of 4 cents from the inner mills and 6 cents from the outer mills to Los Angeles, with provision for an absorption of one-half cent per 100 pounds on cement moving from mill to job through rail facility in minimums of not less than 75 barrels. By the same decision minimum rates for the transportation of cement by highway carriers were established at the level of the rail rates to rail facility points, subject to an addition of one-half cent per 100 pounds (later increased to one cent per 100 pounds) for the first 2½ miles of the distance from the nearest rail facility to point of delivery, and one-half cent per 100 pounds for each additional 5 miles or fraction thereof.

These rail and truck rates became effective in December, 1935. The rail rates of 4 cents from the inner mills and 6 cents from the outer mills, subject to the one-half cent absorption, substantially met the "ticket" written by the inner mills, inasmuch as nearly all of the shipments had final destination beyond rail facility and received the benefit of the absorption. Nevertheless, the rails again found that the volume of cement given them by the inner mills was considerably less than that which they had been led to expect. Apparently these mills contributed to the rails as much traffic as possible,

---

[6] The Legislature of the State of California in 1935 enacted the Highway Carriers' Act (Chapter 223) and added Sections 13½ and 32½ to the Public Utilities Act (Chapter 700).

but for various reasons found it impossible to deliver the promised tonnage.[7]

The rates remained unchanged until April, 1938, when, as part of a nation-wide general adjustment, the rails increased their rates from all of the mills by 10 per cent, or one-half cent per 100 pounds. Shortly thereafter the inner mills, finding their persistent if somewhat ineffective endeavors to favor the rail lines over trucks to be costing them a substantial sum in additional transportation expense, discontinued all efforts in the rails' behalf.

This brings our history up to the filing of the rates now under suspension. At present the rail rates are 4½ cents from the inner mills and 6½ cents from the outer mills to Los Angeles, but by reason of the absorption provision the net rates, as applied, are 4 cents and 6 cents respectively on substantially all of the

---

[7] The instant record is replete with evidence explanatory of the repeated inability of the inner mills to return the bulk of their shipments to the rails. The inner mills themselves point to the preference of their customers for the more flexible truck service, but give as the principal underlying reason the reduction in the sales unit or mill delivery minimum which took place in 1935. The sales unit of cement for many years prior to 1935 had been 600 sacks or the approximate equivalent of the rail carload minimum weight of 60,000 pounds. (A sack of cement weighs 95 pounds; there are 4 sacks to the barrel). One of the outer mills, seeing that substantially all of its tonnage was moving by truck and that the inner mills had committed themselves to rail transportation, suddenly reduced the mill delivery minimum from 600 sacks to 420 sacks. The inner mills held to the 600 sack minimum for several months and endeavored through their customers to have it restored as the minimum for all mills, but finally, seeing their efforts in this cause to be futile, they went a step further and reduced their sales unit to 300 sacks, or 75 barrels. This last step was taken admittedly as an act of retaliation against the outer mills for making the original reduction in the mill delivery minimum. The inner mills intended that the 300-sack minimum would hamper the outer mills in their use of highway vehicles, inasmuch as most of the truck units had a capacity of about 420 sacks. The outer mills promptly met the new reduction, and the sales unit has been 300 sacks since that time.

traffic. To other destinations the Los Angeles rates are held as maximum at intermediate points, and are used as factors in constructing rates to points beyond. The rates of for-hire truck carriers are stabilized generally upon the basis of the rail rates (but subject to a lower minimum weight) to rail facility points, plus specified additional charges for transportation beyond rail facility.[8]

The proceedings with which we are now concerned had their origin in the action of Southern Pacific Company and its subsidiary, Pacific Electric Railway Company, in publishing rates from Monolith to Los Angeles, Long Beach and various other destinations in the Los Angeles basin, of 5 cents per 100 pounds, not subject to the absorption provision. Upon being advised of this

---

8 The competitive relationship between rail and truck rates was somewhat disturbed, however, by the ten per cent increase which the rails made in their rates effective in April, 1938. It should also be mentioned that early in 1937 Associated Contract Truckers (a non-profit corporation having a membership of approximately twenty operators engaged in the transportation of cement by motor vehicle in southern California, and one of the complainants herein) filed with the Commission an application seeking an increase of not less than 1 cent per 100 pounds in the established minimum truck rates, and a similar increase in the corresponding rail rates. Following preliminary public hearings an interim order was issued increasing the minimum truck rates to off-rail points by one-half cent per 100 pounds (Decision No. 30074 of August 28, 1937, in Cases Nos. 3981 and 4071 and Application No. 21172). Thereafter further public hearings were held at which the propriety of the entire structure of rail and truck rates for this transportation was brought into issue, and on May 5, 1938, the Commission issued its decision (Decision No. 30937) by which it somewhat restricted the absorption provision as then being applied by the rails, made a number of changes and refinements in the minimum truck rates, and established minimum truck "drayage" rates for the transportation of cement within the County of Los Angeles. The provisions of this decision did not become effective, however, as its operation was suspended under Section 66 of the Public Utilities Act by the filing of petitions for rehearing more than ten days before the effective date of the order. These petitions have not as yet been acted upon by the Commission.

proposed reduction the two inner mills and the Associated Contract Truckers[9] entered their complaints, and the Commission thereafter filed its order of suspension and investigation.

It will be seen at once that the present proceedings differ greatly from their predecessors. Whereas the various rail carriers have heretofore acted in unison, being concerned principally with the competition of for-hire trucks, and, more recently, proprietary trucks, we now find that the Southern Pacific Company (with its subsidiary, Pacific Electric) is acting alone. The Union Pacific and Santa Fe, which serve the Victorville, Oro Grande and Crestmore plants, proposed no corresponding change in their own rates, and are not in any way involved in these proceedings. The long-standing community of interest between the outer mills at Monolith and Victorville is no longer apparent here, and the suspended rates will, if permitted to become effective without other adjustments, terminate the rate equality which has always existed between the two. Perhaps the only readily recognizable feature remaining from earlier cement proceedings is the unchanging insistence of the inner mills that they are entitled to and must have a rate differential under the outer mills of at least 2 cents per 100 pounds.

It may be well to state at the outset the positions of the parties as they appear in the record.

Position of Southern Pacific and Pacific Electric:

The purposes and policies of Southern Pacific and its subsidiary, Pacific Electric, were made abundantly clear by

---

[9] Associated Contract Truckers is a non-profit corporation representing some 20 contract truck operators engaged in the transportation of cement between points in southern California.

traffic officers of the parent company. From the testimony of these witnesses[10] it appears that respondents have seen their southern California cement tonnage diminish in volume year by year until, by the end of 1938, they were very nearly "out of the picture" so far as this traffic was concerned. Before filing the suspended rates they carefully considered all of the possibilities, and reached the definite conclusion that their only remaining hope of recapturing a share of the lost tonnage lay in casting their lot with the Monolith plant. This conclusion they reached largely by the process of elimination. The mills located at Victorville and Crestmore are not served by Southern Pacific or Pacific Electric rails, and for this reason did not loom as potential sources of any considerable amount of traffic. The Colton mill, although served by Southern Pacific, is reached also by other carriers with which the traffic must be shared. Moreover, because of the comparative proximity of both the Crestmore and Colton plants to the Los Angeles market, and considering the fact that most of the cement is ultimately delivered to jobs located beyond rail facility, respondents find it difficult to believe that any rate higher than the out-of-pocket cost of rail transportation would hold the traffic of the inner mills to the rails in competition with proprietary and for-hire motor vehicles. In this connection they have not forgotten the rather unsatisfactory results of their policy followed in recent years of seeking the particular favor of the inner mills. Respondents are

---

[10] For convenience Southern Pacific Company and Pacific Electric Railway Company will be referred to herein as respondents. They are, of course, respondents in the investigation proceeding (Case No. 4430) and defendants in the complaint proceedings (Cases Nos. 4425, 4427, and 4428).

willing to concede that the inner mills acted in good faith and gave the rails as much traffic as possible, but they nevertheless are extremely reluctant to accept further assurances from, or adopt further proposals made by, these mills.

The Monolith plant, on the other hand, is served exclusively by Southern Pacific Company so far as the traffic here involved is concerned, and all of the Monolith cement which could be returned to rails would move over respondents' lines. Respondents were told that the Monolith plant was in need of certain major repairs and additions, the location and nature of which would determine whether the mill was to be committed to truck transportation for the future, or was to again become primarily a rail-shipping mill. Respondents were assured that if they would publish, and make effective, rates of 5 cents per 100 pounds from Monolith to all destinations in the Los Angeles basin, the mill would abandon an announced plan to purchase sufficient vehicles to perform all of its own transportation to southern California and to northern California, would adapt the necessary plant repairs and additions to rail rather than truck transportation, and would ship via respondents' lines to southern California destinations at least 100,000 tons of cement annually, as compared with some 21,000 tons shipped in 1938. Respondents were convinced not only that acceptance of the Monolith proposal would return a substantial amount of cement traffic to their rails, but also that if the proposal were rejected they would lose to proprietary trucks all of the Monolith cement, not only to the Los Angeles market but to northern California destinations as well. They looked upon the definite offer of the Monolith people as something in the nature of a last straw which they must grasp

if they were to remain a factor of importance in the transportation of cement from any of the southern California mills. The proposal was accepted, and the 5-cent rates now under suspension were accordingly published and filed with the Commission.

It was the position of respondents with respect to these suspended rates that, while they are admittedly below a full-cost basis, they:

1. Are sufficiently high to return something more than the out-of-pocket cost of transportation;

2. Will, because of increased tonnage, make a greater contribution to the overhead costs of railroad operation than is now received from the present rates;

3. Will not be a burden on other traffic, but to the contrary will act to relieve the burden borne by other traffic;

4. Will be found to lie within the "zone of reasonableness";

5. Are necessary to meet the competition of proprietary vehicles; and

6. Are not below the cost of transportation which would be incurred by the shipper through the use of proprietary vehicles.

Respondents contended also that if the suspended rates are not permitted to become effective the Monolith traffic will be permanently lost not only to the rails, but to the for-hire truck operators as well; and that this loss will extend to northern California markets as well as to the destinations covered by the suspended rates.

In reply to the charges of discrimination directed

against them, respondents argued that:

1. So far as the Crestmore plant is concerned, respondents cannot be accused of discrimination inasmuch as their rails do not serve Crestmore, and rates from that point are beyond respondents' control;

2. So far as the Colton plant is concerned, the charge of discrimination is effectively answered by pointing to the dissimilarity of competitive transportation conditions at the Monolith and Colton plants; and

3. So far as Associated Contract Truckers is concerned, its charge that the suspended rates will subject it and all of its members to discrimination does not constitute a cause of action, inasmuch as (respondents urge) Section 19 of the Public Utilities Act is not intended to restrict discrimination between carriers.

In reply to a request of Blue Diamond Corporation, Ltd. that reasonable differentials be maintained for the transportation of cement clinker under cement, respondents answered that the suspended rates apply only to the transportation of cement, and that none of the proceedings now involved is sufficiently broad to embrace rates for the transportation of cement clinker.

Position of Monolith Portland Cement Company:

In general, it may be said that the position of the shipper, Monolith Portland Cement Company, was to support the position of the respondent rail lines. Monolith witnesses testified that they were convinced their company could transport cement from Monolith to the Los Angeles basin in proprietary motor vehicles at a cost which would not exceed that to be incur-

red through use of the suspended rail rates. They stated that, because of certain pending plant repairs and additions, they were faced with the necessity of making a definite choice between rail and truck transportation. These witnesses stated unequivocally that if the 5-cent rail rates were not made effective, the Monolith plant would be placed upon a full proprietary truck basis, and that these trucks would be then used for the transportation of cement to markets in both northern and southern California. They represented that they would attain their objective so far as transportation costs are concerned whether or not the rail rates were permitted to become effective, but said that they would prefer to restrict their operations to the manufacture of cement and leave the "manufacture of transportation" to the transportation agencies.

Position of the Inner Mills:

Although the California Portland Cement Company and Riverside Cement Company presented certain of their testimony and arguments independently, little tangible difference can be detected in the positions of the two companies. Both mills filed complaints alleging that they are in active competition with the Monolith mill; that the suspended 5-cent rates from Monolith are less than the rail rates available to them for transportation from their mills to various other destinations in southern California under like circumstances and for comparable distances; that the suspended rates are unlawful, unjust, and discriminatory in that they (a) will not return to the rail respondents the full cost of transportation, (b) will place a burden upon other commerce and traffic, and (c) will unduly prefer the Monolith mill and unduly prejudice complainants'

mills.[11]

The inner mills were skeptical that the threatened proprietary trucking could be performed at the costs estimated by the Monolith company, but nevertheless agreed that the threat itself was probably bona fide and that the rails were justified in considering it so. They frankly disbelieved that the Monolith plan to use rail transportation almost exclusively could be successfully put into operation, particularly if other mills were at the same time using the more flexible truck transportation. They did not seriously challenge the honesty or basic accuracy of studies introduced by respondents in which the out-of-pocket transportation costs from Monolith to Los Angeles and Long Beach were shown to be less than 5 cents per 100 pounds, nor did they in any way contend that the suspended rates were below the out-of-pocket costs. Indeed, they introduced for their own account a cost exhibit, based upon data contained in the rail studies, for the purpose of showing the out-of-pocket cost of rail transportation from Colton to the same destinations.

Counsel for the Colton mill declared that respondents' real concern was in preserving the northern California rate structure, rather than in recovering Monolith's southern California traffic. He pointed out that many of the northern California rates were considerably higher, mile for mile, than those to the Los Angeles market, and suggested that the prospective movement under the suspended rates was of minor importance to the rails in comparison with the traffic now moving at the higher rates.

---

[11] In addition, as indicated in Footnote 1 hereof, the complaint of California Portland Cement Company alleges that the rates demanded by respondents for the transportation of cement from Colton to various points were and are unjust and unreasonable and in violation of Section 13 of the Public Utilities Act.

What had induced respondents to publish the 5-cent rates, he declared, was the knowledge on their part that unless Monolith were dissuaded from serving the northern markets with its own trucks the higher rates would inevitably be forced downward. He urged that respondents not be permitted to sacrifice the inner mills on the altar of the northern California rate structure.

Throughout the hearings and argument in these proceedings it was readily apparent that the inner mills were not particularly concerned with the reasonableness per se of the suspended rates, but only with their reasonableness in relation to the rates from Colton and Crestmore. In brief, it may fairly be said that their position is now, as it has been for many years, simply that because of their relative proximity to the Los Angeles market they are entitled to, and will insist upon having, a rate differential under the outer mills of not less than 2 cents per 100 pounds.

Position of Southwestern Portland Cement Company:

Southwestern Portland Cement Company recognized that the rates from its plant at Victorville were not brought into issue in these proceedings, but nevertheless directed attention to the long-standing policy of the rail carriers to accord equal rates to Victorville and Monolith, and stated (apparently for the ears of the rail lines) that if the 5-cent rates were established from Monolith and not from Victorville, there could be no future movement of cement by rail from the latter point. This company took no other part in these proceedings except to urge the Commission to "give due consideration to the position of the Victorville plant, and, should it approve the 5-cent rate from Monolith, recommend the same rate from Victorville."

Position of Blue Diamond Corporation, Ltd.:

The plant of Blue Diamond Corporation, Ltd. is located in the heart of the Los Angeles market, at which point it manufactures cement through the use of cement clinker purchased from the other mills. Prior to 1935, rates for the transportation of clinker from the various mills to Los Angeles were one cent per 100 pounds less than the concurrent rates for transportation of cement.[12] With the rate adjustment of December, 1935, this differential (clinker under cement) was reduced to one-half cent per 100 pounds, and has been so maintained since that time.

Blue Diamond entered the instant proceedings only as an intervener in the complaint filed by California Portland Cement Company, and had as its sole purpose the protection of its own competitive position. Although it participated in the cross-examination of witnesses and attacked the cost estimates for rail and proprietary truck transportation from the Monolith plant, it was not, in fact, concerned with the volume of the rates, the differential between the inner and outer mills, or the relationship between rail and truck rates. Its position and purpose in these proceedings may best be expressed in the words of its own counsel, who said, "Whatever yardstick is ultimately used on the cement rates from Monolith to Los Angeles or the cement rates from Colton to Los Angeles, if the same yardstick is used on clinker moving into Los Angeles and on cement moving out of Los Angeles, Blue Diamond can ask for nothing beyond that."

Position of Associated Contract Truckers:

The contract truck carriers represented by Associated Contract Truckers considered their part in these proceedings to

---

[12] Cement clinker moves in bulk in gondola cars. Cement moves in box cars, principally in sacks.

be either that of an innocent by-stander in a clash between the inner mills on the one hand and the outer mills and rail respondents on the other, or that of an innocent victim of scheming rail respondents whose real purpose was to meet the actual competition of contract truckers rather than the potential competition of proprietary trucks. In either role they saw themselves faced with the prospect of becoming the principal sufferers.

Like the inner mills, these contract carriers believed that the Monolith estimates of proprietary trucking costs were more optimistic than accurate, and said that they would much prefer to take their chances with such competition as might be offered by Monolith's own vehicles rather than be forced to compete with the rails on the basis of the suspended 5-cent rates. It was their position that these rail rates would be so low as to make it an economic impossibility for the contract truck carriers to continue to compete for the Monolith traffic. They pointed out that the suspended rates, even though they would return something more than the out-of-pocket cost of rail transportation, would nevertheless be considerably below the full costs including taxes and return on investment; and urged that respondents should not be permitted to establish rates upon an out-of-pocket basis, particularly when such rates would result in substantial losses to competing contract carriers. They contended that the rail rates should be increased rather than reduced, and asked that the Commission combine the disposition of these proceedings with a final decision in certain prior proceedings. (See Footnote 8, supra).

The Evidence:

To prepare the way for a clear understanding of the issues involved, it may be well to summarize the evidence offered before undertaking to describe it in more detail. The rail respondents introduced cost exhibits for the purpose of showing that the suspended rates would not be so low as to unduly burden other traffic; introduced shipper testimony to show that the rates would not be less than the cost of other means of transportation; and introduced carrier and shipper testimony to show that unless the proposed rates were permitted to become effective, the Monolith cement traffic would be lost not only to the rails but to all for-hire carriers. The rails drew a clear distinction between their roles of respondents in the investigation proceeding and of defendants in the complaint cases; having played their part in the former, they waited for complainants to take the lead before assuming their part in the latter.

A substantial part of the evidence contributed by the inner mills had little direct bearing upon the issues in these proceedings, and was apparently addressed more to the rail respondents than to this Commission. These mills went to some lengths to explain their inability and failure to substantiate their tonnage commitments to the rails under past rate adjustments, and at the same time introduced data from their records to show that, after all, the traffic contributed had not been inconsequential. It was manifest that the inner mills wished respondents to understand that under a satisfactory rate differential the rails could still expect to receive substantial tonnage from the inner mills, but that, on the other hand, if the differential were slashed as contemplated under the suspended

rates the inner mills would in all probability be forced to proprietary truck transportation. Aside from this line of evidence, the testimony offered by the inner mills was directed in one way or another to the alleged unreasonableness of the suspended rates by comparison with the present rates from the inner mills, and to the alleged undue preference, prejudice, and discrimination which might result from such a rate relationship. Their real concern, in other words, was with the rate differential between Monolith and the inner mills rather than with the volume of the rates from Monolith.

Southwestern Portland Cement Company, as hereinbefore indicated, offered no factual evidence of its own. The evidence contributed by Blue Diamond Corporation, Ltd. consisted of a showing of the effect which would be had upon the rail cost estimates if the published minimum weight of 60,000 pounds per car were substituted for the average loading weight of 88,000 pounds per car as used in the rail exhibits. Associated Contract Truckers offered little evidence on its own behalf, and that which it did introduce was directed only to certain phases of the cost of transporting cement by motor truck from Monolith to the Los Angeles market.

Following this brief summary, let us now examine the evidence in a little more detail.

The Rail Cost Studies:

The rail respondents introduced, through an engineer experienced in the preparation of railroad cost estimates, three separate studies of the cost of transporting cement in carloads from Monolith to Los Angeles and Long Beach. In the first study the costs were developed under a so-called eight-point formula heretofore employed by Southern Pacific cost experts in several recent proceedings before this Commission, using unit cost data

for the Pacific Lines for the year 1937 and certain operating statistics covering the period from June, 1938, to May, 1939, inclusive. Then, presumptively in anticipation of criticism which might be directed to the use of averages taken from the entire system, the costs were developed under a second method which applied the same formula but made use of unit cost data evolved from the divisional expenses and statistics of four Southern Pacific divisions in California. Going one step further, the witness developed the costs under still a third method, using in general the formula suggested in another proceeding by Dr. Ford K. Edwards, Transportation Economist of this Commission.[13] The witness explained that he followed this formula to the best of his understanding and ability, except that he intentionally made certain variations in it for the purpose of developing out-of-pocket costs directly rather than from a percentage of the full cost.

These three studies, although prepared by quite distinct methods and differing considerably in certain of their details, resulted in final cost figures which were surprisingly similar. The direct or out-of-pocket costs, as developed by the three formulas, are as follows:

Direct Costs per 100 Pounds (In Cents)

	Local Train Operation, Mojave to Los Angeles		Through Train Operation, Mojave to Los Angeles	
	To Los Angeles	To Long Beach	To Los Angeles	To Long Beach
Method 1	3.43	3.44	3.20	3.20
Method 2	3.56	3.59	3.30	3.33
Method 3	----	----	3.31	3.32

[13] The Edwards formula was first introduced on April 7, 1939, as an exhibit in Case No. 4402, which is an investigation instituted by this Commission for the purpose of determining and establishing principles and methods for ascertaining costs in railroad transportation.

Respondents made no claim that the suspended rates were sufficient to return the full cost of transportation including taxes, interest on investment, and the so-called passenger deficiency. Their cost expert estimated that to develop full costs it would be necessary to increase the out-of-pocket costs by 124.7 per cent, thus resulting in full costs somewhat in excess of 7 cents per 100 pounds.

The Proprietary Truck Threat:

The principal evidence relative to Monolith transportation policy was offered by the senior vice president of the Monolith company, who introduced into the record a statement which he explained had been prepared in consultation with other members of the board of directors. The unequivocal nature of this statement may best be seen by direct quotation therefrom:

"The proposed 5-cent rate here under suspension is approximately the same as the cost to us of transporting cement by our own trucks. If the proposed rate is permitted to become effective we will utilize the rail lines for the transportation of our cement; if it is not permitted to become effective we will proceed with our plan to extend our plant facility trucking operations; when we once extend our plant facility trucking operations, naturally the business from the Monolith mill will be lost irretrievably to both the railroads and the contract truckers.

"The time has come when we must decide whether or not we will become predominantly plant facility mill or a rail mill. If we become predominantly a plant facility mill we will utilize our own trucks for the transportation of cement, not only to the territory here involved but to other territories which we serve. As stated before, whether or not Monolith Company becomes

a plant facility mill or a rail mill depends on whether or not the railroad is permitted to establish a rate which will approximate the cost to us of transporting cement in our own trucks.

"We have agreed to ship by rail if the 5-cent rate becomes effective; we arrived at the conclusion to ship by rail under the 5-cent rate after a careful study of our trucking costs and ascertaining that the 5-cent rate was necessary if we were to utilize the railroads instead of our own trucks.

"The Monolith Company shipped by rail over the Southern Pacific and Pacific Electric to the area here involved in 1938 a total of 20,832 tons; if the proposed rate is permitted to become effective Monolith will ship at least 100,000 tons by Southern Pacific and Pacific Electric during the next year. We expect, however, to increase our plant capacity and we, therefore, expect that even more than 100,000 tons will be shipped by rail. If, on the other hand, the rate is not permitted to become effective and Monolith goes into proprietary trucking, not only will the railroads lose that traffic to the Los Angeles territory but will lose the traffic to other points. We expect to ship 500,000 tons to all points during the next year."

The Proprietary Transportation Plan:

Following this testimony the traffic manager of the Monolith Company explained in a general way the plan under which it was proposed to operate the proprietary trucks if that operation should become necessary. He stated that it was intended to first construct a central distributing plant, consisting principally of silos and packing facilities, on property owned by the Monolith Company in the city of Glendale. About 50 per cent of the cement destined to the Los Angeles area would be

moved from Monolith to this proposed Glendale plant in a special type of bulk canvas bags, holding 1600 pounds of cement each; the balance would be transported in the customary 95-pound sacks direct from Monolith to final destination. The bulk bags would be emptied into silos at the Glendale plant, and thereafter sacked for distribution to various destinations as required, or for sale to purchasers who wished to call for the cement with their own vehicles. The witness testified that Monolith utilized an average of about 40 trucks per day in the transportation of its cement, of which 6 were owned and operated by the company, and the balance were owned and operated by contract carriers. The plan was to purchase some 34 additional plant-facility trucks, and discontinue entirely the use of contract trucks.

The witness introduced a study of the cost of performing the proprietary transportation, which he stated had been prepared after a careful analysis of the company's present trucking costs, and an estimate of what could be done in the light of the company's experience. He declared that as a result of this study Monolith was satisfied that it could truck cement to its proposed Glendale plant at less than 5 cents per 100 pounds, could place it on the job anywhere in the Los Angeles area at approximately 5½ cents per 100 pounds, and could serve Long Beach at about 6½ cents per 100 pounds. He testified that he was entirely satisfied with the accuracy of his cost estimates; that the officers and directors of the Monolith Company were convinced that proprietary trucking was entirely feasible at the costs estimated; and that even should the Commission conclude that the cost estimate was too low, the Monolith management would nevertheless go ahead with the proprietary trucking plan.

The Rail Distribution Plan:

The Monolith traffic manager gave also some explanation of the manner in which it was proposed to utilize rail service if the suspended rates were permitted to become effective. He stated that most of the cement was consumed at destinations not served directly by rail facilities, and furthermore that from 70 to 80 per cent of the orders were for quantities of less than the rail minimum of 60,000 pounds. For these reasons, he explained, less than 50 per cent of the cement would move directly by rail to dealers or jobs, and the balance of the tonnage would necessarily require the employment of trucks for transportation from railhead to final destination. Under Monolith's rail distribution plan the rail cars would be consigned to whichever team track was nearest and most convenient to ultimate point of delivery, and contract carriers would be engaged to transport the cement from such team track to final destination. The Monolith witness stated that there were some 30 convenient team track locations in the Los Angeles consuming area, and for this reason he thought it would seldom be necessary for trucks to transport the cement more than a few miles. He estimated that the truck portion of the haul, including transfer from rail car to truck and unloading of the truck at final destination, could be accomplished at an average cost to Monolith of not to exceed 2½ cents per 100 pounds.

The Case for Complainants and Interveners:

None of the parties seriously challenged the accuracy of the rail cost studies, the sincerity of the Monolith trucking threat, or the practicability of the proprietary trucking plan as outlined by the Monolith company. However, the Monolith estimates of the cost at which the proprietary transportation

could be performed were the subject of considerable skepticism, as was the Monolith plan for distribution of cement by rail.

The inner mills, the Blue Diamond Company and Associated Contract Truckers, through cross-examination of the Monolith witness and direct testimony on their own behalf, endeavored to show that the use factor assumed by Monolith in its truck-cost estimates could not be realized in actual practice; that trucks could not practicably be operated between Monolith and Los Angeles at the average speeds assumed in the cost study; that the Monolith estimate of the number of miles and length of life over which the vehicles could be used was excessive; and that grades and curvature on one of the routes proposed to be used were such as to make it unsuitable for heavy trucking. Associated Contract Truckers introduced into the record a study of the cost of transporting cement in proprietary vehicles, prepared in 1937 by a senior engineer of this Commission, in which were developed costs materially in excess of those estimated by Monolith.[14]

The inner mills introduced considerable testimony intended to show the impracticability of reaching off-rail destinations through a large number of rail team tracks, as contemplated by Monolith. Witnesses for each of these mills testified that their respective companies had tried substantially the same plan several years ago, and had found that because of inadequate and undependable rail service and consequent complaints from their customers it was necessary to revise the

---

[14] The difference in the two costs is found to lie largely in the much greater use factor assumed in the Monolith study.

operation so as to utilize only one or two team tracks to which switching service was relatively satisfactory. The inner mills were quite frank in saying that they considered the Monolith program for rail distribution to be utterly unfeasible.

The Colton mill introduced an exhibit comparing the suspended rates with those currently maintained from Colton to the same destinations, and also showing the comparative rail mileages from the two mills. This exhibit shows that to most of the destinations involved the proposed rail rates are on a lower basis, mile for mile, than are the present rates from Colton; and that in some instances the proposed rates from Monolith are below current rates from Colton even though the rail mileage from Monolith is materially greater. The following are representative examples:[15]

Destination	Rail Miles From Monolith	Rail Miles From Colton	Suspended Monolith Rate	Present Colton Rate
Burbank	107	67	5	5½
Glendale	112	62	5	5
Hollywood	137	82	5	5
Los Angeles	117	57	5	4½
Long Beach	139	79	5	5
Pasadena	127	56	5	4½
San Fernando	97	77	5	6
Van Nuys	116	75	5	6½

The Colton plant introduced also a statement to show the approximate cost of transporting cement by rail from Colton to Los Angeles. This exhibit was not a complete and detailed study in and of itself, but was in the nature of a relatively simple calculation prepared from basic data contained in re-

---

[15] In evaluating these rate comparisons it should be remembered that the rates from Colton are subject to an absorption of one-half cent per 100 pounds when shipments are transported beyond rail facility by motor vehicle, whereas the Monolith rates are not subject to such an absorption.

spondents' cost exhibits in these proceedings and in a cost study introduced by Southern Pacific Company in prior cement proceedings.[16] The direct cost of transporting cement in carloads from Colton to Los Angeles, as developed by this calculation, was 1.92 cents per 100 pounds.

This brings to a close the description of the record with which the Commission must deal in these proceedings; other evidence material to the issues has already been sufficiently mentioned under preceding headings. From such ingredients the Commission must compose its decision.

Conclusions:

Respondents recognized their burden in the suspension proceeding to be that of showing that the suspended rates, while below maximum reasonable rates, are not so unreasonably low as to burden other traffic; and that as less than maximum reasonable rates they are not contrary to the provisions of Section 13½ of the Public Utilities Act, infra. So far as the questions of undue discrimination, preference and prejudice were concerned, respondents left the burden on the shoulders of the complainants who had made such allegations.

It is a well-established principle that in the absence of statutory restrictions to the contrary, common carriers have the right to establish rates which are less than maximum reasonable rates provided such rates are not so low as to cast a burden on other traffic, and provided, of course, that no discrimination

---

16 The cost study introduced in the prior proceedings was made a part of the present record as Exhibit No. 14 offered by the Colton Company. It was originally introduced in hearings held in 1937 in Cases Nos. 3981 and 4071 and Application No. 21172, supra.

results. Therefore, leaving aside momentarily the requirements of Section 13¾ of the Public Utilities Act, the question of whether or not suspended rates are unlawfully low resolves itself basically into the question of whether or not they will burden other traffic. Preliminary to disposing of this question, it must be determined whether or not the rates are below the direct or out-of-pocket cost of rail transportation. For the answer to this, we must turn to the rail cost studies. No elaborate discussion of the studies is required. They have, of course, been thoughtfully considered and carefully analyzed by the Commission, and the intricacies of the several formulas, and the methods used by the rail cost witness in dealing with them, were adequately explained in the testimony of record. Suffice it to say that the record is convincing that the rail studies represent a sincere and conscientious effort upon the part of respondents to develop the direct cost of hauling cement in carloads from Monolith to Southern Pacific destinations in Los Angeles and Long Beach; and that as to those destinations, at least, the record leaves no room for doubt that the suspended rates would be easily above the direct or out-of-pocket cost of performing the transportation. That this is true was not seriously questioned by any of the parties. As to other destinations, particularly those on the lines of Pacific Electric, the conclusion is somewhat less obvious, for no complete estimate was introduced of the cost of interline rail transportation. Unquestionably the expense of reaching some of the destinations is considerably above that of reaching Southern Pacific facilities at Los Angeles and Long Beach. However, considering the evidence as a whole, it does not appear that the out-of-pocket costs would be as high to any destination as the suspended rates of 5 cents per 100 pounds.

Even though the suspended rates are above out-of-pocket cost, would they nevertheless burden other traffic? The record shows convincingly that if the rates are permitted to become effective, respondents will receive in the next year some 80,000 tons of new business from Monolith. It shows also that if higher rates are maintained, respondents will be deprived not only of the potential new business, but also of the greater part of the present business from Monolith to both southern California and northern California destinations. Whatever tonnage respondents receive under the suspended rates will, on the basis of this record, return the direct costs and contribute something toward overhead expenses; whatever tonnage is lost will cause the loss also of some contribution toward overhead. Moreover, even though the Monolith traffic could be retained at current rates, the record indicates that the anticipated tonnage at the proposed rates would make a greater contribution toward overhead expenses than would the present tonnage at the present higher rates. Under these circumstances, the conclusion is inescapable that the suspended rates will not in any way add to the burden borne by other traffic, but, on the contrary, will act to lighten that burden.

We turn now to the question whether the suspended rates, as less than maximum reasonable rates, may be in violation of the provisions of Section 13½ of the Public Utilities Act. It will be recalled that respondents introduced considerable evidence for the purpose of showing that the transportation costs which Monolith would encounter through the operation of plant-facility trucks would not exceed those which they would experience in using rail transportation under the suspended rates; and to show that Monolith Portland Cement Company was prepared and fully intended to enter whole-heartedly into proprietary truck transportation in the event the suspended rates were not made effective. Respondents explained that this evidence was for the purpose of

showing that while the suspended rates were established to meet the cost of other means of transportation (proprietary trucking), the rates were not in their opinion less than the cost of such other means of transportation. Such evidence, they stated, was of importance in these proceedings by reason of the provisions of Section 13½ of the Public Utilities Act. The Section reads as follows:

> "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 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." (Added 1935, Chapter 700.)

There is no reasonable basis for questioning that the suspended rates were published to meet the cost of proprietary trucking. Officials of the Monolith Company could hardly have been more uncompromising in stating that their plant would be placed upon a full proprietary transportation basis if the suspended rates should not become effective, and even the inner mills were ready to agree that under the circumstances respondents were justified in acting upon this threat. In an earlier cement decision we said, "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." (Decision No. 28334, supra.) The words are here repeated with approval. The record affords no support for the theory advanced by Associated Contract Truckers that respondents' concealed purpose was to capture the Monolith traffic from the contract trucks.

The next question for determination is whether or not the suspended rates are below the cost of proprietary trucking; and this brings us preliminarily to a specific consideration of the Monolith study of the cost of such transportation. In spite of extensive cross-examination and adverse testimony the Monolith witnesses were unshaken in their faith in their own cost estimates; and they were exceedingly specific in asserting that regardless of any conclusion which the Commission might reach in these proceedings with respect to proprietary costs, the Monolith management would act upon the estimates if the suspended rates should be ordered cancelled. In view of such faith it would perhaps be inappropriate for the Commission to conclude that the Monolith company could not actually accomplish the remarkable efficiency of man and machine upon which its estimates were predicated. Nevertheless, the estimates were dependent upon several hypotheses which cannot easily be accepted, and, in all fairness, it must here be said that they are something less than fully convincing.[17]

[17] The study assumed, in the first place, that each vehicle would be in actual operation in excess of 20 hours each day, for a total of 336 days per year. It assumed that the vehicles would run from 121,000 to 170,000 miles per year, and would have a useful life of 6 years for the trucks and 10 years for the trailers. The total mileage life of each vehicle on these bases would be from 726,000 to more than 1,000,000 miles for the trucks, and from 1,200,000 to nearly 1,700,000 miles for the trailers. The study assumed a load factor of 50 per cent, which means that the vehicles must always be loaded to full legal carrying capacity in one direction, or that whatever lack there may be in this regard will be compensated for by a corresponding return load. The Monolith cost witness explained that the trucks would enjoy some back haul of machinery and supplies which he had not taken into consideration in preparing his study, but

(Cont'd.)

Be this as it may, however, it is largely to the Monolith estimates that we must look if we are to judge whether the suspended rates are below the cost of proprietary trucking. If in fact these estimates are too low, as appears probable, the defect is to some extent counteracted by the evidence introduced by the inner mills to show that Monolith's plan of distributing through a large number of team tracks would prove unsatisfactory, and that for this reason the railhead-to-destination trucking would involve greater average distances, and consequently somewhat greater costs, than contemplated by Monolith. If the cost of proprietary trucking would be somewhat higher than estimated by Monolith, so, apparently, would be the cost of using the rail route.

The proposed rail rates are of identical volume to a large number of destinations throughout the Los Angeles basin and are, of course, applicable only to railhead; the cost of proprietary

---

17 (Concl.)

even though some allowance is made for this return movement it is apparent that to realize the 50 per cent load factor would require almost perfect and unfailing coordination of sales, orders and deliveries. It may be noted in this connection that the established minimum sales unit of 300 sacks, or 28,500 pounds, is not evenly divisible into the net legal pay load of 45,300 pounds for the vehicle units used.

The high use factor was predicated upon the assumption that the truck schedules could be so coordinated that the vehicles would be in an almost continual operation either in making bulk deliveries to the proposed Glendale plant or in making sacked deliveries to the jobs. The use factor is particularly astonishing in view of the testimony which shows that cement may ordinarily be delivered to jobs only at designated morning hours. The Monolith cost witness did not undertake to explain in detail or by examples how the schedules would be operated. No deduction was made for possible time losses due to meals or rest periods of drivers, vehicle failure on the road, inability to accomplish perfect coordination of schedules, or other incidental and unavoidable delays.

The great mileage to be attained by the vehicles was predicated upon the proposition that they would be kept in constant repair and that parts would be replaced whenever the need arose, so that in actual effect only a skeleton of the original vehicle would remain at the end of its useful life. In spite of this, the estimate allowed only 1-3/4 cents per truck-and-trailer mile to take care of all repairs and replacements. The estimated life of 6 years for the trucks and 10 years for the trailers apparently took no account of the possibility that obsolescence might shorten the efficient life of the vehicles.

trucking is subject to variation according to the length of haul, but not according to whether the destination point is served by rail facility. For these reasons, if for no others, it will be seen that the relationship between rail rates and truck costs must be different for each delivery point, and that it therefore cannot be hoped to determine with mathematical precision whether, as to each destination, the suspended rates are less than the cost of other means of transportation. It may be well, therefore, to look rather to the relationship between the suspended rates and truck costs as they apply to the Los Angeles marketing area as a whole.

The suspended rates are uniformly 5 cents per 100 pounds, minimum weight 60,000 pounds. The record indicates that less than half of the cement finds destination at points served directly by rail; the majority of the shipments must be handled beyond railhead by motor vehicles. The average cost of this railhead-to-job transportation, as estimated by Monolith, is 2½ cents per 100 pounds, including transfer from rail car to truck and unloading of the truck at destination. The transportation costs to Monolith of using the rail route, then, would be 5 cents to railhead destinations and an average of 7½ cents to off-rail destinations. The costs of proprietary trucking as estimated by Monolith are slightly under 5 cents to the Glendale plant, about 6 cents to Los Angeles, and 6½ cents to Long Beach.[18] From these figures it may be said that in general the suspended rates are below the cost of proprietary trucking to railhead points, and above the cost of proprietary trucking for the purpose of reaching off-rail points. These simple comparisons are not conclusive in themselves, for a satisfactory determination of

---

[18] The Los Angeles cost is an average, considering that 50 per cent of the tonnage would be trucked direct from Monolith to destinations, and the balance would be handled through the proposed Glendale packing plant.

the question whether or not the suspended rates are less than the cost of proprietary trucking requires consideration of a variety of cost factors which play and interplay in the movement of cement from mill to final destination. Nevertheless, upon the basis of the record now before us, it is reasonably clear that on the whole the proposed rail rates are not less than the cost "which might be incurred through other means of transportation." (Sec. 13½, P.U.A.)

However, there is a larger question here involved. Aside from determining whether the rates are below the cost of other means of transportation, we cannot brush aside the uncontradicted testimony of the officials of the Monolith Portland Cement Company that, based upon their costs and investigation, they have definitely concluded to place their plant upon a full proprietary transportation basis if the suspended rates are not permitted to become effective. This proposed proprietary operation would extend not only to southern California points, but to northern California destinations as well. The carrying out of this plan would require a substantial investment in silos and packing facilities at Glendale, in addition to that involved in the purchase of some 36 trucks and trailers. These capital expenditures once having been made, it is clear that the proprietary operation would not soon be abandoned, even though the cost of performing the service might be found to be higher than is now anticipated. Thus, for some years at least, the Monolith traffic to both southern California and northern California would be lost to the rail lines and to the contract truck operators as well. Upon consideration of all of the facts and circumstances of record, the Commission finds that the rates are fully justified by transportation conditions.[19]

---

[19] Section 13½ of the Public Utilities Act permits carriers to establish rates below the cost of other means of transportation "upon such showing as may be required by the commission and a finding by it that said rate is justified by transportation conditions."

From the foregoing it is concluded that the suspended rates are not unreasonably low per se, and that as less than maximum reasonable rates they do not transgress the provisions of Section 13½ of the Public Utilities Act. We must now consider whether or not complainants and intervenors have shown the rates to be unduly discriminatory, preferential, prejudicial, or otherwise unlawful.

Although the exhibit introduced by the Colton mill to show the out-of-pocket cost of transporting cement by rail from Colton to Los Angeles is subject to certain shortcomings which tend to restrict its probative value, it appears that in the absence of more complete information the cost of 1.92 cents per 100 pounds as therein developed should be accepted as a reasonably accurate approximation of the direct or out-of-pocket cost of performing the transportation in question. In this connection it may be noted that the cost of performing the same service as developed by a Southern Pacific witness in the 1937 proceedings was 1.93 cents per 100 pounds.

It is reasonably clear upon this record, then, that the direct cost of transporting cement from Colton to Los Angeles is approximately 1.92 cents per 100 pounds, while the comparable cost from Monolith is about 3.30 cents per 100 pounds. This indicates that the present rail rate from Colton to Los Angeles is well above the direct or out-of-pocket cost of performing the service, and could be considerably reduced without becoming unreasonably low per se. However, this showing lends no apparent support to complainants' contention that the suspended rates are unduly discriminatory. Because respondents have found it necessary to reduce their Monolith rates to a level not far above the out-of-pocket costs, it does not necessarily follow that they should be required to reduce their rates from other points in the same amount or to the same level, particularly where it is not shown that similar circumstances and conditions obtain.

The record shows clearly that the suspended rates are lower, mile for mile, than the current rates from Colton to the same destinations; and that although the distances from Monolith to most of the destinations involved are considerably greater than those from Colton, the rates from Monolith are in nearly every instance as low or lower. Even after making allowance for the absorption of one-half cent per 100 pounds which the rails provide in connection with the present rates, there is no questioning that the suspended rates would place Monolith upon a more favorable rate basis, distance considered, than any of the other mills. However, it cannot be presumed that a mere difference in rates creates unlawful prejudice and preference,[20] nor does the mere showing that rates from one point in a territory are lower than rates from other points in that territory, whether maintained by the same carrier or different carriers, establish the fact of such prejudice or preference.[21] Discrimination, prejudice and preference are questions of fact to be determined by the Commission in the exercise of its administrative function, not arbitrarily but in the light of all relevant circumstances and conditions;[22] and to be unlawful must be unjust and undue.[23] In order to establish the fact of unlawful discrimination

---

20 Nashville M. & S. Co. v. L. & N. R.R. Co., 118 I.C.C. 517; Assoc. Oil Co. v. S. P. Co., 33 C.R.C. 581, 584.

21 T. & P. R.R. Co. v. Interstate Commerce Commission, 162 U.S. 197; Interstate Commerce Commission v. Alabama M. T. Co., 168 U.S. 144; L. & N.R. Co. v. Behlmer, 175 U.S. 648; East Tenn. V. & G. R. Co. v. Interstate Commerce Commission, 181 U. S. 1; Interstate Commerce Commission v. L. & N. R. Co., 190 U. S. 273; Sperry Flour Co. v. Island Transportation Co., 30 C.R.C. 561, 565.

22 Texas and P.R. Co. v. Interstate Commerce Commission, 162 U.S. 197-219. Interstate Commerce Commission v. Alabama Ry., 168 U.S.144,170. Interstate Commerce Commission v. Delaware, L. & W. R. Co., 220 U.S. 235, 255. United States v. Louisville & N. R. Co., 235 U.S. 314,320. Pennsylvania v. United States, 236 U.S. 351, 361. Manufacturers R. Co. v. United States, 246 U.S. 457, 482. Nashville C. & St. L. R. Co. v. Tennessee, 262 U.S. 314; C. P. Cement Co. v. S. P. Co., 35 C.R.C. 904, 906.

23 Re Tariff Suspension, 36 C.R.C. 135, 137.

it must be shown that attending circumstances and conditions are substantially similar.[24]

If the circumstances surrounding the traffic of the several mills involved in these proceedings are in fact substantially similar, complainants have not succeeded in disclosing that fact for the benefit of the present record. To the contrary, the record shows that the suspended rates will secure for respondents some 80,000 tons of new business annually, and in addition will hold to their lines a substantial amount of old business which would otherwise be lost entirely and irretrievably to proprietary trucks. It shows also that rates even fractionally higher than those now under suspension would fail to accomplish these purposes. In these respects, if in no others, the circumstances and conditions surrounding the Monolith traffic appear to be dissimilar to those surrounding the traffic of the inner mills.

Little need be said relative to the complaintof Associated Contract Truckers. The record before us indicates without contradiction that if the suspended rates are cancelled the Monolith traffic will be diverted in its entirety to proprietary trucks, whereas if the rates are permitted to become effective a considerable portion of the tonnage will continue to move by contract truck. Under the circumstances it is difficult to understand in what manner the operators represented by Associated Contract Truckers believe they are to be injured by the proposed rates.[25]

Neither the rates under suspension nor other rates assailed in the several complaints have been shown to be unreasonable, discriminatory, or in any other respect unlawful. The suspension will

---

[24] Pac. Elec. Rwy. Co., (Nov. 5, 1934), Dec. 27943, App. 17984, unreported.

[25] While rates of highway carriers are not involved in these proceedings, Section 10 of the Highway Carriers' Act guarantees to the highway carriers the right to meet the rail rates for the same transportation of the same kind of property between the same points.

be lifted; the complaints, except to the extent that one of them deals with matters as to which evidence was not received, will be dismissed.

O R D E R

Public hearings having been held in the above entitled proceedings, and based upon the evidence received at the hearings herein held and upon the conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that the complaint in Case No. 4425, except as it relates to the lawfulness of rates from Colton to destinations other than those to which the rates under investigation in Case No. 4430 were published, be and it is hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the complaints in Cases Nos. 4427 and 4428 be and they are hereby dismissed.

IT IS HEREBY FURTHER ORDERED that the order of suspension in Case No. 4430 be and it is hereby vacated and set aside, and that proceeding be and it is hereby discontinued.

Dated at San Francisco, California, this 30th day of August, 1939.

Commissioners