

Decision No. 32763

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Southern Pacific Company for relief )  
from the long-and-short-haul clause )  
of Section 24(a) of the Public )     Application No. 23241  
Utilities Act in connection with )  
rates on cement in carloads from )  
Permanente to San Francisco, Oakland, )  
Alameda, and San Leandro )

Appearances

James E. Lyons, for applicant Southern Pacific Company  
Sanborn, Roehl and McLeod by Clair McLeod and N. E.  
Keller, for Pacific Portland Cement Co.  
E. W. Hollingsworth, for the Permanente Corporation  
Ware and Berol by Edward M. Berol, for Truck Owners  
Association of California  
Ralph P. Mitchell, for Henry Cowell Lime and Cement Co.  
W. G. Higgins, for Santa Cruz Portland Cement Co.  
A. H. Van Slyke, for Yosemite Portland Cement Co.

BY THE COMMISSION:

O P I N I O N

Applicant seeks authority under Sections 15 and 24(a) of the Public Utilities Act to publish on one day's notice, non-intermediate in application, rates of 4½ cents per 100 pounds, minimum carload weight 60,000 pounds, for the transportation of Portland building cement from Permanente to San Francisco, Oakland, Alameda and San Leandro. The rates are proposed to take care of the transportation of cement from a mill recently constructed by the Permanente Corporation at a new station known as Permanente located on the Los Altos branch of the Southern Pacific Company 41.8 miles from San Francisco.

The matter was submitted at a public hearing had at San Francisco January 22nd before Examiner Howard G. Freas.

Applicant's general freight agent testified that the rates were determined upon "in an endeavor to place the Permanente Corporation in the rate picture on a fair and equitable basis" with respect to the rates from Cowell, Redwood City, Davenport, Kentucky House and Merced and at the same time create the least possible disturbance of other cement rates. He pointed out that the Southern Pacific Company did not control the rates from certain of these points and urged that those proposed from Permanente were justified for the reasons: (1) that with respect to the distance to San Francisco, Permanente was approximately midway between Redwood City and Cowell, from both of which points rates of the volume here proposed are now in effect; (2) that cement companies serving the destination territory here involved now enjoy low non-intermediate rates based to some extent, at least, on market competition, and that under these circumstances market competition requires the proposed adjustments; (3) that the Permanente Corporation has represented to applicant that it must have a rate equality with competitors located at Redwood City and Cowell, and that if it is not accorded the proposed  $4\frac{1}{2}$  cent rates it can enjoy transportation at no greater cost by use of its own trucks; (4) that although Permanente is 13.1 miles farther removed from San Francisco than is one of the other mills, applicant is required to perform a switching service consuming from 2 to 4 hours per day at the closer mill, whereas an arrangement had been effected whereby the Permanente Corporation will perform comparable switching at its plant, which advantage in switching cost is believed to offset the greater mileage from Permanente. He stated that the shipper represented that it would ship by rail if the  $4\frac{1}{2}$  cent rates are to be made effective.

Apparently feeling that the foregoing was primarily in justification of the  $4\frac{1}{2}$  cent rates to the terminal points rather than

in justification of the maintaining of higher rates at the intermediate points, the witness further testified that the intermediate point rates were reasonable, distance and service considered, and in line with those from the competing cement mills.<sup>1</sup> He urged that neither carrier nor market competition was the same at the intermediate points as that encountered at the terminals. This he said was due primarily to the fact that there is no water competition at such intermediate points and that the quantity of cement there consumed is substantially less than at the terminals. He contended that the existing rates from all the plants here involved were "deeply rooted" in water competition and that the cement rate adjustment was so delicate that the publication of rates of a different volume to the intermediate points would seriously upset the adjustment from the other mills.<sup>2</sup>

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<sup>1</sup> Section 24(a) of the Public Utilities Act provides in part as follows:

"No common carrier subject to the provisions of this Act shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, within this State, the shorter being included within the longer distance, \* \* \*. Upon application to the Commission, such common carrier may, in special cases, after investigation, be authorized by the Commission to charge less for a longer than for a shorter distance \* \* \*."

The highest rates at intermediate points Permanente to San Francisco are those applying to points Millbrae and north where rates of 6½ cents are now in effect. From Permanente to Oakland the highest rates are those to points between Redwood City and Oakland which are of the same volume. Under the proposal, rates from Permanente to points north of Redwood City would exceed the rates from Redwood City to the same points by 1/2 cent. To points south of Redwood City the rates from Permanente would be the same as applicant's present Class "C" rates.

<sup>2</sup> The witness stated that the publication of the proposed rate from Permanente non-intermediate in application would reduce the rate from Redwood City to San Francisco, Oakland, Alameda and San Leandro which in turn would disturb the adjustment to those points from Merced, and the rate from Redwood City to Merced being of the same volume as that from Merced to Redwood City, it would likewise have to be changed. This would necessarily affect the rates to the Merced territory from the southern mills.

Counsel for applicant contended that it was entirely within the discretion of the Commission to determine what constituted "special cases" within the meaning of Sec. 24 (a) of the Public Utilities Act; that relief from that section had been granted over a long period of time under circumstances such as those here presented, with the acquiescence if not approval of interested parties generally; and that although the authority of the Interstate Commerce Commission in this regard was more limited than that of this Commission, the Interstate Commerce Commission had nevertheless granted relief of the nature of that here sought on numerous occasions.

A representative of the Permanente Corporation testified that the mill was now in partial production and that it would reach full production by February 1st; that its capacity would exceed 7,000 barrels per day; and that it was anticipated that from 500,000 to 1,000,000 barrels would be shipped into the San Francisco Bay area annually. He further testified that based upon extensive experience in the transportation by truck of related commodities Permanente Corporation had made a study showing that cement could be transported from Permanente to San Francisco for approximately 3 $\frac{1}{2}$  cents per 100 pounds.<sup>3</sup> This witness confirmed the applicant's testimony to the effect that Permanente Corporation would ship by rail at the 4 $\frac{1}{2}$  cent rate and stated that unless this rate were established that company proposed to do its own hauling.

No one testified in opposition to the granting of the application. Counsel for Pacific Portland Cement Company stated that standing by itself it considered the proposal unjustified but that, appreciating the new plant's need for rates, it would not

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<sup>3</sup> It was conceded that this estimate did not include interest on the investment and certain other items. However, the witness stated that he believed by transporting cement in bulk, costs could be reduced approximately 10 or 15 per cent, and that after considering the objections raised it would still be his recommendation to the management that it should engage in proprietary transportation if the 4 $\frac{1}{2}$  cent rate were not made effective.

oppose the granting of this application provided that applicant would agree never to urge that protestant's position here should be taken as an approval of the proposed adjustment. To this applicant agreed.

The other cement companies did not state their positions. The Truck Owners Association of California stated that under the circumstances it had no objection to the granting of the relief sought, but that it considered the proposed rates unreasonably low either for proprietary or for for-hire transportation.

It is not necessary here to consider all the circumstances under which relief from the prohibition of Section 24(a) of the Public Utilities Act is justified. No reason appears why, considering the location of the various mills and the transportation circumstances here of record, the Permanente shipper should not be accorded rates comparable to those enjoyed by certain of its competitors. Whether or not non-intermediate rates from certain of the other mills to the territory here involved are proper under the circumstances now obtaining is not within the issue of this proceeding.<sup>4</sup> The fact that such rates are now and for a long time have been enjoyed by competing mills, some of which this record indicates are similarly situated, together with the showing of the difference in trucking competition as between the termini and the intermediate points, justifies the relief sought. The further fact that the mill is now in operation, justifies the granting of the request to make the rates applicable on one day's notice.

The granting of this application is of course without prejudice to whatever other or different conclusion the Commission may reach on another record.

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<sup>4</sup> Pacific Portland Cement Co. filed a petition urging that the Commission institute an investigation into the non-intermediate rates from all of the competing mills to the San Francisco Bay area. If petitioner believes that these rates should be reviewed it should file a formal complaint in accordance with the Commission's Rules of Procedure.

O R D E R

This matter having been duly heard and submitted,  
IT IS HEREBY ORDERED that the above entitled application  
be and it is hereby granted.

This order shall become effective on the date hereof.

Dated at Los Angeles, California, this 23rd day of  
January, 1940.

*Ray L. Rice*  
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*Frank R. Wilcox*  
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*Justus D. Casner*  
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Commissioners.