

Decision No. 37534

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 RAIL-
 WAY COMPANY, SOUTHERN PACIFIC COMPANY,
 THE ATCHISON, TOPEKA AND SANTA FE RAIL-
 WAY COMPANY, PACIFIC FREIGHT TARIFF
 BUREAU, F. W. GOMPH, AGENT, for the
 transportation of cement and cement
 clinkers, carloads from Colton, Crest-
 more, Victorville, Oro Grande, Monolith,
 Los Angeles and Wingfoot to points in
 Southern California.

ORIGINAL

Case No. 3981

In the Matter of the Investigation by
 the Commission on its own motion into
 the rates, rules, regulations and prac-
 tices of every highway carrier doing
 business within the State of California,
 in so far as said rates, rules, regula-
 tions and practices relate to the trans-
 portation of cement and cement clinkers
 from Colton, Crestmore, Victorville, Oro
 Grande, Monolith, Los Angeles and Wing-
 foot, California, to points in Southern
 California.

Case No. 4071

BY THE COMMISSION:

Additional Appearances

Joseph T. Enright and Waldo A. Gillette for Monolith
 Portland Cement Company.
 F. W. Turcotte for Archie D. Ames.

SUPPLEMENTAL OPINION

Upon petition of Archie D. Ames, a highway contract car-
 rier, these proceedings were reopened for the limited purposes of
 determining whether or not the Commission established minimum rates
 therein for the transportation by highway carriers of cement and
 cement sacks between certain points hereinafter designated, and the
 volume of any rates so established. These questions were submitted

at a public hearing held at Los Angeles before Examiner Bryant, and are ready for decision.

Minimum rates established in these proceedings were superseded on May 31, 1942. Rates for the future are therefore not in issue; nor is the reasonableness of any rate involved. The primary question is whether minimum rates were applicable to certain shipments of cement transported in 1941 and the early part of 1942 by highway carriers from the plant of Monolith Portland Cement Company at Monolith, to several points of destinations lying roughly from one to three miles southerly and southeasterly of Muroc.¹ If this be answered in the affirmative, a secondary inquiry relates to the volume of such rate or rates.

Evidence was introduced by petitioner, who contended that the minimum rates were applicable, and by witnesses called in behalf of Monolith Portland Cement Company, who contended that the rates were not applicable. The evidence consisted essentially of specific reference to various decisions and other formal documents of record, of testimony describing in detail the delivery locations and their relationship to rail facilities, and of testimony concerning the geographical relationship of these delivery locations to Mojave, Daggett and other points named in the descriptions to be interpreted.

The record shows that on March 4, 1935, the Commission suspended proposed reduced rates filed by certain railroads for the transportation of cement and cement clinkers from Monolith and other shipping points to various points of destination throughout southern

¹ Monolith and Muroc are situated in Kern County. Monolith is located some 15 miles northwesterly from Mojave, on rails operated jointly by Southern Pacific Company and The Atchison, Topeka & Santa Fe Railway. Muroc is situated on the main line of the Santa Fe between Mojave and Daggett.

California, and entered into an investigation to determine the lawfulness of such rates (Case No. 3981). While this investigation was pending, the California Legislature enacted the Highway Carriers' Act authorizing the Commission to establish or approve maximum or minimum rates for highway carriers. Thereupon the Commission instituted an investigation into the rates maintained by highway carriers for the transportation of cement and cement clinkers from Monolith and the other shipping points to a designated area in Southern California which is a subject of our present inquiry (Case No. 4071). The two cases were consolidated for hearing and decision.

By decision No. 28334, rendered on November 4, 1935 (39 C.R.C. 498) the Commission made its findings with respect to the rail rates and established certain minimum rates for the highway carriers. In so far as is here pertinent, the order provided that highway carriers "operating between the points involved in these proceedings" should not charge for the transportation of cement from Monolith "to the points involved in these proceedings" any lesser rates than those shown in an exhibit attached to the order. The exhibit named rates to 26 destinations not herein involved, and provided a method for determining minimum rates to other "points in Southern California, Santa Barbara and Mojave and south, Daggett and west."

The territorial scope of Case No. 3981 was not defined in the order instituting investigation except by reference to the rail rates therein suspended. Testimony of record, confirmed by examination of the tariffs, shows that none of the suspended rates applied to Muroc or to any point in the vicinity thereof. The territorial scope of Case No. 4071, although apparently designed to coincide in general with that of the rail suspension case, was somewhat broader in this respect. The transportation specified in the order

instituting investigation in Case No. 4071 was that from Monolith and other origins "to Santa Barbara, Mojave and points in California south thereof and easterly to and including Daggett." That this is a broad description based upon routes of the rail lines whose rates were under investigation becomes apparent when it is observed that there are rail lines extending southerly from Santa Barbara and from Mojave, that Mojave and Daggett are rail junction points, and that there is a rail line extending easterly from Mojave to Daggett and beyond.² Since Muroc is a point between Mojave and Daggett on the latter line, it follows that a description based upon rail routes, which included the phrase "Mojave and points in California south thereof and easterly to and including Daggett" necessarily embraced Muroc and the adjacent area lying southerly from Muroc.

From these facts we conclude that transportation from Monolith to points in the vicinity of Muroc was between points involved in Case No. 4071. Therefore we find that the destinations herein considered were "points involved in these proceedings" (Decision No. 28334, supra).

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The truck rates established in Case No. 4071 were related to the rail rates.

The exhibit appended to Decision No. 28334 provided a basis for determining minimum rates to "points in Southern California, Santa Barbara and Mojave and south, Daggett and west." It will be noted that this wording differs slightly from the similar wording hereinbefore quoted from the order instituting investigation in Case No. 4071. Since an ordering paragraph of the decision specified that highway carriers should not charge for transportation "to the points involved in these proceedings" any lesser rate than those shown in the exhibit, it is evident that the geographical description in the exhibit was intended to coincide with that in the order instituting investigation. In view of the conclusion already reached that the description was based upon rail points and routes, and not upon metes and bounds, the slight difference in wording has no significance whatsoever. We find, therefore, that the established minimum rates were applicable to the transportation herein considered, namely that from Monolith to destinations lying in the vicinity of and southerly from Muroc.³

³ A cartographer, testifying on behalf of Monolith Portland Cement Company, indicated his understanding of the description "Santa Barbara, Mojave and points in California south thereof and easterly to and including Daggett" by marking on a map a straight line from Santa Barbara to Mojave and another from Mojave to Daggett. His understanding of the description "Santa Barbara and Mojave and south, Daggett and west" was indicated by drawing a straight line from Santa Barbara to Mojave, a second due south from Mojave, and a third from Daggett due west to its intersection with the second line. Muroc was shown to lie to the south of the straight line from Mojave to Daggett and to the north of the line drawn due west from Daggett. An area of not exceeding two and one-half miles south of Muroc was shown to lie to the north of a line drawn due west from the rail station at Daggett. In view of the conclusion herein reached that the quoted descriptions relate to rail routes rather than to geographical metes and bounds, imaginary boundaries traced from these descriptions by a cartographer can be of little significance.

We turn then to the question of the volume of the established minimum rates. As hereinbefore indicated, the minimum rates were set forth in an exhibit appended to Decision No. 28334, supra, as amended. The exhibit named rates specifically in cents per 100 pounds to 26 destinations, none of which are herein involved, and provided with respect to other destinations the following:

"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¢ per 100 lbs. for the first 2½ miles of the distance from the nearest rail facility to the point of delivery and 1/2¢ per 100 lbs. for each 5 miles or fraction thereof thereafter."

It will be seen that determination of the minimum rates for highway carriers requires consideration of the common carrier rail rates to "rail facility", and of the distance from the nearest rail facility to the point of delivery. During the year 1941 and until April 24, 1942, the carload rail rate for the transportation of cement from Monolith to Muroc was 5-1/2 cents per 100 pounds.⁵ Effective on the latter date the rate was increased to 6 cents per 100 pounds.⁶ But Monolith Portland Cement Company points out that the rail rate on the effective date of Decision No. 28334 was only 5 cents per 100 pounds, and urges that the order "cannot now be construed to mean that the highway carrier rates would change in the

⁴ The second paragraph quoted is as revised by Decision No. 30074, effective September 7, 1937. The paragraph originally established a charge of one-half cent per 100 pounds for the first 2 1/2 miles.

⁵ Atchison, Topeka & Santa Fe Railway Company Tariff No. 9798-N, C.R.C. No. 736; and Pacific Freight Tariff Bureau Tariff No. 88-R, C.R.C. No. 74.

⁶ Supplement No. 14 to Pacific Freight Tariff Bureau Tariff No. 88-R, C.R.C. No. 74.

event the rail rates changed", since the results would be inconsistent with the prescription of specifically named rates to 26 principal destinations.⁷ The question thus raised is whether the "common carrier rail rates on cement in carload lots from and to the same points", by which the highway carrier rates are to be measured, were the rail rates in effect when the order was made, or those in effect when the transportation was performed.

The Highway Carriers' Act directs that minimum rates established by the Commission "shall not exceed the current rates of common carriers", and it was this provision which influenced the prescription of the highway rates at the rail level.⁸ It may be reasoned that maintenance of the desired relationship between rail and truck rates would have required an ambulatory order, but the fact that the Commission prescribed highway carrier rates to rail facility at 26 principal destinations by setting forth specifically in cents per 100 pounds the rail rates in effect at the time of the order is convincing proof that an ambulatory order was not intended nor made. The common carrier rail rates to be used as a measure, then, are those which were in effect when the decision was issued, or when it became effective, or when the minimum rates became effective. No question arises here, since on each of the three dates the rail rate from Monolith to Muroc was identical, namely, 5 cents per 100 pounds.

The record shows that a number of shipments of cement were delivered at a cement platform which constituted part of a

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Brief of Monolith Portland Cement Company.

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Decision No. 28334 recites: "As to the movement from mill to railhead, the statute commands that the minimum rate for the highway carrier shall not be higher than the rail rate---As to this portion of the business, then, competitive conditions necessitate a depressed minimum for the highway carrier".

"batching plant" located approximately one mile south of the rail station at Muroc.⁹ A rail spur extended from the station to the batching plant.¹⁰ Monolith Portland Cement Company contended that delivery at the platform constituted delivery at "rail facility" within the meaning of the rate order; petitioner contended that the platform was a point beyond rail facility for which an additional charge was prescribed. Considerable testimony was devoted to the precise location of the cement platform with relation to the rail track. The exact distance between them was not established, but estimates ranged from 100 to 300 feet and the record is persuasive that the lower figure was approximately correct. It was testified that the site of the platform was selected primarily with a view to providing convenient access for motor vehicles.

The term "rail facility" is not one of precise and accepted meaning in transportation parlance, nor was it given specific definition in Decision No. 28334. The opinion portion of the decision uses with apparent interchangeability the terms "rail head destination", "rail head", "rail facility", "spur track facility" and "warehouse". The term "rail facility point" was subsequently substituted for "warehouse".¹¹ Since the rate decision specified that the rail rate should be the minimum rate for transportation of cement by highway carriers to rail facility, it is reasonable to conclude that the questioned term was not

⁹ The batching plant consisted of sand and rock bunkers, a clam shell, weighing apparatus, a water supply, and the cement platform. The purpose of this combination was to permit trucks to load measured quantities of sand, rock, cement, and water, for delivery in a mixed batch at the pouring site.

¹⁰ Although the evidence is not conclusive on the point, it appears that the carload rail rates published to Muroc were applicable to cars spotted on this spur, and such will be the assumption for purposes of this opinion.

¹¹ Decision No. 28425 dated December 22, 1935.

limited in its meaning to rail tracks or to facilities of any kind provided by the railroad. Rail facilities within such a literal meaning are rarely open to shipments transported by highway carriers and not by railroad. However, it is evident from the rate decision itself that the term "rail facility" as used therein referred only to points or locations which were strictly competitive between the railroad and the highway carrier. The cement platform herein discussed was specifically designed and located for the receipt and delivery of shipments from and to motor vehicles exclusively. The rail line could not have been used without involving a physical handling of the cement for a distance of some 100 feet or more between the rail car and the platform. The asserted fact that the shipper could as well have located the platform adjacent to the rail track is immaterial. Upon consideration of these circumstances and of the facts hereinbefore recited relating to the physical location of the cement platform, we conclude that this platform was not a "rail facility" point within the meaning of the minimum rate order.

Other shipments of cement were transported by highway carriers from Monolith to various points of delivery on the site of an airfield located at a maximum distance of less than 2 1/2 miles southeasterly from the rail facility just described. The minimum rates applicable to this transportation may be readily determined from the rate order in light of the foregoing conclusions.

In addition to the transportation rates, Decision No. 28334 provided for accessorial services as follows:

"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...

"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."

Some question was raised in the record as to whether or not, or to what extent, the highway carriers actually performed the accessorial service of unloading certain shipments. This is purely a question of fact which cannot be decided upon this record and which is furthermore beyond the purview of our present inquiry.

Petitioner seeks a determination of the minimum rates established for the transportation of returning empty sacks. Since the order specifically provides that rates for this service shall be equivalent in cents per 100 pounds to the rates for transportation of cement between the same points in the opposite direction (subject to a minimum charge per shipment), the conclusions herein reached with respect to the applicable cement rates will automatically provide a determination of the minimum rates applicable to the sacks.

Upon consideration of all of the facts and circumstances of record, and of the conclusions hereinbefore set forth, the Commission is of the opinion and finds as a fact that:

1. Decision No. 28334, supra, as amended, established minimum rates for the transportation of cement, portland building, in lots of not less than 28,500 pounds, from Monolith to the points of delivery hereinbefore described. From and after September 7, 1937, the minimum rate applicable for delivery to either the cement platform or the air-field site heretofore referred to was 6 cents per 100 pounds.

2. Decision No. 28334, as amended, established for the accessorial service of unloading, an accessorial charge of one-half cent per 100 pounds in addition to the transportation charge.

3. Decision No. 28334, as amended, established minimum rates for the transportation or returning empty sacks

between the points hereinbefore described. From and after September 7, 1937, the applicable minimum rate was equivalent in cents per 100 pounds to the rate stated in Finding No. 1 above for the transportation of cement between the same points in the opposite direction, namely 6 cents per 100 pounds, subject to a minimum charge of 50 cents per shipment.

Since these proceedings were reopened only for the purpose of determining whether or not the Commission prescribed minimum rates for the transportation herein considered, and the volume of any rates so established, no order is necessary other than an order discontinuing the proceedings.

O R D E R

Public hearings having been held in the above entitled proceedings, findings of fact having been made, and good cause appearing,

IT IS HEREBY ORDERED that Cases Nos. 3981 and 4071 be and they are hereby discontinued.

The effective date of this order shall be thirty (30) days from the date hereof.

Dated at San Francisco, California, this 5th day of December, 1944.

Richard K. Lach
Justice F. Quaker
Francis L. Havenner
Francis Dew
James H. Russell
 Commissioners.