

Decision No. 45770**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation and)
 Suspension by the Commission on its own)
 motion of reduced rates published in)
 Pacific Southcoast Freight Bureau Tariff)
 No. 88-S, Cal. P.U.C. No. 115 of J. P.)
 Haynes, Agent, for the transportation of)
 cement in bulk in carloads from Monolith)
 to Los Angeles and various other southern)
 California points.)

Case No. 5248

Appearances

C. W. Burkett, Jr., and E. L. H. Bissinger, for Southern
 Pacific Company and Pacific Electric Railway Company,
 respondents;

Joseph T. Enright, Waldo A. Gillette and Norman Elliott
 for Monolith Portland Cement Company,
 interveners;

Wallace K. Downey and J. Richard Townsend, for
 California Portland Cement Company,
 interveners;

Lauren M. Wright, for Riverside Cement Company,
 interested party;

S. A. Moore, for Permanente Cement Company,
 interested party;

C. R. Boyer, for Southwestern Portland Cement Company,
 interested party;

T. A. L. Loretz, for Blue Diamond Corporation,
 interested party.

O P I N I O N

This proceeding is an investigation on the Commission's
 own motion into the lawfulness of certain proposed reduced rates
 for the transportation of cement in bulk in carloads from Monolith
 to Los Angeles and various other southern California points.

Public hearings were held before Commissioner Craemer
 and Examiner Bryant, and oral argument was heard by the Commission

en banc. The matter is ready for decision.¹

The rates in question were published on behalf of Southern Pacific Company and Pacific Electric Railway Company to become effective on December 18, 1950. Before that date the Commission received protest from California Portland Cement Company alleging, among other things, that the proposed rates are unjust and unreasonable, unduly preferential to Monolith Portland Cement Company, and unduly prejudicial to the protestant, in violation of Sections 13 and 19 of the Public Utilities Act. It appearing to the Commission that the rights and interests of the public might be injuriously affected, the effective date of the reduced rates was postponed and their operation suspended pending a determination of their lawfulness in accordance with the provisions of Section 63(b) of the Public Utilities Act.

The respondent railroads, assisted by Monolith Portland Cement Company, assumed the burden of justifying the suspended rates. California Portland Cement Company undertook to show these rates to be unlawful. Other cement companies entered appearances and observed the proceedings but did not participate actively. Although this case is technically a Commission investigation, development of the record was accomplished through a bitter contest in which the respondent railroads and the Monolith company appeared on one side and California Portland appeared on the other. Twenty witnesses testified, and more than 100 exhibits were received. The hearings consumed twelve days and extended, with necessary continuances, from February 26 to May 8, 1951.

¹ Hearings were held at Los Angeles on February 26 and 28, March 1, 21, 22, 28, 29 and 30, and May 2, 3 and 4, 1951. The oral argument was held at Los Angeles on May 8, 1951.

The Monolith company operates a cement manufacturing plant at Monolith, approximately 117 miles north of Los Angeles on rails of the Southern Pacific Company.² California Portland Cement Company operates a mill at Colton, 57 miles east of Los Angeles, served by Southern Pacific, Pacific Electric, Santa Fe and Union Pacific.³ Two other cement producers are involved indirectly but vitally. One of them, the Southwestern Portland Cement Company, has its mill at Victorville, about 104 miles east of Los Angeles on the rails of Santa Fe and Union Pacific. The other, Riverside Cement Company, operates two plants; one at Crestmore, 55 miles east of Los Angeles on the Union Pacific, and the other at Oro Grande, 109 miles east of Los Angeles on the Santa Fe and Union Pacific. In accordance with their relative distances from Los Angeles, the mills at Colton and Crestmore are referred to as the "inner" mills while those at Monolith, Victorville and Oro Grande are called the "outer" mills.

Historically, the rates to the Los Angeles area have been maintained on a lower basis from the inner mills than from the outer mills, with the inner mills generally in one rate grouping and the outer mills in another.⁴ The rate differential between the inner

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The Atchison, Topeka and Santa Fe Railway Company also operates over the tracks which serve Monolith. However, for movements from Monolith to Los Angeles the Santa Fe line follows a circuitous route and competitive rates are not maintained.

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Names of the railroad companies have been shortened herein for convenience. The names in full are Southern Pacific Company, Pacific Electric Railway Company, The Atchison, Topeka and Santa Fe Railway Company, and Union Pacific Railroad Company.

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Decision No. 32280, in Cases Nos. 4425, 4427 and 4428, reported 42 C.R.C. 92, at page 94 (1939), recites as follows: "The first mill established was at Colton. The scale of rates applicable from Colton was later extended to apply from Crestmore, which is located but a short distance therefrom. When the Oro Grande plant was established, it was accorded rates $1\frac{1}{2}$ 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."

and outer mills has varied from time to time, has been a matter of undisguised concern to all of the cement producers, and has been made the subject of many proceedings before this Commission in the past.⁵

The present rates to Los Angeles are 6 cents from the inner mills and 7½ cents from the outer mills, thus resulting in a differential of 1½ cents per 100 pounds. From Monolith to Los Angeles the suspended rate is 7 cents.⁶ The existing rates apply on either sacked or bulk cement and are subject to a minimum weight of 60,000 pounds; the suspended rates are restricted to cement in bulk and are subject to a minimum of the marked capacity of the car used.

Since 1939 there has existed a period of relative calm in the southern California cement rate situation.⁷ This period, it now appears, was in the nature of an armed truce which awaited only an incident to bring about a renewal of hostilities. That incident was the publication and filing by respondents of proposed reduced rates from Monolith to destinations in the Los Angeles area.

⁵ For example, Case No. 576, Golden State Portland Cement Co. vs. A.T.S.F.Ry.Co., et al. (1915); Case No. 2663, California Portland Cement Co., et al. vs. S.P.Co., et al. (1930); Case No. 3280 Southwestern Portland Cement Co. vs. A.T.S.F.Ry.Co., et al., and related Cases Nos. 3283, 3289, 3295, 3313, 3334 and 3361 (1933); Case No. 3836, In re Suspension of Reduced Rates (1934); Case No. 3981, In re Suspension of Rates (1935); and Case No. 4425, California Portland Cement Co. vs. S.P.Co., et al., and related Case No. 4427 (1939).

⁶ Los Angeles is the heart of the market, and rates to that point are illustrative. The same or related rates are maintained and proposed to various surrounding cities and communities. All rates are stated herein in cents per 100 pounds.

⁷ In 1939 the present respondents were permitted, after investigation, to establish certain reduced rates from Monolith. See Decision No. 32280 in Cases Nos. 4425, 4427 and 4428, 42 C.R.C. 92.

Monolith Portland Cement Company, the record shows, applied the initial force which ended the period of tranquility. For some time that company had attempted to prevail upon respondents to restore the prewar rate differential between Monolith and the inner mills of one cent per 100 pounds.⁸ The attempts were not productive of results. Then, in June, 1950, the president of Monolith company told traffic officials of Southern Pacific Company that unless the Monolith rates were reduced promptly his company would undertake to perform all of its own transportation to the Los Angeles area.⁹ Thus threatened with the loss of substantial tonnage, the Southern Pacific traffic official responsible for rates of his company in southern California proposed for consideration a 7-cent rate from Monolith to Los Angeles, applicable only upon cement in bulk. At a subsequent meeting in August, 1950, after a period of study by both sides, he made a definite offer to establish the rates now suspended, and the offer was accepted by Monolith.

The senior executive vice president of the Monolith company testified that since 1939 his company has shipped by rail substantially all of its cement sold in the Los Angeles area, and will continue to do so if the rates now suspended are permitted to become effective. During the past year the bulk movement to

⁸ The one-cent differential was established in 1939, but was changed to 1½ cents as the result of general percentage increases made in the level of rail rates in recent years.

⁹ He said in effect, according to a railroad witness, "that he was tired of fooling around with the railroads about adjusting rates on cement from Monolith to Los Angeles and southern California and unless we did something and did it promptly he would transport by proprietary operations all of his cement from Monolith to southern California."

destinations involved in this proceeding exceeded 160,000 tons and the sacked movement exceeded 100,000 tons. An increase in both bulk and sacked shipments is expected in the coming year. The company became alarmed, he said, by the continued declination of the rail lines to restore the one-cent differential, and by the fact that competing mills were acquiring an increasing number of hopper-bottom truck trains. These conditions caused Monolith to investigate the economic feasibility of installing a proprietary transportation system from its plant. After investigation a firm conclusion was reached that the necessary vehicles should be purchased unless the rail rates were reduced. The witness testified that, if the suspended rates are not made effective, the Monolith company will acquire at least sufficient hopper-bottom tank trailer truck trains to transport all of its bulk tonnage to the Los Angeles market, and will acquire additional facilities to transport some, if not all, of the sacked cement. He stated that the company plans to expand its shipping facilities at Monolith in any event, and will design the facilities specifically for truck loading if the hopper-bottom truck trains are acquired. Once the capital investments are made, he declared, the rails will lose the Monolith tonnage for at least five years - the minimum economical life of the trucks - and rail shipments will be permanently affected in the future by the loading facilities.

The traffic manager of the Monolith company introduced in evidence his estimates of the costs which the company would incur in performing its own transportation. During the extended course of the hearings he modified his figures in various respects, but he consistently maintained the opinion and belief that Monolith can acquire the necessary vehicles and perform its transportation of bulk

cement to destinations involved in this proceeding at an over-all cost not greater than it would incur in shipping by rail at the suspended rates. His conclusions were based upon factors which may be summarized briefly. According to the Monolith evidence 28 per cent of its bulk tonnage to the Los Angeles area moves to railhead destinations and the remaining 72 per cent goes to off-rail points which must be reached by motor vehicle. The tonnage now moving to the off-rail points is shipped in rail cars from Monolith to storage and transfer plants which the company maintains in the Los Angeles area.¹⁰ There it is transferred to motor vehicles at an estimated cost of one cent per 100 pounds, and thence transported to destinations throughout the Los Angeles area at an average cost of about 4 cents per 100 pounds. Based upon these factors, the average cost to the Monolith company of moving all of its bulk tonnage to the Los Angeles market at the suspended rates, including transfer and trucking beyond railhead where necessary, would be about 10½ cents per 100 pounds. The cost which the company would incur in transporting all of the tonnage direct from Monolith to the final destinations in its own vehicles, as estimated by the traffic manager, would be ^{about} 9¼ or 9½ cents per 100 pounds.

Respondents introduced evidence designed to show that the suspended rates were necessary to retain the traffic. An assistant traffic manager of Southern Pacific Company testified that the rates were published only after respondents had studied the entire situation carefully and had satisfied themselves that the reductions were essential to prevent loss of the Monolith bulk tonnage. He said

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The cement is handled through silos located at Pacoima, Industrial and Hawthorne.

that the issue in this proceeding is not whether there should be a restoration of former rate differentials, but whether respondents will retain or lose the substantial volume of Monolith cement traffic which they now enjoy. This witness pointed out that the suspended rates are subject to a minimum weight of the marked capacity of the car used, and said that covered hopper cars owned by Southern Pacific have a marked carrying capacity of 140,000 pounds. Carload shipments in sacks, he said, average about 95,000 pounds per car, whereas the average loading of cement shipped in bulk by Monolith in 1950 was 153,000 pounds per car. The load limit, also stencilled on the cars, exceeds the marked capacity. He introduced exhibits showing that the movement from Monolith in 1950 was greater than the rail movement from both Colton and Crestmore during the same period. When asked why the respondents did not publish a relative rate reduction from the inner mills, he replied: "Because, in our judgment, a relative reduction of one-half cent for 100 pounds in the present rate to Los Angeles from Colton and Crestmore, with related rates to points beyond, would not result in any increase of revenue, but would, in fact, result in a decrease in the revenues the rail lines are receiving."¹¹

Analyses of the rail costs were submitted by the manager of Southern Pacific Company's Bureau of Transportation Research. This witness introduced as exhibits various studies which had been prepared by him, or under his direction, of the out-of-pocket cost of hauling bulk cement from Monolith and from Colton to Los Angeles and other destinations involved in this proceeding. His exhibits included separation of costs according to the type of car loaded and according to the use of steam or diesel-powered locomotives. He explained that bulk cement shipped by Monolith company moves principally in covered hopper cars owned by Southern Pacific, with

¹¹ During an interval between hearings in this proceeding California Portland tendered to the rail lines a request for a rate reduction from Colton corresponding to that proposed from Monolith. The record shows that this request was considered at a special meeting of representatives of all of the rail lines serving Colton, and that the carriers voted to decline the request.

a lesser movement in privately-owned hopper cars or in box cars; and that Southern Pacific is in a transition period in conversion from steam to diesel-powered locomotives. Expenses were assigned to particular trains so far as possible, and unit costs were developed for those items of expense which cannot be directly assigned but must be allocated. He stated that considerable time was spent in determining the variable portions of maintenance of way and structures expenses. After the costs per train mile and per thousand gross-ton miles were derived they were applied to the total tons per car (assuming 100 per cent empty return for each district) in order to determine the line-haul costs. To the line-haul costs he added the estimated car-mile costs, switching costs, terminal costs, loss-and-damage expenses, payroll taxes, and other items.

According to the cost exhibits, the weighted average cost of handling cement in covered hopper cars from Monolith to various points in Los Angeles and the adjacent area during the first eleven months of 1950 was 5.35 cents per 100 pounds under steam operations and 4.59 cents per 100 pounds under the composite steam and diesel operations. At the suspended rates the weighted average revenue on the same shipments would have been 7.70 cents per 100 pounds. With reference to the movement of bulk cement from Colton to points in the Los Angeles area he developed an estimated out-of-pocket cost of 4.18 cents per 100 pounds for movement via Southern Pacific, and 5.19 cents per 100 pounds for handling via Pacific Electric.¹² The corresponding average revenue was 7 cents per 100 pounds. The witness declared that any traffic which can be gained by any means

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These costs are based upon the average load of 147,800 pounds per car actually shipped for the first eleven months of 1950. At 153,000 pounds per car the cost per 100 pounds would be reduced about .18 cents. The loads from Monolith averaged approximately 153,000 pounds, and the record indicates that present and future shipments from the Colton mill may be about the same.

at a rate which will return more than the out-of-pocket cost will reduce the burden on other traffic.

The foregoing brief description of evidence offered by respondents and by the Monolith company indicates in general their position regarding the suspended rates. The position may be summarized as follows: The rates are essential to retain substantial tonnage; although necessarily depressed below maximum reasonable rates, they will produce revenue well in excess of the out-of-pocket cost; they will not burden other traffic but will, to the contrary, relieve the burden which would otherwise exist if the tonnage were lost; and they do not unduly prefer Monolith, nor prejudice Colton, because circumstances surrounding the movement of tonnage from the two shipping points are dissimilar. Respondents hold that a corresponding reduction in the rates from Colton would constitute an unwarranted sacrifice of revenues without necessity or justification.

California Portland Cement Company challenged in a number of respects the showing offered by respondents and by the Monolith Company. The unusual length of the record in this proceeding was due in large measure to the undertaking by California Portland to discredit this showing, which undertaking led to the introduction of rebuttal evidence by respondents and by Monolith, and to further rebuttal and surrebuttal by both sides. Numerous collateral issues were developed and explored, some of which had little evident bearing upon the basic issues in this case.

It was the announced purpose of California Portland to show, among other things, that the Monolith cost estimates were understated; that the proprietary operation, as assertedly contemplated by the Monolith company, would not be economically feasible; and that the company was not sincere in its threat to engage in extensive proprietary trucking. It sought to show also that the

rail estimates tended to understate the current cost of the movement from Monolith, and to overstate relatively the cost of rail transportation from Colton. In addition to its cross-examination of witnesses called by the proponents of the suspended rates, California Portland used the process of subpoena to examine other rail representatives, and also produced a number of voluntary witnesses on its own behalf.¹³

California Portland pointed out and examined in detail various alleged defects in and omissions from the Monolith estimates of proprietary trucking costs. Among the expense items believed to be understated or excluded were those for tires, vehicle repairs, insurance, and garage overhead. A consulting cost expert was engaged by California Portland to prepare and submit his own estimate of the costs which Monolith would encounter. He used for this purpose certain records developed by the Colton mill in conducting proprietary services, modified these figures where he believed necessary, and supplemented them with data obtained through his experience in studying other trucking operations. The consultant explained that the Colton records were relied upon where possible, but that the other sources were used when the Colton figures were not available or not appropriate. Monolith's cost for transporting its bulk cement to the Los Angeles area, according to the consultant's estimate, would average about 15.44 cents per 100 pounds. He offered calculations to show that if the Monolith company were to put its proprietary plans into effect it would incur a total annual expense substantially greater than that which accrues under the

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Rail representatives subpoenaed by California Portland were the assistant to the president of Southern Pacific Company in charge of the Bureau of Transportation Research, the assistant general auditor and two assistant freight traffic managers of that company, a general freight agent of Union Pacific, and an assistant general freight agent of Santa Fe.

present shipping methods: Based upon one of his exhibits, the additional cost, considering both bulk and sacked cement, would be nearly \$300,000 a year.

Officers and employees of California Portland, and certain receivers of cement shipped by that company, testified concerning respects in which the Monolith trucking plans were believed to be impracticable. According to the evidence thus introduced, many difficulties would be encountered. The witnesses undertook to show that the contemplated number of vehicles would be insufficient; that if the number were increased their use factor would drop; that if they were supplemented by for-hire vehicles Monolith's total cost would be increased accordingly; that many places to which bulk cement must be delivered are not physically capable of accommodating the large vehicle-trains which the company would use; and that additional costs would accrue if vehicles of a different type had to be used for some of the movements. The contention in general was that, while Monolith might feasibly transport a portion of its product in company-owned trucks, it would be economically unsound for it to handle the entire bulk movement to all points involved in this proceeding. Counsel for California Portland Cement Company argued that the Monolith trucking threat, being obviously impracticable, was false, fraudulent, and a sham, made only for the purpose of gaining a commercial advantage for the Monolith mill.

Objections by California Portland to the rail cost estimates were of two principal classes. First, it undertook to show, mainly through cross-examination of railroad witnesses, that rail operating costs had increased since some of the basic data were developed; and that respondents were inconsistent in reducing cement rates from Monolith while at the same time seeking to make a general

increase in all of their class and commodity rates.¹⁴ Second, it sought to show, principally through the testimony of its cost consultant, that certain of the formulas used by the rail witness had the effect of increasing relatively the cost of switching and hauling from Colton. High switching costs at Colton were challenged as being attributable in part to the formulas and in part to rail-road operating disabilities. California Portland developed also, through examination of the rail witnesses, that the Monolith-Los Angeles haul involves operating conditions considerably more severe than those between Colton and Los Angeles.

Traffic representatives of the Santa Fe and Union Pacific, called as witnesses by California Portland, testified that their companies had not voted favorably on the reduced rates from Monolith prior to their publication.¹⁵ The Santa Fe witness said that if the Monolith reduction were made it was most likely that a similar adjustment would be made by his company in the rates applying from the plant of Riverside Cement Company at Oro Grande and from the plant of Southwestern Portland Cement Company at Victorville. He declined to express an opinion whether Santa Fe would thereby suffer a collateral loss. The Union Pacific witness stated that if the suspended rates went into effect his company would feel obliged to give the same rates to the Oro Grande and Victorville mills. He declared unequivocally that the Union Pacific will therefore suffer a substantial collateral loss in revenue if the Monolith rate

¹⁴ General increase petitions are pending before the Interstate Commerce Commission in I.C.C. Docket Ex Parte No. 175, and before this Commission in Application No. 32219.

¹⁵ Under established procedures, proposed changes in rail rates are docketed for consideration by all carriers whose interests may be affected.

reductions are permitted. It was the belief of his company, he said, that any reduction in the present rates on bulk cement from the outer mills to Los Angeles would produce rates that would be unreasonably low.

It was shown by evidence adduced on behalf of California Portland that there is a high degree of competition in the distribution of cement throughout the Los Angeles area. Each of the mills, the record shows, maintains a staff of salesmen who regularly solicit the business of all substantial users of the commodity. Very small differences in delivered price, differences considerably less than the one-half cent per 100 pounds reflected by the suspended rate reduction, are sufficient to influence the consumers in selecting one brand in preference to another. California Portland witnesses asserted that the Monolith company is able to dispose of much of its product at points relatively remote from competitors (such as the southerly portion of the San Joaquin Valley), and "dumps" the remainder in the Los Angeles market upon which their company is dependent. They testified that, although all of the producers sell cement wherever they can do so to best advantage, there is particularly active competition in the Los Angeles area which constitutes the major market for cement in southern California.

The vice president of California Portland and a consulting expert in transportation rate matters, both testifying on behalf of that company, introduced in evidence a number of exhibits comparing the present and suspended rates on cement from Monolith with those on the same and various other commodities between other points in California. The statements indicate, in the instances selected, that the Monolith rates are more favorable than those applying from Colton to certain destinations beyond Los Angeles; that the southern California cement rate structure is relatively depressed when

compared with cement rates elsewhere; and that the Monolith cement rates are lower than Class "C" rates and below various commodity rates on lime, gypsum and plaster. The conclusions which California Portland would have the Commission draw from all of these comparisons were not made apparent.

Full discussion of all of the rebuttal and surrebuttal evidence would unnecessarily lengthen this opinion beyond reasonable limits. The Monolith company subpoenaed California Portland's trucking records and recalled its own traffic manager for the purpose of showing that the consultant's cost estimates were invalid. California Portland undertook to show in detail that its trucking records were incomplete and valueless unless properly modified and supplemented. The respondent rail lines reacted to criticism of their cost analyses by recalling the manager of Southern Pacific's Bureau of Transportation Research to point out wherein the criticisms were in error. The Monolith traffic manager, in rebuttal testimony, reiterated his conviction that his cost estimates were conservative and the company's plans well-considered and sound. Each participant in the proceeding was most painstaking in pointing out errors or inconsistencies in the opposing evidence and in responding to criticisms of its own evidence. That some details of record have been omitted from discussion in this opinion should not be taken as an indication that any of the material evidence has been overlooked or disregarded.

The sole purpose of this proceeding is to determine whether or not the suspended rates should be permitted to become effective. The Commission will not assume the functions and responsibilities of railroad management. Respondents' judgment in rate making will be supplanted by that of the Commission only if the provisions of the Public Utilities Act have been or will be violated.

It is axiomatic that the present suspension must be lifted unless the Commission finds from the evidence of record that the rates are unlawful. The issue resolves itself essentially to the question whether the rates are, as alleged by California Portland Cement Company, either unjust and unreasonable in violation of Section 13, or unduly preferential and prejudicial in violation of Section 19 of the Public Utilities Act.

It is well established that rates may be unreasonable¹⁶ because they are too low as well as because they are too high. There is a zone of reasonableness within which common carriers, so long as statutory restrictions are not transgressed, may and should exercise discretion in establishing their rates. The upper limits of that zone are represented by the level at which the rates would be above the value of the service, or be excessive. The lower limits are fixed, generally, by the point at which the rates would fail to contribute revenue above the out-of-pocket cost of performing the service, would cast an undue burden on other traffic, or would be harmful to the public interest. Rates at the upper limits of the zone may be termed maximum reasonable rates; those at the lower limits of the zone may be termed minimum reasonable rates.

It is evident on the present record that the suspended rates from Monolith are less than maximum reasonable rates. Neither the respondents nor any of the interested parties contended to the contrary. The issue at this point is whether the rates are unreasonably low, i.e., less than minimum reasonable rates. In order to decide this issue properly it must be determined, among other things, whether or not the rates will provide revenue in excess of the out-of-pocket cost of performing the service.

¹⁶ Interstate Commerce Commission vs. C.N.O. & T.P. Ry. Co., 167 U.S. 479, 511.

According to respondents' cost studies, the rates would return revenues substantially in excess of the out-of-pocket cost. California Portland Cement Company spared no effort to show that the estimated costs were understated, principally on the basis that the rail studies failed to reflect recent increases in wages and other items of expense. It succeeded in establishing that railroad operating expenses have followed in general an upward trend, and that all of the expense increases were not accounted for in the rail cost exhibits. The examination disclosed also some examples of offsetting reductions in expense items, attained through technological improvements and otherwise. It is clear from careful consideration of all of the evidence that correction of the real or apparent inadequacies in the exhibits would have collectively only an inconsequential effect upon the final results. Whatever the adjustments should be, the conclusion is inescapable from the evidence that the current out-of-pocket cost to respondents of transporting bulk cement in carloads from Monolith to destinations involved in this proceeding is substantially below the gross revenues which would be returned by the suspended rates.

The suspended rates, being reductions, would of course return less revenue to the carriers than they would receive if the same tonnage were transported at the present rates. Inasmuch as both the present and proposed rates are relatively low, there is the question whether the reduction is in fact necessary and whether it will have the effect of burdening other traffic. Section 13 $\frac{1}{2}$ of the Public Utilities Act inhibits the establishment of lower than maximum

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reasonable rates under certain circumstances. If the evidence were convincing that respondents can retain the tonnage without making the reduction there would be some basis for holding that the suspended rates would improperly sacrifice revenues, with consequent burdening of other traffic and with potential collateral losses to other carriers. On the contrary, however, the record is convincing that the reduction is necessary if the Monolith traffic is to be retained. The disbelief of California Portland Cement Company in the economic feasibility of Monolith's trucking plan is understandable, but whether or not experience would prove that venture to be a prudent one the record is strongly convincing of the company's determination to undertake it if the suspended rates are disapproved. Certainly the respondent railroads, persuaded of that determination, have filed the reduced rates voluntarily in the conviction that otherwise a proprietary fleet will be installed and their traffic lost. We find no sound basis for concluding that their conviction is unfounded or unwarranted, nor for holding that they were not fully justified in acting upon it.

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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."

We observe no necessary inconsistency in respondents' action in reducing particular rates while seeking general rate increases in other proceedings. Their evident objective in both instances is the same, i.e., to maximize their net revenues. The evidence in the present proceeding is convincing that the suspended rates, albeit they are reductions, will serve that purpose.

It is concluded that the suspended rates are necessary to retain to the rail lines a substantial volume of tonnage, and that the rates will return revenues substantially in excess of the out-of-pocket costs and contribute needed revenues to the rail overhead burden. Upon basis of these conclusions we find that the suspended rates are not unjust nor unreasonable in contravention of the provisions of Section 13(a) of the Public Utilities Act. We find further that the rates are justified by transportation conditions and not contrary to the provisions of Section 13 $\frac{1}{2}$ of the Act.

There remains the question whether, by establishing the suspended rates, the respondents would make or grant any preference or advantage to the Monolith company or subject California Portland Cement Company to any prejudice or disadvantage contrary to the provisions of Section 19 of the Act.

It is clear from the evidence that California Portland would be disadvantaged by the suspended rates, as it would by any rate reduction applicable from competing mills and not from its own. Because of the highly competitive nature of the Los Angeles cement market, an advantage gained by one of the companies represents an actual or potential threat to the others. Changes in the rail rate relationships apparently affect materially the extent to which particular companies can compete in the Los Angeles area. The great concern and anxiety of California Portland, as evidenced in this

proceeding, is easily understandable. The anxiety was made more acute by the possibility that the rate reductions, if allowed, might be extended to its other competitors shipping from Victorville and Oro Grande.¹⁸

Nevertheless, every difference or disadvantage is not an unlawful discrimination. Regardless of any sympathetic understanding with which the Commission may view the situation confronting California Portland, it may not arbitrarily condemn the suspended rates. Discrimination, preference, and prejudice 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; and to be unlawful must be unjust and undue.¹⁹ In order to establish the fact of unlawful discrimination it must be shown that attending circumstances and conditions are substantially similar.²⁰

The suspended rates were published by respondents under circumstances amounting to compelling necessity. No such necessity dictates a similar reduction in the rates from Colton. In the best judgment of responsible traffic officials of Southern Pacific Company, the railroads would be simply "throwing money away" if they were to reduce the rates from Colton. In this important respect the circumstances and conditions attending the Monolith traffic are dissimilar to those surrounding the Colton traffic. Under the suspended rates

¹⁸ That the Southwestern Portland Cement Company and Riverside Cement Company expressed no concern over the proposed rate reduction from Monolith is explainable by the fact, established of record, that the Union Pacific would "feel obliged" to make the same reduction from the Victorville and Oro Grande mills, and that the Santa Fe would "most likely" make an identical adjustment from those points.

¹⁹ Re Tariff Suspension, 42 C.R.C. 92, 117, and cases therein cited.

²⁰ Pacific Electric Railway Company (Nov. 5, 1934), Dec. 27943, Application 17984, unreported.

the differential, Monolith over Colton, in the rates to Los Angeles would be reduced from 1½ cents to one cent per 100 pounds on bulk cement only. The lower figure does not represent a new competitive factor for California Portland. A one-cent rate differential was maintained by the rail lines for long periods in the past.

The miscellany of rate statements submitted in exhibit form by California Portland affords no evident basis for a conclusion that unlawful discrimination would be created by the suspended rates.

Upon careful consideration of all of the facts and circumstances of record it is concluded and we hereby find that the rates under suspension in this proceeding are not unreasonable, discriminatory or in any other respect unlawful. The suspension will be lifted.

Acceptance of the suspended rates by the Commission does not constitute endorsement of rates on cement between other points. Only the particular rates now under suspension are in issue in this proceeding. The respondent railroads, in conformity with their commitments made in connection with general rate increase proceedings, should give appropriate study and consideration to their carload cement rates from all points. X

O R D E R

Public hearings and oral argument having been held in the above-entitled proceeding, and based upon the evidence of

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record and upon the conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that the order of suspension in this proceeding be and it is hereby vacated and set aside and that the proceeding be and it is hereby discontinued.

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

Dated at San Francisco, California, this 29th day of May, 1951.

R. J. [Signature]
Justus F. O'Connell
Harold A. Kula
Francis H. Potter
John E. Mitchell
Commissioners