

**ORIGINAL**

Decision No. 48436

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation	)	
into the rates, rules, regulations,	)	
charges, allowances, and practices	)	
of all common carriers, highway	)	Case No. 4808
carriers, and city carriers relating	)	
to the transportation of property.	)	

Appearances

- Edward M. Berol, Bertram S. Silver and Frank M. Chandler, for Truck Owners Association of California, petitioner.
- S. A. Moore and Kenneth M. Robinson, for Permanente Cement Company, intervenor and interested party.
- Joseph T. Enright and Waldo A. Gillette, for Monolith Portland Cement Company, protestant.
- Eugene R. Booker, for Northern California Ready Mixed Concrete & Materials Association, protestant.
- O'Melveny & Myers, by L. M. Wright, for Riverside Cement Company, interested party.
- C. R. Boyer, and Overton, Lyman, Prince & Vermille, by Wayne H. Knight, for Southwestern Portland Cement Company, interested party.
- John E. Doane, for Calaveras Cement Company, interested party.
- William G. Higgins, for Santa Cruz Portland Cement Company, interested party.
- Wallace K. Downey, for California Portland Cement Company, interested party.
- N. E. Keller, interested party.
- Grant L. Malquist, for the Commission's staff.

SUPPLEMENTAL OPINION

The minimum rates applicable to the transportation of cement in truckloads (38,000 pounds or more) by city and highway carriers are set forth in City Carriers' Tariff No. 8 - Highway Carriers' Tariff No. 10.<sup>1</sup> This tariff has been in effect since

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<sup>1</sup> These rates were prescribed by Decision No. 44633 of August 8, 1950, in this proceeding. The tariff is Appendix "A" of that decision.

September 15, 1950. It provides truckload rates of state-wide application. These rates superseded generally lower rates which had therctofore been in effect in other minimum rate tariffs.<sup>2</sup> There are two scales of rates in the cement tariff. The "Northern Territory" scale applies north of Gaviota Pass and north of Kern and San Bernardino Counties. The "Southern Territory" scale applies in the remainder of the State.<sup>3</sup> For distances of 200 miles or less the northern scale is higher than the southern scale. For greater distances the scales are on the same level. Interterritorially the applicable scale is that for the territory in which the shipment originates.

Originally, Truck Owners Association of California sought a 15-percent increase in the northern territory rates. Subsequently, it amended its proposal by requesting the same increase in southern to northern territory and Kern County rates.<sup>4</sup> Following this amendment Permanente Cement Company filed a petition asking

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<sup>2</sup> The other tariffs are the general commodity San Francisco, East Bay, Los Angeles and San Diego drayage area and state-wide highway carrier tariffs.

<sup>3</sup> The boundary line is described in Item No. 80 of the tariff as follows: "Beginning at a point on the shore line of the Pacific Ocean due south of Gaviota, thence northeasterly along an imaginary straight line to the junction point of Santa Barbara, Ventura and Kern County boundaries, northerly and westerly along the westerly boundary of Kern County to the junction point of Kern, San Luis Obispo and Kings Counties, thence easterly along the northerly boundary lines of Kern and San Bernardino Counties to the California-Nevada boundary line."

In northern territory cement mills are situated at Kentucky House (Calaveras County), Redwood City, Permanente (Santa Clara County), Davenport (Santa Cruz County) and San Juan Bautista (San Benito County). The mills in southern territory are located at Monolith (Kern County), Colton, Crestmore (Riverside County) and Oro Grande and Victorville (San Bernardino County).

<sup>4</sup> The petition seeking the increase, as filed on January 18, 1952, was limited to transportation within northern territory. It was scheduled for hearing on February 27. At petitioner's request the hearing was postponed. Thereafter, and again at petitioner's request, the matter was temporarily removed from the hearing calendar. The amendment was filed on May 31.

(1) that it be permitted to intervene, (2) that rates be established which would eliminate unjust rate relationships and undue discriminations and preferences allegedly resulting from the existing territorial arrangements and the rates applicable thereunder, and (3) that the territorial descriptions be revised accordingly.<sup>5</sup>

Following nine days of public hearing held at San Francisco before Examiner Mulgrew and at the conclusion of oral argument the matter was submitted.

During the course of the hearings Permanente modified its petition by confining its requests affecting southern territory to territorial areas and rates involving the cement mill situated at Monolith. It proposes the revision of territorial descriptions so that Monolith would be included in both northern and southern territory. It also proposes the adoption of a rule under which the northern rate scale would apply on shipments from Monolith to northern territory and the southern rate scale would apply on shipments from Monolith to southern territory.

The truck association similarly changed its proposals affecting southern territory. It urges that the Monolith mill be included in northern territory. As an alternative it proposes that such increases as may be established in northern territory rates also be made applicable to transportation from Monolith to northern territory and an investigation be undertaken to determine the lawfulness and propriety of the Monolith rate differentials.

The truck association contends that the cement carriers have experienced marked increases in costs, particularly in wage costs, since the present rates were established. It stresses the increases in drivers' wages and in the carriers' contributions to employee health and welfare benefits. It asserts also that higher

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<sup>5</sup>The Permanente petition was filed on June 18.

costs for fuel, tires, other materials and supplies and increased taxes similarly have been experienced by the carriers. The association claims that as a result the cement rates have become unreasonably low and now fail to produce adequate revenues.

The tariff rates apply to the transportation of cement whether it is in bulk or in sacks. The preponderant movement is in bulk. The association and the Commission's Transportation Division staff submitted estimated costs for bulk cement hauling. The bulk cement costs developed by the staff are somewhat lower than the sacked costs. The staff study also shows increases in expenses experienced by the carriers for bulk cement hauling since the existing minimum rates were established. The costs developed by the witnesses for bulk cement transportation, the staff estimate of the percentage increases in these costs since they were previously studied and the existing and proposed rates for various distances are shown in the following table:

TABLE 1  
Estimated Costs, Increases in Costs and Existing and Proposed Rates  
(Costs and Rates in cents per 100 pounds)

Miles	COSTS		INCREASE IN COSTS		RATES			
	Association	Staff	Staff	Existing	(a)	(b)	(c)	(d)
30	6.1	5.7	6.8%	5 $\frac{1}{2}$	5	6 $\frac{1}{2}$	5-3/4	
75	11.9	10.6	3.5	11	10	13	12	
150	20.9	18.4	8.4	18	17	21	20	
350	45.2	41.5	10.2	34	34	39	39	
500	63.7	59.3	10.5	48	48	55	55	

- (a) - Northern territory scale.  
 (b) - Southern territory scale.  
 (c) - Northern territory and from Monolith to northern territory.  
 (d) - Alternative proposal Monolith to northern territory.

<sup>6</sup> The staff costs are based on wages and contributions to employee benefits in effect on June 1, 1952. They do not reflect an additional wage increase of 4 $\frac{1}{2}$  cents per man per hour and an additional contribution of \$3.65 per man per month subsequently approved by the Wage Stabilization Board. However, the current costs are only slightly understated. The differences are represented by small fractions of a cent for each 100 pounds.

The truck association's cost figures are based on operations which include some hauling from the Monolith mill. Its witnesses said that wages and other costs for the Monolith operations are the same as those for northern territory operations. This is disputed by Monolith. Its witness testified that there are two groups of for-hire carriers hauling from Monolith. He said that the first and larger group consists of carriers operating from the mill on a daily basis and the second and smaller group consists of carriers transporting cement from the mill at the request of dealers and with less frequency than the other truckers. The Monolith witness said that the mill arranges loads for the first group but not for the second. The association's cost studies are not based on the operating experience of any of the carriers included in the first group.

With respect to hauling to Kern County points, the Monolith witness testified that operations from southern territory to these points are conducted on the basis of a lower wage rate than operations from northern territory.<sup>7</sup>

The staff cost studies do not include any Monolith<sup>8</sup> operations.

The truck association supplied operating statements for five carriers, California Trucking Service, J. A. Nevis Trucking, Inc., Miles and Sons, A. Nunes Trucking, and Swanson's Trucking Service. These statements cover the period May 1, 1951 through April 30, 1952, except in the case of California Trucking Service. Its statement covers only the five-month period commencing December 1, 1951, when it was acquired by Miles. Concededly

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<sup>7</sup> Wages for the southern territory hauling, he said, were \$1.86½ per man per hour, or a percentage of revenue, as compared with \$2.00 per man per hour for the northern territory hauling.

<sup>8</sup> They were prepared when only northern territory rates were involved. The amendment of the association's petition broadening the territorial scope of the issues filed May 31, 1952, was accompanied by a request for an early hearing. A hearing was scheduled for June 23.

this five-month period is not typical of annual operations for the reason that it includes the three winter months when construction activity is limited by weather conditions and the use of cement is consequently less than in other months. Also, during the remaining months of this particular period building activity admittedly was curtailed by strike conditions.

Nevis is predominantly a general commodity hauler. Its cement revenue was derived entirely from a single regular operation under a rate exceeding the minimum rate and amounted only to approximately one and one-half percent of its total revenue.

In the circumstances the operating statements of California Trucking and Nevis have little value. The following tabulation shows the actual operating results submitted by the three remaining carriers. It also shows their estimates of results from future operations made on the basis of the adjustments in the actual results necessary to give effect to higher expenses, to provide for income taxes and to account for additional revenues including those which would be derived from the proposed cement rate increase.

TABLE 2

<u>Carrier</u>	<u>Operating Results</u>		<u>Net Revenues</u>	<u>Operating Ratio</u>
	<u>Revenues</u>	<u>Expenses</u>		
	<u>Actual</u> (Provision not made for income taxes)			
Miles	\$5,797,414	\$5,738,740	\$ 58,674	98.98%
Nunes	126,783	122,861	3,922	96.90
Swanson	280,220	283,470	(3,250)	101.16
	<u>\$6,204,417</u>	<u>\$6,145,071</u>	<u>\$ 59,346</u>	<u>99.04%</u>
	<u>Actual Adjusted</u> (Includes provision for income taxes)			
Miles	\$6,331,076	\$6,198,273	\$132,803	97.90%
Nunes	143,898	132,597	11,301	92.15
Swanson	<u>300,938</u>	<u>297,008</u>	<u>3,930</u>	<u>98.70</u>
	<u>\$6,775,912</u>	<u>\$6,627,878</u>	<u>\$148,034.</u>	<u>97.82%</u>

( ) - Indicates loss

The association also developed rate bases and estimated rates of return for the carriers listed in Table 2. These calculations are based on the adjusted net revenues shown in that table. They are reproduced below.

TABLE 3

Rate Bases and Rates of Return

<u>Carrier</u>	<u>Rate Base</u>	<u>Adjusted Net Revenues</u>	<u>Rate of Return</u>
Miles	\$1,668,418	\$132,803	7.96%
Nunes	66,278	11,301	17.05
Swanson	75,025	3,930	5.24
	<u>\$1,809,721</u>	<u>\$148,034</u>	<u>8.18%</u>

Neither Miles nor Swanson obtains as much as one-half of its total revenues from cement hauling. Of \$5,797,414 total unadjusted revenue for Miles, transportation of cement accounted for \$2,214,872 or about 38 percent and other operations accounted for the remaining \$3,582,542 or 62 percent. Miles estimated that the sought cement rate increase would produce \$319,687 in additional revenue and that authorized and proposed increases in other rates would produce \$213,975.<sup>9</sup> In contrast with the 15-percent

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<sup>9</sup> Of the \$213,975 in additional revenue estimated for increases in other rates \$123,384 or approximately 58 percent was assigned to increases in rates for general commodities in Highway Carriers' Tariff No. 2. The \$123,384 figure was based on the 9-percent surcharge effective June 24, 1952. The surcharge has been superseded, effective March 1, 1953, by generally higher rates (Decision No. 48189 of January 19, 1953). The further increases vary in their amounts and some reductions are involved. Its effect on the estimates submitted by Miles cannot be measured with the information at hand.

increase proposed for cement, other services are shown as being subjected to an aggregate over-all increase amounting to about 6 percent. The chief adjustment in expenses is attributable to wage increases and attending increases in pay roll taxes aggregating \$123,040. More than 10 percent of this sum, \$14,242 plus pay roll taxes, is accounted for by increases in the wages of local drivers and platform men who are not employed in the cement operations.

For Swanson, cement accounts for only \$44,386 or about 15 percent of the total of \$280,220 unadjusted revenue. The sought cement rate increase is estimated as \$6,637. For other operations, the unadjusted revenue of \$235,834 is estimated as being subjected to an increase of \$14,081 or approximately 6 percent.<sup>10</sup>

In the case of Nunes, the unadjusted cement revenue amounts to \$114,105 or about 90 percent of the total of \$126,783 unadjusted revenue. No provision was made for an increase in the remaining revenue of \$12,678 derived from other operations for which minimum rates have not been established. The proposed cement rate increase is estimated as amounting to \$17,115.

Neither Swanson nor Nunes employs local drivers and platform men.

Of the three carriers Nunes is the only one deriving more than one-half of its total revenue from cement hauling and the only one transporting cement from Monolith. As Tables 2 and 3 show, estimated operating results of Nunes under the

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The \$14,081 estimate of additional revenue includes \$9,531 or about 68 percent from Highway Carriers' Tariff No. 2 traffic. As in the case of Miles it is based on a 9-percent increase and the effect of the further increase of March 1, 1953, cannot be determined from the available information.



proposed 15-percent increase and without any adjustment of revenues from its other traffic would produce an operating ratio of 92.15 percent and a rate of return of 17.05 percent after provision for income taxes.

Winkler Brothers Transportation, a carrier hauling for Calaveras Cement Company, also submitted its actual operating results for 1951 and for the first six months of 1952. It hauls cement exclusively. For 1951 its revenues were \$215,898 and its expenses were \$158,747, resulting in net operating revenues of \$57,151. For the first six months of 1952 the corresponding figures were \$104,125, \$79,518 and \$24,607, respectively. Provision was not made in these figures for income taxes. The indicated operating ratios are 73.53 percent for 1951 and 76.37 percent for the first six months of 1952.

Winkler is not a member of the petitioning truck association, is not seeking an increase in the minimum rates in cement, and does not believe that these rates should be increased. The association's cost witness pointed out that in the first six months of 1952 Winkler's recorded costs for repairs and tire expense were abnormally low and that the wage costs for the period were below those which would have been experienced under current wage levels. He adjusted the Winkler expenses to average repair and tire costs and labor expense to reflect the current levels. These adjustments raised expenses from \$79,518 to \$98,818. Resulting changes are a reduction in net operating revenues from \$24,607 to \$5,307 and an increase in operating ratio from 76.37 percent to 94.90 percent.

The effect the proposed increase would have on the Winkler operating results was not estimated. Some two-thirds of its gross revenues is derived from hauling cement from the Calaveras mill to the site of the Pine Flat Dam. This transportation is surrounded by circumstances and conditions differing from those obtaining in ordinary cement hauling. The service is performed by Winkler at a rate lower than the minimum rate otherwise applicable pursuant to authority granted by the Commission under Section 3666 of the Public Utilities Code.<sup>11</sup>

Both the association and staff cost presentations disclose that the amounts by which the existing northern territory minimum rates fail to meet the estimated costs vary considerably and that a horizontal increase would not serve to harmonize the rates with the cost pattern. In the rates for long hauls the truck association proposes the establishment of rates which are substantially less than the estimated costs but in the rates for short hauls it proposes rates higher than the costs. With respect to the minimum rates applicable from Monolith to northern territory and to Kern County points, it has not been established that the current costs are on approximately the same levels as northern territory costs.

The over-all operating results of Miles and Swanson indicate that on the whole their future revenues will prove to be inadequate unless they secure higher rates than those on which their adjusted revenue estimates were based. However, most of

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<sup>11</sup> See Decision No. 45763 of May 29, 1951, as amended, in Application No. 32242.

the revenues of these two carriers, as has hereinbefore been noted, are derived from operations other than cement hauling. The traffic they handle under Highway Carriers' Tariff No. 2 rates has been subjected to further increases. This traffic is an important part of their over-all operations. The Miles and Swanson operating ratios on the basis of unadjusted revenues and expenses are somewhat higher than the ratio for Nunes and much higher than the ratio for Winkler. It will be recalled that 90 percent of the revenues reported by Nunes and 100 percent of those reported by Winkler are derived from hauling cement. The record thus suggests that any increase in cement rates essential to compensatory operations for Miles and Swanson should not exceed increases in other rates as the petitioning truck association proposes.

In any event, neither the actual nor estimated operating results of Miles and Swanson have been shown to be typical of cement haulers generally. They differ from the results of Nunes and Winkler, as above indicated, and afford no solid basis for conclusions and findings with respect to the propriety of the cement rate level. The record shows that Miles over a considerable period of time has transported cement in certain short-haul operations at rates higher than the minimum rates. Neither it nor any other cement carrier is precluded by the Commission's minimum rate orders from making further necessary upward rate adjustments.

The costs and operating results of record do not demonstrate that the proposed horizontal increase of 15 percent in the minimum rates is justified. The record does not otherwise show what, if any, increases should be established in these rates. At best it indicates that for cement hauling of which the service provided by Miles and Swanson may be typical there is a need for some upward adjustment of the rates. The nature and extent of any such adjustment is not determinable in the light of the record made.

With respect to Permanente's allegations concerning rate relationships and discriminations and prejudices the record indicates that in the sale of cement for delivery in Kern County and in the lower part of northern territory there is competition not only between Monolith and northern territory mills but also between these mills and other mills situated in southern territory. These matters, therefore, are not susceptible of being satisfactorily settled here where rates from all of the southern territory mills are not involved.<sup>12</sup> Interested parties may bring these matters before the Commission by making appropriate filings.

Upon consideration of all the facts and circumstances of record we are of the opinion and hereby find that the sought adjustments in minimum rates for the transportation of cement have not been justified and that accordingly the petitions of Truck Owners Association of California and Permanente Cement Company seeking these adjustments should be denied.

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Originally rates from all southern mills were included in the Permanente petition. It voluntarily limited its requests to Monolith rates at the hearings. Southern territory mills which had entered appearances as protestants thereupon changed their position to interested parties.

O R D E R

Based on the evidence of record and on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the adjustments sought by the petition of Truck Owners Association of California, filed January 18, 1952, and the petition of Permanente Cement Company, filed June 18, 1952, and as amended, be and they are hereby denied.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 30<sup>th</sup> day of March, 1953..

*R. J. ...*  
 President  
*Justin J. ...*  
*Hans ...*  
*John E. Mitchell*  
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 Commissioners

Commissioner KENNETH POTTER, being necessarily absent, did not participate in the disposition of this proceeding.