

ORIGINALDecision No. 61639

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 carriers and city
 carriers relating to the transportation
 of cement and related products (com-
 modities for which rates are provided
 in Minimum Rate Tariff No. 10).

Case No. 5440

Petition No. 7

(Filed February 19, 1960)

Arlo D. Poe, J. C. Kaspar, and James Quintrall, for
 California Trucking Associations, Inc., petitioner.

H. K. Carter, for Carter Transportation Company, respondent.

R. Y. Schureman and Max Binswanger, for Binswanger Trucking,
 respondent.

Daniel M. Campbell, for Campbell Truck Company, respondent.

R. Y. Schureman, for Roland E. Mason (doing business as
 Valley Transportation Company) and for Daniel Lohnes
 Trucking Company, respondents.

Lauren M. Wright, for Riverside Cement Company, a division
 of American Cement Company, protestant.

Joseph T. Enright and Waldo A. Gillette, for Monolith
 Portland Cement Company, protestant.

Wallace K. Downey, for California Portland Cement Company,
 protestant.

Eugene A. Feise, for Calaveras Cement Company, a division
 of The Flintkote Company, interested party.

S. A. Moore and D. K. Graham, for Permanente Cement Company,
 interested party.

Glenn E. Walker, for Glenn E. Walker (a California corpora-
 tion), interested party.

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

Lee G. Gale, for D. V. Gale & Company, interested party.

Jere C. Bowden, for San Bernardino-Riverside Counties Rock
 Products Association, interested party.

Grant L. Malquist, R. A. Lubich, and Norman B. Haley, for
 the Commission's staff.

O P I N I O N

By this petition the California Trucking Associations, Inc., seeks increases in the rates in Minimum Rate Tariff No. 10 that apply to the transportation of cement between points in Southern California territory by for-hire highway carriers. Said rates were established at their present level in August, 1956. Petitioner alleges that the costs of performing the transportation have since increased substantially; that in relation to the increased costs the present rates are unreasonably low and that increases in the rates are necessary for the preservation and maintenance of adequate for-hire transportation facilities for the services involved.

Public hearings on the petition were held before Examiner C. S. Abernathy at Los Angeles on August 3, 4, 25, 26 and October 5, 1960. Oral argument was held before Commissioner C. Lyn Fox and Examiner C. S. Abernathy at Los Angeles on October 6, 1960. Evidence in the matter was submitted by petitioner, by an engineer and by a rate expert of the Commission's staff, by several carriers of cement, and by representatives of various of the cement companies operating in Southern California.

The evidence which petitioner presented was designed to show the extent that certain of the carriers' labor costs have increased since May, 1956. The engineer of the Commission's staff submitted data to show present costs of the transportation of cement by for-hire highway carriers operating within Southern California territory. The staff rate witness submitted two scales of rates which he recommended be established to govern the transportation of bulk cement and sacked cement respectively.

The rates which the rate witness recommended are higher than the present rates by amounts ranging up to about 20 to 25

percent. In general, the amounts of the proposed increases vary inversely with the length of haul. No increases would apply where the length of haul exceeds 170 constructive miles in the case of bulk cement and 190 constructive miles in the case of sacked cement.

The adoption of the proposals of the Commission rate witness was opposed by three carriers of cement and by the several cement companies that would be affected thereby. A witness for one of the carriers proposed (with the support of the other carriers) that no increases be made in the rates for bulk cement, and that increases in the rates for sacked cement be made in lesser amounts than those which the rate expert recommended. Assertedly, the establishment of the rate increases proposed by the Commission rate witness would result in a drastic diversion of the cement traffic to operators of cement ready-mix plants or their affiliates. In this connection the carriers presented evidence that in recent years the ready-mix operators or their affiliates have entered into the transportation of cement so extensively that they (the carriers) have had to curtail their own operations. The carrier witnesses declared that the rate increases which the rate witness proposed -- particularly those that would be made in the rates for bulk cement -- would serve only to encourage the further expansion of the transportation activities of the ready-mix operators and affiliates. They urged that before increases are made in the minimum rates for bulk cement an investigation be made into said transportation activities for the purpose of determining the bearing thereof upon the rates and services of for-hire carriers.¹ Regarding the rates for sacked cement, the carrier

¹ Assertedly, in the development of the transportation activities of the ready-mix operators and of their affiliates, procedures have been employed that go beyond solicitation practices normally available to for-hire carriers generally. Rebates have been paid indirectly, and the ready-mix operators have used their purchasing power with respect to cement as a means of directing transportation to their affiliates. Moreover, the ready-mix operators have compelled the cement companies to make shipments from the most distant mills in order that the affiliates may realize the benefits of the longest hauls.

witnesses said that some increases should be made therein to compensate for increases in labor costs which the carriers have experienced. However, they favored the establishment of lesser increases than those that were advocated by the rate witness. They said that the lesser increases would be compensatory, and would provide less incentive for the diversion of the traffic away from for-hire carriage.

The opposition of the cement companies to the rate increase proposals of the rate witness was directed mainly to the increases which would be made in the rates for bulk cement. The companies contended that the cost data which were submitted by the engineer are excessive and not representative of the costs that actually apply to the transportation of cement. They argued that the real test of the sufficiency of the rates is the carriers' operating results thereunder, and they referred to evidence to the effect that the carriers have been operating profitably heretofore as contradicting the engineer's showing of costs that are higher than the present rates. They argued also that the extensive development of the transportation activities of the operators of cement ready-mix plants and their affiliates under present rates is further proof that the rates are sufficient to cover the costs of service and to return a profit. The cement companies likewise favored an investigation into the transportation activities of the ready-mix plants and their affiliates to determine the bearing thereof upon the minimum rates to be prescribed and maintained for the for-hire transportation of cement by highway carriers.

Although the cement companies strenuously opposed the establishment of increases in the rates for bulk cement, the several

companies, with the exception of the Monolith Portland Cement Company, indicated that they would accept, as necessary rate adjustments, increases in the rates for sacked cement in accordance with the carrier proposals referred to above. The objections of the Monolith Company were on the grounds that its competitive position in the Los Angeles marketing area would be adversely affected by the fact that relatively greater increases would apply for deliveries of its cement within the area than would apply for like deliveries to the same destinations from competitors' cement plants at Colton and Crestmore. A representative for the Monolith Company stated that the increases would be acceptable to his company if they were limited so as to avoid such a change in its competitive relationships.

Discussion, Findings and Conclusions

At the outset of this discussion it should be stated that we conclude that the record in this matter does not support the establishment of the rates which were recommended by the Commission's staff. This conclusion stems in part from the difference between the staff's evaluation of the carriers' operating results under present rates and the carriers' actual operating results. It also stems from the change in transportation circumstances that has occurred during the past three years whereby operators of cement transit-mix plants and their affiliates have emerged as important, if not dominant, factors in the transportation of cement within Southern California.

Since under the staff's proposals increases of as much as 20 to 25 percent would be made in the present minimum rates, it would appear that the present rates are well below a reasonable level and are insufficient to provide an adequate return. As pointed out by

the cement companies, such a conclusion is not consistent with evidence which was submitted to the effect that the carriers' operations are generally profitable.² Inasmuch as the record shows that the carriers' operations are confined, for the most part, to the transportation of cement, it appears that the financial results of the carriers' operations are a factor that necessarily should be considered in this instance in appraising the level of the present rates. In view of the reported profitableness of the carriers' operations, we conclude that further information should be had relative to the amounts and bases of the profits before rate increases of the magnitude proposed by the staff may be found justified.

Information should likewise be had relative to the circumstances which have prompted the substantial participation of the operators of cement transit-mix plants and their affiliates in the transportation of cement -- particularly bulk cement. First, it seems unlikely that such a development would have occurred unless the transportation could have been performed profitably within the limits of the present rates. Second, it appears that the transportation activities of the transit-mix operators have been developed in part on practices which may not be properly applied by for-hire carriers but which, because of the effect of such practices upon for-hire transportation, require analysis and evaluation for the prescribing of reasonable minimum rates, rules and regulations to govern for-hire carriage.

²

One carrier reported that his operations for five months through June, 1960, resulted in earnings as indicated by an operating ratio of 87 percent. With respect to the operations of other carriers, however, the record does not indicate the extent of the profits earned.

One further consideration of particular importance in this connection is that which was emphasized both by carrier and shipper participants in this matter, namely, that the benefits of increases in the rates for bulk cement as proposed by the Commission rate witness would accrue principally to the transit-mix operators and their affiliates, and would result in the further expansion of the transportation activities of said operators and their affiliates. Inasmuch as purposes of rate regulation under the Highway Carriers' Act are "to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands" (Section 3502, Highway Carriers' Act), it is evident that before rates are prescribed which would be primarily beneficial to the carrier services of the transit-mix operators and their affiliates, said services should be reviewed from the standpoint of whether their furtherance is consistent with the above-quoted purposes of the Highway Carriers' Act. The record herein does not provide basis for such a review.

For the foregoing reasons no increases in the minimum rates for the transportation of bulk cement should be prescribed at this time. With respect to the rates for sacked cement, however, the evidence is clear that said rates are not compensatory, mainly because of increases in labor costs which the carriers have experienced since the rates were first established at their present

level.³ Increases in the rates for sacked cement should be prescribed. Except as otherwise provided herein, the increases should be limited to those which would result under the recommendations of the carrier witnesses, inasmuch as it appears from the testimony of those witnesses that said increases would be sufficient to return at least a substantial portion of the increased costs of service and would not result in an undue diversion of traffic away from the carriers. In the adoption of the rates which the carrier witnesses proposed, modifications in certain of the rates should be made to avoid a change in the competitive position in the Los Angeles area between the Monolith Portland Cement Company on the one hand and cement companies having mills at Colton and Crestmore on the other hand. On this record it does not appear that greater increases in the rates that apply to shipments of the Monolith Company within the Los Angeles area than in the rates for shipments of competing companies from the adjacent areas have been shown to be justified. Minor adjustments should be made also in the rates for distances of 45 to 50 constructive miles and of 120 to 130 constructive miles in order to avoid what appears to be unjustified differentials between said rates and the rates for distances within the next mileage brackets.

The Commission is of the opinion, and finds as a fact, that (a) increases in the rates in Minimum Rate Tariff No. 10 have been shown to be justified to the extent that increased rates are prescribed in the following order; (b) that said increased rates are and will be just, reasonable and nondiscriminatory minimum rates for the services to which they apply; and (c) that to the extent that the

³ The evidence shows that increases in labor costs have applied to the transportation of bulk cement as well as to sacked cement. However, the transportation of sacked cement involves substantially more labor than bulk cement, and the impact of the cost increases has therefore been correspondingly greater on the transportation of the sacked cement.

rates of common carriers whose operations are subject to Minimum Rate Tariff No. 10 are less, in volume or effect, than the rates hereinafter prescribed, the rates of said common carriers are lower than a reasonable and sufficient level and not justified by transportation conditions, and that said common carriers should effect such increases as are necessary to make their rates conform to those hereinafter prescribed.

Inasmuch as no increases in the rates for bulk cement are prescribed in the following order, the status of said rates requires further comment. Although we conclude that increases in the rates should not be ordered on this record, it does not necessarily follow from this fact that under present conditions adjustments in the rates should not be made. The present rates were developed largely upon transportation conditions which were in effect more than 10 years ago. The evidence is clear that changes of material consequence have since occurred in the underlying transportation factors. We are persuaded that the maintenance of just, reasonable and nondiscriminatory rates for the future requires a re-evaluation of, and probably adjustments in, the rates in the full light of present conditions. Since this matter does not provide grounds for such re-evaluation and adjustment, further information should be developed for this purpose. Accordingly, the Commission's staff will make studies to this end as other assignments permit, and will submit its proposals thereon at hearings to be scheduled subsequently. Included in such proposals should be recommendations concerning what changes, if any, should

be made in the carload weights for bulk and sacked cement.⁴ The retention of this phase of Case No. 5440 on the Commission's hearing docket pending the development and submission of the staff proposals, and of related proposals by interested parties, does not appear necessary. This phase of Case No. 5440 will be terminated.

O R D E R

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

IT IS HEREBY ORDERED that

1. Minimum Rate Tariff No. 10 (Appendix "A" of Decision No. 44633, as amended) be and it is hereby further amended by incorporating therein, to become effective April 22, 1961, the revised page attached hereto and by this reference made a part hereof, which page is numbered as follows:

Seventh Revised Page 12 cancels Sixth Revised Page 12

2. Tariff publications required or authorized to be made by common carriers as a result of the order herein may be made effective not earlier than the effective date hereof on not less than five days' notice to the Commission and to the public; and

⁴ At the hearings in this matter various proposals were made that the carload minimum weight for sacked cement be increased. It appears that these proposals should be considered further after broader notice has been afforded the parties that would be affected thereby.

that such required tariff publications shall be made effective not later than April 22, 1961.

3. In the exercise of the authority hereinabove granted, common carriers are authorized to depart from the provisions of Section 460 of the Public Utilities Code and of Article XII, Section 21 of the Constitution of the State of California, to the extent necessary to publish the rates established herein.

4. In all other respects the aforesaid Decision No. 44633, as amended, shall remain in full force and effect.

5. This phase of Case No. 5440 be, and it hereby is, terminated.

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

Dated at San Francisco, California, this 7th day of March, 1961.

President
George L. Brewer

Fredrick B. Holhoff

Commissioners

SECTION NO. 2 - RATES IN CENTS PER 100 POUNDS										Item No.		
FROM (1)		TO		Apply Rate Below in Scale For:								
Southern Territory		Southern Territory		Southern Territory								
		Northern Territory										
Northern Territory		Southern Territory		Northern Territory								
		Northern Territory										
MILES		RATES				MILES		RATES				*200
But Not Over		Scale				But Not Over		Scale				
		Southern Territory		Northern Territory				Southern Territory		Northern Territory		
		(2)	(3)	(2)	(3)	(2)	(3)	(2)	(3)			
0	3	3½	5	5	6	150	160	21½	21½	22½	22½	
3	5	3½	5½	5½	6	160	170	22½	22½	23½	23½	
5	10	3½	5½	5½	6½	170	180	24	24½	24½	24½	
10	15	4½	6	6	7	180	190	25	25	25½	25½	
15	20	4½	6½	6½	7½	190	200	26½	26½	26½	26½	
20	25	5½	7	7	8	200	220	27½	27½	27½	27½	
25	30	5½	7½	7½	8½	220	240	30	30	30	30	
30	35	6½	8	8	9	240	260	32	32	32	32	
35	40	7	9	8½	9½	260	280	34½	34½	34½	34½	
40	45	7½	9½	9	10	280	300	36	36	36	36	
45	50	8½	10	9½	10½	300	325	38½	38½	38½	38½	
50	60	9½	11	11	12	325	350	41	41	41	41	
60	70	10½	12½	12	13	350	375	43½	43½	43½	43½	
70	80	11½	13½	13	14	375	400	46½	46½	46½	46½	
80	90	12½	14½	13½	15	400	425	48½	48½	48½	48½	
90	100	14½	15½	14½	16	425	450	51½	51½	51½	51½	
100	110	15½	16½	16	17	450	475	53½	53½	53½	53½	
110	120	16½	17½	17	18	475	500	56½	56½	56½	56½	
120	130	17½	18½	18½	18½	500		Add to rate for 500 miles 2½ cents per 100 pounds for each 25 miles or fraction thereof.				
130	140	19	19½	19½	19½							
140	150	20	20½	21	21							

(1) For Territorial Descriptions, see Item No. 80.
 (2) Rates apply for shipments in bulk.
 (3) Rates apply for shipments in packages.

Empty Pallets, Second Hand (Used),

- (a) Returning after being used in the transportation of a palletized cement shipment, or returning in exchange for pallets used in the transportation of a palletized cement shipment, to the consignor of the cement shipment, or
- (b) Shipped for use, or in exchange for pallets to be used, to the consignor of a palletized cement shipment, per pallet

20 cents
(Subject to
Notes 1 and 2)

220

NOTE 1-The provisions of this item apply only in connection with pallets used in the transportation of cement subject to rates in Southern Territory.

NOTE 2-The provisions of this item apply only when the empty pallets are transported by the same carrier utilized in the transportation of the cement shipment.

* Change
o Increase }

Decision No.

61639

EFFECTIVE APRIL 22, 1961

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 35