

Decision No. 65402

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Protest and)	
Request of MONOLITH PORTLAND CEMENT)	
COMPANY for investigation and sus-)	
pension of tariff schedule publishing)	(I&S) Case No. 7598
certain reduced rail rates on cement)	
to San Joaquin Valley points.)	

ORDER OF INVESTIGATION AND SUSPENSION

By petition filed April 22, 1963, Monolith Portland Cement Company seeks suspension and investigation of certain reduced rates published on behalf of The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) to become effective May 8, 1963.¹ The assailed rates would apply on carload shipments of cement in bulk from Cushenbury, Victorville and Oro Grande to destinations in the San Joaquin Valley between Bakersfield and Merced, inclusive.

Petitioner is engaged in the production, selling and shipping of cement at and from its mill located at Monolith. It alleges that for many years past it has competed with or endeavored to compete with other companies having mills located at Cushenbury, Victorville and Oro Grande, served by the Santa Fe. Petitioner states that cement produced at Monolith, Cushenbury, Victorville and Oro Grande has been and is purchased and consumed by members of the public for use in the markets known as:

¹ The effective date was voluntarily postponed by respondents until May 15, 1963, because of an apparent failure in the service of the petition, and in order to insure adequate time for preparation of a reply to the petition and for consideration thereof by the Commission. The assailed rates are set forth in Items Nos. 1180, 1185, 1190, 1200, 1205, 1235, 1250, 1255, 1260, 1285, 1290, 1295, 1300, 1305, 1310, 1315, 1325, 1330, 1335, 1340, 1350, 1355, 1360, 1370, 1375, 1380, 1390, 1395, 1400, 1405, 1415, 1420 and 1425 of Supplement No. 17 of Pacific Southcoast Freight Bureau Freight Tariff 88-W issued by W. O. Gentle, Tariff Publishing Officer.

(a) the San Joaquin Valley Bakersfield to and including Merced, (b) the San Bernardino Valley including the municipalities of San Bernardino, Colton and Riverside, (c) the Pomona Valley including the municipalities of Pomona and Ontario, (d) the Elsinore area including Elsinore and Corona and (e) the Hemet Valley including San Jacinto and Perris; that the Santa Fe is an originating carrier of the cement produced from each of the aforementioned mills; that the Santa Fe is required to render its transportation services for the transportation of cement from the aforementioned mills to the above named markets.

The petition alleges that about February, 1963, the Santa Fe, as a member of the Pacific Southcoast Freight Bureau, proposed to the other members of said Bureau, including Southern Pacific Company and Union Pacific Railroad Company, that the Bureau approve Santa Fe's publication of rates to the San Joaquin Valley, Bakersfield to and including Merced; that after due investigation and vote had by the members of said Bureau, the Santa Fe proposal was disapproved; and that thereafter, the Santa Fe did, about March 23, 1963, give notice of its intention to publish the rates herein assailed notwithstanding the disapproval of the Bureau.

Petitioner avers that the relatively unreasonable, prejudicial and preferential extent of both the existing rates² and the further unlawfulness of the further proposed reduced rates from the Oro

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The petition appears to assail existing rates as well as those sought to be suspended. Only the proposed rates are directly in issue in a suspension proceeding. However, the Commission takes official notice that the petitioner herein has filed on April 29, 1963, a complaint (Case No. 7604) wherein it alleges that current rates on cement from Monolith to various destinations including certain San Joaquin Valley points were and are unjust and unreasonable, unduly prejudicial, preferential and discriminating in violation of Article 12, Section 21, of the Constitution of the State of California and in violation of the Public Utilities Act.

Grande group mills to the San Joaquin Valley marketing area :
are in violation of Sections 451, 453 and other Sections
of the Public Utilities Code and Section 21, Article XII of the
Constitution of the State of California as typified by the follow-
ing table of 5 examples representative of the rates to each of
these marketing areas:

			<u>Rates in Cents Per 100 Pounds</u>	
<u>FROM</u>	<u>TO</u>	<u>MILES</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Monolith	San Bernardino	168	* 24 1/2	* 24 1/2
Oro Grande	Bakersfield	173	<u>16 1/2</u>	<u>11 1/2</u>
Differential in Favor of Oro Grande Group			8	13
Monolith	Corona	192	24 1/2	24 1/2
Oro Grande	Famoso	194	<u>17</u>	<u>12</u>
Differential in Favor of Oro Grande Group			7 1/2	12 1/2
Monolith	San Jacinto	212	28 1/2	28 1/2
Oro Grande	Richgrove	209	<u>17</u>	<u>12</u>
Differential in Favor of Oro Grande Group			11 1/2	16 1/2
Monolith	Elsinore	215	28 1/2	28 1/2
Oro Grande	Ultra	223	<u>17 1/2</u>	<u>12 1/2</u>
Differential in Favor of Oro Grande Group			11	16
Monolith	Pomona	194	19 1/2	19 1/2
Oro Grande	Shafter	191	<u>17</u>	<u>13</u>
Differential in Favor of Oro Grande Group			2 1/2	6 1/2

*Intermediate application of Pomona rate of 19 1/2¢ per 100 pounds available until cancelled. In addition, a temporary rate was published to expire May 31, 1963 as a result of the recent Southern Pacific threatened strike.

5/6/62
The petition recites that the accepted ^{principle} ~~principal~~ of rate making where competing mills are cross-shipping into markets was declared by this Commission in *Pacific Portland Cement v. The A.T. & S.F. Ry. Co.*, 33 C.R.C. 300, 306 (1929), wherein it stated:

"Manifestly it is unjust to establish favorable rates to allow complainants' competitor to reach the territory tributary to their mills and not extend as favorable a basis of rates to enable complainants to reach the territory adjacent to their competitor's mill. Where competing plants are cross-shipping into primary markets there should be a common basis for measuring the level of the rates unless there are controlling reasons for deviating from this principle, such as we have found in connection with the 9-cent rate from Merced to the San Francisco district. Spreckels Savage Tire Co. vs. A.T. & S.F. Ry., et al., 142 I.C.C. 507. Oklahoma Portland Cement Company vs. D. & R.G.W.R.R., 128 I.C.C. 63."

Respondents in their reply request that the petition for suspension be denied. They state that Monolith, the point at which petitioner is located, is served by both Southern Pacific Company and Santa Fe over tracks owned by Southern Pacific; that Santa Fe operates as a tenant over tracks of Southern Pacific between Mojave and Kern Junction on which Monolith is located and that such so-called "joint track" provides the connecting link over which Santa Fe's trains operate to and from the San Joaquin Valley. The reply states that under a contract with the Southern Pacific the cost of maintaining and operating this track is shared by the carriers. In addition, this contract provides that on any traffic which is either originated or terminated by Santa Fe on this "joint track," Santa Fe shall pay Southern Pacific, in addition to the regular compensation, a penalty charge equal to 60 percent of Southern Pacific's local rate between the point of origin or destination on the joint line, on the one hand, and the opposite end of the joint line, on the other hand. This penalty charge, respondents state, was established as a deterrent to origination or termination by Santa Fe of traffic on this track which was originally exclusively used by Southern Pacific.

By reason of the foregoing facts, respondents further state that the cost to Santa Fe of handling traffic from the Monolith mill is relatively higher than the cost to it of handling traffic which originates at the other three mills (Oro Grande, Victorville and Cushenbury) which are on Santa Fe owned track where no penalty attaches.

With regard to petitioner's allegation that the reduced rates are unduly prejudicial and discriminatory to Monolith and unduly preferential to the three southern mills, respondents aver that the underlying facts are not the same and that Monolith's

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situation is ~~legal~~ and logically distinguishable. The reply recites that Santa Fe is the sole participant in the proposed rates from the three southern mills. From Monolith, Santa Fe has the power to name its single factor rate to the involved destinations, but it asserts that as a practical matter such power is ineffective. In addition to the cost of transportation from petitioner's plant, Santa Fe must pay to Southern Pacific Co., 60 percent of the latter's local rate of 8½ cents from Monolith to Kern Junction, and the balance must be sufficient to cover the cost of performing the transportation service from Monolith's plant to destination.

Assertedly, the present rates from Monolith reflect margins above out-of-pocket costs as narrow as the proposed reduced rates from the three other mills. It is alleged that if the rates from Monolith's plant to the San Joaquin Valley were reduced by the same amounts as the proposed rates from the three southern mills, the Monolith rates would in every instance be substantially below out-of-pocket costs, including the penalty Santa Fe is required to pay Southern Pacific and assertedly would be substantially confiscatory. So far as relationship to railroad costs is concerned, respondent concludes that Monolith already has rates as favorable, or more favorable than the proposed reduced rates from the other three mills.

The reply recites that the State of California has already let the contract for construction of the first portion of the canal between Los Banos and Wheeler Ridge, as a part of the Feather River project; that Santa Fe has been promised that if the proposed rates go into effect that it will move 1,200 cars of cement from one of the southern mills to the contractor; that if the proposed rates do not go into effect there will not be a rail movement and in all likelihood the traffic for this contract will move via proprietary truck

from a northern mill. The reply further recites Santa Fe has been promised, under the proposed rates, further substantial movement of cement to the balance of the canal project and into the San Joaquin Valley generally from other southern mills.

Respondents aver that in contrast during 1962 Santa Fe hauled to destinations on its line located in the San Joaquin Valley a total of 13 carloads of cement from all of the southern mills (which includes all of the mills south of Bakersfield); that it moved no carloads of cement from the mills north of Bakersfield; and that the principal movement from the mills of Cushenbury, Oro Grande and Victorville into the San Joaquin Valley was via proprietary trucks.

Respondents state that almost every car of cement handled under the proposed rates will improve Santa Fe's net position and that the initial movement of 1,200 cars would contribute almost \$50,000 to overhead, above out-of-pocket costs.

Concerning petitioner's rate comparisons respondents allege the following deficiencies; (1) in every instance shown the southbound rate from Monolith applies in connection with a minimum weight of 60,000 pounds whereas the northbound rates here proposed are at 150,000 pounds, and (2) the southbound rates shown are paper rates and traffic from Monolith to most of these points, if it is moving by rail, is moving at lower rates at a minimum weight of 150,000 pounds published and available via Southern Pacific and its subsidiaries.

Respondents aver that in connection with movements of cement to Los Angeles and San Diego, the two most important cement consuming areas, and to which protestant makes no comparison, Monolith's rate is only 2 cents higher to San Diego than the rate from Cushenbury, Oro Grande and Victorville as compared with the 3 cent differential northbound. Respondents state that Santa Fe does participate in this rate to San Diego over a route Southern Pacific-Los Angeles-Santa Fe.

To Los Angeles the rate on bulk cement is 8-1/2 cents from the three mills and from Monolith, although Monolith is a few miles more distant.

According to respondents, Monolith is not prejudiced because it has available rates which give it a differential more favorable to it southbound than its competitors have northbound; the fact that Santa Fe cannot participate in most of these rates is not a source of preference or prejudice because the rates are available via other routes which are not alleged to be inadequate; and even if preference or prejudice were found to exist, it would not be undue or unlawful, because of the penalty applicable where Santa Fe originates traffic at Monolith.

Respondents pray that the petition be denied and that the rates be permitted to go into effect as scheduled. Respondents assert that because of the very considerable importance of these reduced rates to the Santa Fe as a regulated common carrier endeavoring to meet the competition of private carriage, they do not want to leave any question unanswered and so ask the Commission for the privilege of oral argument en banc.

Replies were also filed by American Cement Corporation whose plant is located at Oro Grande, Southwest Portland Cement Company whose plant is located at Victorville, and Permanente Cement Company whose plant is located at Cushenbury. All of these replies request denial of the petition for suspension. American also requests as an alternative that it be granted an opportunity to appear before the Commission to present its views before a suspension be permitted.

American avers that it is entitled to the same rate treatment northbound and to the San Joaquin Valley points that Monolith receives southbound into points located in San Diego County. It

states that the rates involved herein merely grant American's Oro Grande cement plant more nearly equal rate treatment northbound to Merced and intermediate points as compared to the rate treatment Monolith already receives southbound to San Diego and intermediate points. As comparison it cites railroad rates from Oro Grande to Merced of $22\frac{1}{2}$ cents per 100 pounds as compared to rate of $15\frac{1}{2}$ cents per 100 pounds from Monolith to Merced. It also compares the rail rates on cement southbound from Monolith to San Diego of $14\frac{1}{2}$ cents per 100 pounds with rates from Crestmore to San Diego of $11\frac{1}{2}$ cents per 100 pounds. American states that petitioner's rate comparisons all involve what may well be labeled as "paper rates" from Monolith where little or no cement moves by rail and where no adjustment of rail rates would generate any railroad business.

Southwestern's reply alleges that the proposed rates will not create any burden whatsoever upon Monolith, for the reason that Monolith will continue to have a rate advantage on shipments of cement to the San Joaquin Valley points over Southwestern's mill at Victorville. Rate comparisons submitted by Southwestern show that the present differentials to common San Joaquin Valley points range from 7 to 8 cents per 100 pounds, whereas under the proposed rates the differential would be 3 cents per 100 pounds, the same as that enjoyed by Monolith on southbound movements of cement to points in San Diego County. Southwestern states that it has not been able to market cement in the San Joaquin Valley by rail because of the existing wide differential between rates from Victorville and Monolith.

Permanente asserts that the assailed rates are consistent with the national transportation policy to promote the inherent advantages of each mode so that rates of a carrier shall not be held up to the particular level to protect the traffic of any other mode of transportation. Permanente's reply also cites certain rate

comparisons on southbound traffic heretofore referred to in other replies covered herein. Permanente states that it desires to distribute cement by rail from its Cushenbury plant to a greater area in the San Joaquin Valley; that because of the high rail freight absorption necessary to compete, it is only possible to deliver cement by proprietary trucks; and that unless the proposed rate reductions are placed into effect its traffic will continue to move via proprietary trucks.

The Commission is of the opinion and finds that the effective date of the rates herein in issue should be postponed pending a hearing to determine their lawfulness. The requests of respondents and American Cement Corporation for oral argument are denied.

Good cause appearing,

IT IS ORDERED that:

1. The operation of Items Nos. 1180, 1185, 1190, 1200, 1205, 1235, 1250, 1255, 1260, 1285, 1290, 1295, 1300, 1305, 1310, 1315, 1325, 1330, 1335, 1340, 1350, 1355, 1360, 1370, 1375, 1380, 1390, 1395, 1400, 1405, 1415, 1420 and 1425 in Supplement No. 17 to Pacific Southcoast Freight Bureau Freight Tariff 88-W, W. O. Gentle, Tariff Publishing Officer, filed to become effective May 8, 1963, and amended to become effective May 15, 1963, is hereby suspended and the use thereof deferred until September 12, 1963, and that no change shall be made in said tariff items or supplement during the period of suspension or any extension thereof unless otherwise ordered by the Commission.

2. A copy of this order shall be filed with said tariff in the office of the Commission.

3. Copies of this order shall be forthwith served upon Pacific Southcoast Freight Bureau, Tariff Publishing Agent; The Atchison, Topeka and Santa Fe Railway Company, a corporation; petitioner; and repliants of record.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 14th day of May, 1963.

George F. Grover

President

Ed Mitchell

Frederic B. Holoboff

Gallatin W. Bennett

Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.