

Decision No. 66487**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 suspension)
 of tariff schedule publishing)
 certain reduced rail rates on)
 cement to San Joaquin Valley)
 points.)

(I&S) Case No. 7598

Frederick G. Pfrommer, for The Atchison, Topeka and Santa Fe Railway Co. and Pacific South-coast Freight Bureau; respondents.
J. T. Enright and Waldo A. Gillette, for Monolith Portland Cement Co.; petitioner.
 O'Melveny & Myers by Lauren M. Wright, D. H. Marken, for American Cement Corporation; C. R. Boyer, for Southwestern Portland Cement Company; Eugene A. Feise, for Calaveras Cement Company; S. A. Moore and A. E. Ferre, for Permanente Cement Company; E. J. Bertana, for Pacific Cement and Aggregates, Inc.; Paul S. Barnett and Walter G. Herrigel, for Ideal Cement Co.; Wallace K. Downey, for California Portland Cement Co.; Albert T. Suter, for Southern Pacific Company; interested parties.

O P I N I O N

This proceeding is an investigation into the lawfulness of certain rates for the transportation of cement by The Atchison, Topeka and Santa Fe Railway Co. (hereinafter sometimes called Santa Fe) from Oro Grande, Victorville and Cushenbury to points in the San Joaquin Valley between Bakersfield and Merced. The matter was submitted following two days of hearing held May 23 and 24, 1963. Submission was set aside by order dated May 28, 1963. Further hearings were held August 19, 20, 21, 22 and 23, 1963 before Examiner Thompson at San Francisco, the parties presented argument and suggested findings of fact and the matter was submitted on briefs filed September 16, 1963.

The rates in question were published in Supplement No. 17 of Pacific Southcoast Freight Bureau Freight Tariff No. 88-W on behalf of Santa Fe to become effective May 8, 1963. Monolith Portland Cement Co. petitioned for the suspension of said rates in accordance with General Order No. 113-A. It appearing that the rights and interests of the public might be adversely affected, the effective date of the reduced rates was postponed and their operation suspended by the Commission in Decision No. 65402, dated May 14, 1963.

The Controversy

The reported decisions of the Commission are replete with matters concerning cement rates where a cement company has prevailed upon a railroad to reduce rates in order to permit the producer to compete in a distant market and a rival cement company nearer the market has attacked the rate adjustment so as to maintain the competitive advantage of being nearer to that market.^{1/} This is another such type of case. As in the previous cases, the issues were bitterly contested, with the relationships of the rates from the various cement plants, or differentials as they prefer to call them, in the forefront of this controversy.

^{1/} Such cases, among others, include: Investigation of Cement Rates, 50 Cal. P.U.C. 622; California Portland Cement Co. v. S.P. Co., 42 C.R.C. 92; Southwestern Portland Cement Co. v. A.T. & S.F. Ry., 38 C.R.C. 473; Pacific Portland Cement Co. v. A.T. & S.F. Ry., 33 C.R.C. 300; California Portland Cement Co. v. S.P. Co., 35 C.R.C. 905; Cowell Portland Cement Co. v. S.P. Co., 1 C.R.C. 823.

The first four of the cases were cited by the parties in this proceeding and were described by one of the participants as the "Landmark cases in cement rates." Investigation of Cement Rates, supra, contains a concise history of cement rate making in California together with a long list of matters, similar to the controversy here, which have been decided by the Commission.

The principal market involved here is some twelve million barrels of cement that will be used in the construction of the California Aqueduct System of the Feather River Project which will supply water from Northern California to Southern California. That project contemplates the construction of a number of canals, roads, reservoirs, and structures extending from San Luis Dam, which is located approximately ten miles west of Los Banos, to Perris Reservoir, which assertedly will be located in the vicinity of Perris and Hemet. It is contemplated that the construction will be in a series of stages or reaches and will be completed in 1974. The contract for the construction of the first reach, a canal extending from San Luis Dam in a southeasterly direction for 16 miles, has been let and the contract for the furnishing of the cement has been awarded to American Cement Company. It would seem that the bidding for the furnishing of the cement for this first reach brought this controversy to a head. While the market for cement in the San Joaquin Valley and in the Hemet area is growing (as is the case throughout California because of increasing population), and there are other large construction projects planned for those areas, the Feather River Project construction is the predominant feature underlying the present controversy.

The participants are the railroads, who hope to capture some of the transportation of cement used in the project, and the cement companies that are so located as to have opportunity to be the purveyors of the cement for certain of the reaches. It is proper here to introduce the participants and to relate briefly their interests herein. For that purpose we have prepared a sketch showing the locations of the cement plants involved and

the lines of the Santa Fe and the Southern Pacific Company near the proposed California Aqueduct System. That sketch is Appendix A attached hereto. It shows only the lines of Santa Fe and S. P. Co.; however, it should be kept in mind that some of the cement plants are served by other railroads, and the area about the proposed aqueduct system south of San Bernardino is served by other railroads. Additionally, it must be kept in mind that the railroads involved also maintain joint rates for the transportation of cement.

Monolith Portland Cement Co., the petitioner herein, has its plant at Monolith near Tehschapi at railhead on a line owned by S. P. Co. and operated jointly with Santa Fe. As may be seen from Appendix A it is the plant most centrally located with respect to the aqueduct system. It does not quarrel with the level of the suspended rates but desires Santa Fe to reduce the rates from Monolith to San Joaquin Valley points and to establish rates from Monolith to the Hemet area on the same mileage basis as the suspended rates from Oro Grande to San Joaquin Valley points. In this fashion, it is attempting to maintain its competitive advantage with respect to the project north of Lancaster and to reduce its present disadvantage with respect to the construction south of Victorville.

American Cement Corporation has a plant at Oro Grande located on track operated jointly by Santa Fe and Union Pacific Railroad Company and also has a plant at Crestmore located on the Union Pacific. It was the cement company that successfully negotiated with the Santa Fe for the rates here in issue. It is opposed to reductions being given to Monolith to the south because it would be at the expense of Crestmore's present advantage.

Permanente Cement Company has plants at Cushenbury located on the Santa Fe and at Permanente, near San Jose, at railhead on the S. P. Co. The plants are so located that this company is competitive on almost all of the reaches of the project. It is supplying half of the cement for the construction of the San Luis Dam from its plant at Permanente. Because the origins Oro Grande, Cushenbury and Victorville in the past have been considered as a single group origin, Santa Fe included Cushenbury in the rate reductions. While Permanente gains little from the rate reductions with respect to the reaches north of Hanford because of its plant at Permanente, the reductions will assist it on the construction in the San Joaquin Valley south of Hanford. It, therefore, supports the Santa Fe herein. Southwestern Portland Cement Company has its plant at Victorville. It benefits by the rates here involved and supports Santa Fe in this proceeding. California Portland Cement Co. has its plant at Colton. Its concern herein is mainly with Monolith's request for lower rates to the southern points which are in California's "backyard".

Calaveras Cement Company has its plant at Kentucky House on the lines of S. P. Co. Ideal Cement Co. has its plant at Redwood City and is served by S. P. Co. It also has a plant at San Juan Bautista not at railhead. Pacific Cement and Aggregates, Inc., has its plant at Davenport on the S. P. Co. line. These companies, by reason of their locations, can compete only for the northern reaches of the aqueduct system. They would be adversely affected by the suspended rates. Calaveras presently is supplying half of the cement used in the construction of the San Luis Dam.

The plants at Oro Grande, Victorville, and Cushenbury are the only ones from which Santa Fe can obtain cement traffic in connection with the Feather River Project. While it also serves Monolith, for reasons that will be discussed later, Monolith is primarily an S. P. Co. origin point. It would also seem that for various reasons Santa Fe traffic from Oro Grande, Victorville and Cushenbury to the project would be only to destinations in the San Joaquin Valley. The principal reason for this circumstance is that the construction sites are not at railhead so that the cement will have to be trucked to the jobsite with the result that a rail-truck movement, with the cost of transferring the cement from rail car to truck, can compete with an all truck movement only for the more distant lengths of haul. It appears probable that cement moving from Oro Grande, Victorville or Cushenbury to points on the project south of the Tehachapi Mountains would not move by Santa Fe. It is Santa Fe's position that it can participate in the cement traffic resulting from the construction of this project only if the rates here in issue are allowed to become effective. It has been assured by American Cement Company of some traffic if the rates are made effective.

Southern Pacific is anxious to obtain some of this cement traffic. Because it serves all of the northern plants and Monolith, and the construction of the project is starting in the north, it is in a different position from Santa Fe. At this time its policy appears to be that of "wait and see" so as not to offend any of the plants it serves. The only action taken by it thus far occurred after it was known that American Cement Co. had secured the cement bid for the first reach. In May 1963, during the course of this proceeding, S. P. Co. published and filed a reduced

joint carload rate with Union Pacific on cement from Oro Grande to Los Banos. The level of that rate is such that the cost to American of shipping cement via U. P.-S. P. to Los Banos or Volta and thence by truck to jobsite is approximately the same as the cost to it of shipping cement via Santa Fe to Sharon and thence by truck to jobsite. The U. P.-S. P. joint rate has become effective and the traffic will move at that rate unless the suspension of the rates here in issue is vacated. The amount of cement involved on the first reach of the project is 1,200 carloads and the cement was due to start to move in November 1963 and continue for several months.

The Issues

The scope of this proceeding is prescribed in Decision No. 65402 which ordered this investigation. It was stated therein, "The Commission is of the opinion and finds that the effective date of the rates here in issue should be postponed pending a hearing to determine their lawfulness." While this proceeding is technically an investigation by the Commission on its own motion, it definitely is an adversary proceeding similar to a complaint, the only difference being that the respondent (Santa Fe) has the burden of proof rather than the complainant (Monolith). It is to be noted that the Commission staff did not appear or participate in this proceeding.

At the prehearing conference the triable issues were narrowed and the parties agreed that for their purposes the following matters are the only ultimate issues they wish determined in this proceeding:

1. Are the rates under suspension just and reasonable in comparison with other rates maintained by respondent for the transportation of cement between the following points:

- a. From Monolith to points between Bakersfield and Merced, both inclusive,
- b. From Monolith to points on respondent's line in the San Bernardino Valley, the Pomona Valley, the Hemet Valley and in the Elsinore area, including Elsinore and Corona?

2. Do the rates under suspension grant any undue preference or advantage to American Cement Corporation, Permanente Cement Company and Southwestern Portland Cement Company or subject Monolith Portland Cement Company to any undue prejudice or disadvantage?

3. Do the rates under suspension unjustly discriminate against Monolith Portland Cement Company or the locality of Monolith?

Petitioner and interested parties did not challenge that the suspended rates are compensatory. Respondent presented evidence and requested findings intended to support a conclusion that the proposed rates are justified by transportation conditions.^{2/}

^{2/} Section 452 of the Public Utilities Code provides:
"452. Nothing in this part 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 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 is 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 is required by the commission and a finding by it that the rate is justified by transportation conditions. In determining the extent of such 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."

The mandatory language of Section 452 makes such finding an issue in this case even though it was not raised by petitioner or interested parties.

Petitioner requests the Commission to establish rates from Monolith in this proceeding. Ideal Cement Company urges the Commission to declare the proposed rates to be unlawful and then undertake a complete investigation of existing rail cement rates with a view to establishing a mileage scale of rates which will be considered minimum for future application.

Section 455 of the Public Utilities Code governs investigation and suspensions of common carrier rates; it states in part,

"On such hearing the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable." (emphasis added)

The Santa Fe rates from Monolith are in issue in Case No. 7604 which is presently before the Commission. With respect to the investigation proposed by Ideal, the aqueduct system is to be constructed in a series of reaches or stages over the next ten years. An attempt to foresee or prophesy transportation conditions for that period and to establish rates based thereon would be unwise. It is our intention here to resolve the ultimate issues agreed upon at the prehearing conference, to determine whether the suspended rates are justified by transportation conditions in accordance with Section 452 and, if necessary, fix reasonable rates in lieu of the suspended rates

if the latter are found to be unlawful. Our findings and conclusions will be directed solely to those matters.

The Evidence

The record contains evidence of the operating conditions of Santa Fe in the area involved and estimates of its cost of transporting cement. There is evidence of the markets for cement and the circumstances under which the commodity is marketed. In addition there are comparisons of many rates maintained by Santa Fe and by other railroads for transportation between many points in California. This record also contains much data concerning the present and future construction of the Feather River Project. There is no disagreement among the parties concerning the applicable rates for the transportation of cement, the markets involved, events that have occurred, or other such matters. They do disagree regarding the inferences that should be drawn and the conclusions that should be made from those facts. Much of the testimony consists of opinions and conclusions of witnesses characterized by the parties calling them as experts in transportation rate analyses.

Numerous comparisons of the rates from the several cement plants to various markets were made showing the differentials in rates among the cement plants. Those rates included the local rates of respondent and of other railroads and joint rates maintained by respondent with other railroads. Rates other than those maintained by respondent are not material to the issues herein except to the extent that they are applicable between points served by respondent and indicate the reason for the action taken by respondent with respect to its competition. The measures of unreasonableness, unjust discrimination or undue prejudice alleged

by petitioner are to be determined from the actions taken by Santa Fe and not from those taken by other railroads.

We will first consider the issues related to the comparison of the suspended rates with the rates of Santa Fe from Monolith to San Joaquin Valley points. The services rendered in the transportation of bulk cement from Oro Grande, Victorville and Cushenbury involve substantially the same services as are rendered in the transportation of bulk cement from Monolith. Portland cement is a low-grade, heavy loading commodity produced to meet standard specifications and the plants located at Monolith, Oro Grande, Victorville and Cushenbury produce such Portland cement. Each plant competes one with the other in the sale of this product and no one of the producers can obtain a greater price for its cement than the other. Portland cement, except on rare occasions, is sold by the plants on an F.O.B. delivered basis and said plants bear the transportation charges. Respondent maintains volume rates from all of those plants to San Joaquin Valley points subject to carload minimum weights of marked capacity of car used but not less than 150,000 pounds. Shipments from Oro Grande, Victorville and Cushenbury destined to San Joaquin Valley points pass by Monolith en route so that from Monolith to the north the physical transportation from all of those plants to San Joaquin Valley points is identical. The form of tender of shipments and the facilities for the tendering of carload shipments at those plants are substantially the same. The rates from Monolith to San Joaquin Valley points in terms of cents per mile are higher than the suspended rates proposed by Santa Fe for transportation of cement from Oro Grande, Cushenbury and Victorville to San Joaquin Valley points.

Santa Fe suggests two conditions of transportation distinguishing the movement of cement from Oro Grande, Victorville and Cushenbury from the transportation from Monolith to the San Joaquin Valley points. It contends: (1) although the suspended rates will generate new movement for Santa Fe, it has not been shown the establishment of the same mile for mile basis from Monolith to the same San Joaquin Valley points will generate new movement; and, (2) the suspended rates are above out-of-pocket costs and are compensatory whereas the existing rates from Monolith to San Joaquin Valley points are already below out-of-pocket costs. With respect to the first contention we find that it is without merit in that it assumes that Monolith either does not care to or will be unable to compete with the other mills in connection with construction of other reaches of the Feather River Project in the San Joaquin Valley or, if it does desire to compete, that the cement which would be moved from Monolith would be transported by a transportation agency other than Santa Fe, presumably by S. P. Co. or by truck. It has been shown that Monolith competes with American and other cement companies at destinations in the San Diego area at freight rates 2 cents per 100 pounds differentially higher than some of its competitors. It cannot be assumed that Monolith will not compete in the San Joaquin Valley area where its existing freight rates are three cents differentially lower than the suspended rates. The evidence does not show that Monolith would not use Santa Fe nor make greater use of Santa Fe for the transportation of cement to San Joaquin Valley points if the rates from Monolith were to be reduced. With respect to the second contention, it is based upon a certain expense paid by Santa Fe to Southern Pacific Co. on shipments originating at

Monolith that it does not pay in connection with shipments originating at Oro Grande, Victorville and Cushenbury. This additional expense has its origin in the terms of a certain contract entered into by Santa Fe and Southern Pacific Co. on January 1, 1912 regarding the joint operation of track between Mojave and Kern Junction (Bakersfield). Inasmuch as respondent has suggested no other differences in transportation circumstances and conditions between the points involved, and because Monolith and Santa Fe vigorously disagreed regarding the competency, relevancy and materiality of the expense, it is necessary to consider the provisions of the contract and the circumstances surrounding that contract.

In 1895 a group of San Francisco businessmen organized the San Joaquin Valley Railway Company which in 1898 completed a railroad from Stockton to Bakersfield (Valley Line) to compete with Southern Pacific Company. In 1898, after completion of the Valley Line, Santa Fe purchased the stock of that company upon the assurances to the sellers that the line would be continued in operation as a competitor of the Southern Pacific. At that time Santa Fe operated, under lease from Southern Pacific, a line from Needles to Mojave which connected at Barstow with its own line to Los Angeles. In 1898 Santa Fe was prepared to build its own line from Mojave to connect with the Valley Line at Bakersfield. Southern Pacific had a line between Bakersfield and Mojave that then had excess capacity. This resulted in an agreement entered into on January 16, 1899 providing for joint use, maintenance and repairs by Southern Pacific and Santa Fe of that section of track. This agreement was to expire in 1917. In 1911 a subsidiary of Santa Fe purchased the line between Needles and Mojave it had

operated under lease. At that time the use of the line between Mojave and Bakersfield required the double tracking. In addition, a change was made in the laws of California regarding the taxing of corporations. These circumstances necessitated a change in the agreement between Southern Pacific and Santa Fe concerning the joint use of the line. A new agreement was entered into January 1, 1912 containing terms for the joint use and operation of the Mojave-Bakersfield line for a period of 50 years. The fourth provision of that agreement^{3/} provides for the additional expense referred to by respondent. That provision calls for the payment by Santa Fe to Southern Pacific of 60 percent of the local rates over that portion of the joint track used in connection with any freight transported by Santa Fe having origin or destination on said joint track. No such payment is required in connection with freight transported over the joint track that does not have origin or destination on the joint track. The remainder of the agreement covers operating procedures, the liabilities of the

^{3/} Fourth. Neither third party [Santa Fe] nor its successors or assigns shall do on the joint line any local business originating at and destined to points thereon, except if and when required by law to do so; and if required by law so to do shall pay to second party [Southern Pacific Company] or its successors, or in case of termination of the lease to second party, to first party [Southern Pacific Railroad Company-the owner] or its successors, or other party designated by it or them for the purpose, 60 per centum of the then existing local rates upon such local business; and neither third party nor its successors or assigns shall receive or deliver passengers or freight at any point on such joint line except upon payment to second party or its successors, or, in case of the termination of the lease to second party, to first party or its successors, or other party designated by it or them for the purpose, of 60 per centum of the then existing local rates at the time for transportation of such passengers or freight over the portion of the joint line over which they shall be transported; but such percentage may be altered by mutual agreement of the second and third parties hereto, their respective successors or assigns.

parties using the line, the sharing of taxes and expenses of operating and maintaining the line and also provides for a sum to be paid annually, in quarterly installments, by Santa Fe to Southern Pacific for the right to use the line. The 1912 agreement was approved by the Commission on August 27, 1912, Southern Pacific Railroad Co. et al., 1 C.R.C. 470.

By its terms the 1912 agreement expired January 1, 1962. The Transportation Act of 1920 amended the Interstate Commerce Act to provide the Interstate Commerce Commission with exclusive jurisdiction over pooling arrangements, joint trackage agreements and other combinations of railroads. The termination of the 1912 agreement found Southern Pacific and Santa Fe unable to agree with respect to terms for a new agreement covering the operations by Santa Fe over the Mojave-Bakersfield line. On August 7, 1962 Santa Fe filed an application with the Interstate Commerce Commission to continue its operation under the 1912 agreement. Exhibit 13 is a copy of the decision of the I.C.C. in that application (Finance Docket No. 22218). The decision authorizes the continuance of the operation pursuant to the terms of the 1912 agreement and provides that no changes or modifications shall be made in the terms and conditions without prior authority from the I.C.C. The decision contains findings,

"that the continued operation pursuant to, and the extension of the term of, the agreement of January 1, 1912, without obtaining approval prior to the expiration of said agreement on December 31, 1961, has resulted in a violation of section 5 of the Act; and that the authority sought should not be withheld because of the law violation, as the transaction has been shown to be consistent with the public interest in other respects."

Under law Santa Fe must continue operations over the Mojave-Bakersfield line and must continue to pay Southern Pacific

60 percent of the local rate for operations conducted on that line for the transportation of freight to or from a point on that line. That expense is an out-of-pocket expense in that it is directly applicable to the shipments involved. Said expense is one that accrues in connection with shipments transported by respondent from Monolith and does not accrue in connection with shipments originating at Oro Grande and transported to destinations north of Kern Junction. That expense, therefore, is a condition of transportation of shipments from Monolith not present in the transportation of shipments from Oro Grande. The difference in conditions is one that can be accurately measured with reference to the rates for the transportation of cement from Monolith and from Oro Grande to San Joaquin Valley destinations. The local rate on cement from Monolith to Kern Junction is $8\frac{1}{2}$ cents per 100 pounds. Sixty percent of that rate is 5.1 cents per 100 pounds.

Respondent presented exhibits setting forth the out-of-pocket costs to it of transporting cement in carload shipments of 150,000 pounds in covered hopper cars from Monolith, Oro Grande, Cushenbury and Victorville. Those out-of-pocket costs were developed in accordance with procedures provided in Interstate Commerce Commission Bureau of Accounts Statement 3-61 entitled "Rail Carload Cost Scales By Territories For the Year 1960". The following table shows the costs developed, together with a comparison of the suspended rates with the rates from Monolith to points in San Joaquin Valley.

COMPARISON OF OUT-OF-POCKET COSTS AND
RATES FOR TRANSPORTATION OF BULK CEMENT
IN CARLOADS, 150,000 POUNDS PER SHIPMENT

Cents Per 100 Pounds
POINTS OF ORIGIN

<u>Destination</u>	<u>Rates</u>		<u>Out-of-Pocket Costs</u>			
	<u>Monolith</u>	<u>Oro Grande etc.*</u>	<u>** Monolith</u>	<u>Oro Grande</u>	<u>Victor- ville</u>	<u>Cushen- bury</u>
Bakersfield	10.0	11.5	11.0	8.7	8.8	9.7
Corcoran	11.0	14.0	13.6	11.3	11.4	12.3
Fresno	11.5	14.5	13.6	11.4	11.6	12.4
Hanford	11.0	14.0	14.3	12.0	12.2	13.0
Madera	13.5	16.5	14.9	12.6	12.7	13.6
Merced	15.5	18.5	16.7	14.5	14.6	15.5

* Suspended Rates

** Includes 60% Payment to S.P.
of 5.1 cents per 100 pounds

Monolith contends that the 60 percent of the local rate payment is the result of a private agreement voluntarily made by Santa Fe. We find that such agreement is one authorized and approved by regulatory authority. It also contends that said payment is of no legal significance when determining reasonable non-discriminatory or nonprejudicial through rates, citing Monolith v. Santa Fe, 169 ICC 689, Blue Diamond v. Santa Fe, 171 ICC 175, and a number of other decisions. The situation here is different from those in the cited cases in these respects: this Commission approved the terms and conditions of the 1912 contract; pursuant to order of the I.C.C. the terms of the 1912 contract govern the operation by Santa Fe over the track between Mojave and Kern Junction; Santa Fe, even with the concurrence of Southern Pacific, is prohibited from changing any of those conditions unless authorized by the I.C.C., and Santa Fe is required by law to continue to operate over that track; the rates here involved are local rates so that Santa Fe does not

have it within its power, through agreement with Southern Pacific or otherwise, to change the circumstances or conditions.

We find:

The suspended rates are above out-of-pocket costs and are compensatory whereas the existing rates from Monolith to San Joaquin Valley points are already below out-of-pocket costs and hence are already not compensatory and are insufficient; and by reason of the foregoing, the suspended rates are not unreasonably low in relationship to the rates from Monolith to San Joaquin Valley points; they do not grant any undue preference or advantage to American Cement Corporation, Permanente Cement Company and Southwestern Portland Cement Company; or subject Monolith Portland Cement Company to any undue prejudice or disadvantage in connection with the transportation of bulk cement from their respective plants to San Joaquin Valley points; and, the suspended rates do not unjustly discriminate against Monolith Portland Cement Company or the locality of Monolith in connection with transportation of bulk cement to San Joaquin Valley points.

We will next consider the suspended rates in relation to the rates maintained by Santa Fe from Monolith to destinations in the San Bernardino Valley, the Pomona Valley, the Hemet Valley and the Elsinore area, including Elsinore and Corona.

The contentions of Monolith pertain to the "cross-shipping" principle stated by the Commission in Pacific Portland Cement Co. v. A.T.& S.F.R.R., 33 C.R.C. 300 and reiterated by it in subsequent decisions cited earlier herein. In that decision the Commission held:

"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. [citations]"

Monolith argues that it should be afforded the same basis of rates on a milcage basis to the southern points as Santa Fe seeks to afford Oro Grande to the San Joaquin Valley. The rates maintained by respondent from Monolith to the southern points are in issue in Case No. 7604 and as stated hereinbefore we will not here consider the lawfulness of said rates inasmuch as they are specifically in issue in that proceeding. All that is to be determined herein at this point is the lawfulness of the suspended rates when they are compared with the rates from Monolith to the southern points. If they are found to be unlawful, Section 455 of the Public Utilities Code requires a determination of the just and reasonable rates that should be established in lieu of the suspended rates.

LOCAL RATES OF SANTA FE
FROM MONOLITH TO POINTS SHOWN
MINIMUM CARLOAD WEIGHT 60,000 LBS.

<u>Destination</u>	<u>Distance in Miles</u>	<u>Rate in Cents Per 100 Pounds</u>
San Bernardino	168	24½
Corona	192	24½
Perris	193	25½
Pomona	194	19½*
Menet	210	26½
San Jacinto	212	28½
Elsinore	213	28½

* A temporary rate established because of certain emergency conditions. Scheduled to expire.

DISTANCES, PRESENT RATES AND
 PROPOSED RATES VIA SANTA FE
 FROM ORO GRANDE TO SAN JOAQUIN VALLEY
 MINIMUM CARLOAD WEIGHT 150,000 POUNDS

<u>Destination</u>	<u>Distance in Miles</u>	<u>Rate in Cents per 100 Pounds</u>	
		<u>Present</u>	<u>Proposed</u>
Bakersfield	173	16½	11½
Oil City	184	17	12
Richgrove	209	17	12
Porterville	231	17½	12½
Shafter	191	17	13
Corcoran	236	18½	14

Santa Fe also maintains rates on bulk cement in carloads, minimum weight 60,000 pounds from Oro Grande to San Joaquin Valley points. The rate to Bakersfield is 35½ cents, to Corcoran is 39½ cents, and to the other of the points shown is within that range. Respondent does not publish local rates on bulk cement from Monolith to the southern points subject to a minimum weight greater than 60,000 pounds.

Respondent contends that there are differences in circumstances and conditions in the transportation of cement from Oro Grande to San Joaquin Valley points which distinguish it from transportation from Monolith to the southern points. One of the alleged differences is in marketing conditions. Santa Fe contends that San Joaquin Valley is a primary market whereas the San Bernardino-Hemet-Elsinore area is secondary. We are not wholly in accord with this contention. The San Joaquin Valley is a larger area than the San Bernardino-Hemet-Elsinore area and the ordinary cement consumption in the former area is probably greater; however, in the consumption of cement for ordinary purposes neither is a market of the size of the primary markets of Los Angeles or San Diego. The Feather River Project

is the dominating feature of the markets involved here. In that connection, the project is under construction in the San Joaquin Valley whereas construction of the project in the San Bernardino-Hemet area is to be done in the future. That appears to be the only significant difference in the markets in the two areas.

There are, however, differences in transportation circumstances and conditions which relate to comparisons of the suspended rates on mileage bases with the rates from Monolith to the southern points. First, there is the matter of the additional expense of transporting shipments from Monolith resulting from the fourth provision of the 1912 contract described hereinbefore. The local rate from Monolith to Mojave is 6 cents per 100 pounds. Sixty percent of that rate is equivalent to an additional cost of 3.6 cents per 100 pounds. Another difference involves the rates themselves. The bulk cement rates maintained by Santa Fe from Monolith to the southern points are subject to a minimum weight of 60,000 pounds. Respondent presently maintains bulk cement rates from Oro Grande and Monolith to the San Joaquin Valley points subject to minimum weights of 60,000 pounds as well as at marked capacity of car used subject to a minimum weight of 150,000 pounds. The 60,000 pound rates from Oro Grande to San Joaquin Valley points are not as favorable, mile for mile, as the rates from Monolith to the southern points. From a comparison standpoint, the most that can be contended here is that Monolith is prejudiced because Santa Fe has not established local rates on bulk cement subject to minimum carload weights of 150,000 pounds from Monolith to the southern points as it has from Oro Grande to San Joaquin Valley points. That circumstance, however, already exists and has existed for some period of time and would not be changed by the continued suspension of the rates here involved.

The shortest route from Oro Grande to the San Joaquin Valley points is via Santa Fe. The shortest route from Monolith to the southern points in most instances is via Southern Pacific direct or via Southern Pacific to Los Angeles and thence via Santa Fe to destination. The distance from Monolith to Pomona via Santa Fe direct is 194 miles; via Southern Pacific direct it is 149 miles. Southern Pacific has maintained a rate on cement in carloads of 150,000 pounds from Monolith to Pomona of 15½ cents per 100 pounds. In the cases of shipments from Monolith to Corona, the distance via Santa Fe direct is 192 miles; the distance via S. P. to Los Angeles and thence via Santa Fe to Corona is 164 miles. There is a joint rate of 15½ cents per 100 pounds, minimum carload weight 150,000 pounds, between those points.

Santa Fe also contends that in connection with the cross-shipping doctrine, the San Bernardino-Hemet-Elsinore area is tributary to the cement mills at Crestmore and Colton rather than those at Oro Grande, Victorville and Cushenbury. It was stated that Santa Fe's rates from the latter points to that area are paper-rates^{4/} because the truck rates provide the lowest cost of transportation to the area and therefore Santa Fe is not granting a preference to Oro Grande, Victorville and Cushenbury in that area. In view of our decision on the other issues, it is unnecessary to consider this contention of Santa Fe. However, it is one that may be raised and considered in Case No. 7604.

^{4/} Other than to points directly intermediate to Los Angeles, in which cases the Los Angeles rate of 8½ cents, minimum weight 150,000 pounds is applicable, the bulk cement rates maintained by Santa Fe to the southern points are subject to minimum weights of 60,000 pounds.

We find:

The rates based upon minimum carload weights of 60,000 pounds maintained by respondent from Monolith to the southern points do not provide a proper basis of comparison with the suspended rates, which are subject to minimum carload weights of marked capacity of car but not less than 150,000 pounds;

Santa Fe also maintains rates subject to minimum carload weights of 60,000 pounds from Oro Grande, Victorville and Cushenbury to San Joaquin Valley points which provide the same basis of comparison with the rates from Monolith to the southern points;

Monolith has filed a complaint with the Commission (Monolith v. A.T. & S.F. Ry., Case No. 7604) alleging, among other things, that the rates from Monolith to the southern points are unjust, unreasonable, unduly prejudicial and discriminatory in relationship to the rates maintained by Santa Fe from Oro Grande, Victorville and Cushenbury, to San Joaquin Valley points;

In this investigation and suspension proceeding Monolith seeks reduced rates from Monolith to southern points to be established on the same basis, mile for mile, as the suspended rates; and,

There are circumstances and conditions surrounding the transportation of cement from Monolith to southern points by respondent that are not similar to those surrounding the transportation of cement in bulk from Oro Grande, Victorville and Cushenbury to San Joaquin Valley points, including, the additional expense of 3.6 cents per 100 pounds on shipments originating at Monolith, the routing of shipments via Santa Fe under its local rates is not the shortest route from Monolith to many of the southern points involved herein, and the market for cement for

the Feather River Project construction in the San Joaquin Valley is actual, whereas that market in the southern points area is potential.

Based on the foregoing we find and conclude with respect to the relationship of the suspended rates with the rates maintained by Santa Fe for the transportation of cement from Monolith to southern points, and without any prejudice to any of the matters in Case No. 7604 where Santa Fe's rates from Monolith to the southern points are the principal issues, that the suspended rates are not unreasonably related to the rates from Monolith, are not unduly preferential of the mills at Oro Grande, Victorville and Cushenbury, and are not unduly prejudicial to nor do they unduly discriminate against Monolith.

We next consider whether it has been shown that the suspended rates are justified by transportation conditions. We find:

At the present time and during the past two years virtually no shipments of cement in carloads of 150,000 pounds or more have moved from the mills at Oro Grande, Victorville and Cushenbury via the Santa Fe to destinations on the Santa Fe at San Joaquin Valley points and the movement by any means from said mills to said points has been small, consisting principally of the movement from Victorville to Bakersfield by trucks operated by the customer of the mill;

The rates under suspension were promulgated by Santa Fe to develop a movement where none presently exists, and are at a level based upon representations of the mills at Oro Grande, Victorville and Cushenbury that present rail rates are too high to permit these mills to successfully compete and that if these

suspended rates were established a substantial movement via Santa Fe at these rates would be developed;

Effectiveness of these rates will probably generate a substantial new movement via Santa Fe where none now exists;

The rates are in excess of out-of-pocket costs, including some return on investment, and will make a contribution to overhead; and,

Since virtually no traffic is moving over Santa Fe at the present rates, there will be little or no loss of revenue on traffic already handled as a result of the rate reduction.

Based on the foregoing we find that the suspended rates are compensatory, will not burden other traffic, are just, reasonable and sufficient rates, and are justified by transportation conditions.

From the foregoing findings of fact we conclude that the suspension of rates ordered by the Commission on May 14, 1963 in Decision No. 65402, and extended by order dated September 11, 1963, should be vacated.

O R D E R

IT IS ORDERED that:

1. The order of suspension in this proceeding is hereby vacated and set aside.
2. In the establishment of the rates here involved, respondents shall file a vacating supplement to Pacific Southcoast Freight

Bureau Tariff No. 88-W to make said rates effective not earlier than the effective date of this order.

3. Proceedings in this investigation are discontinued.

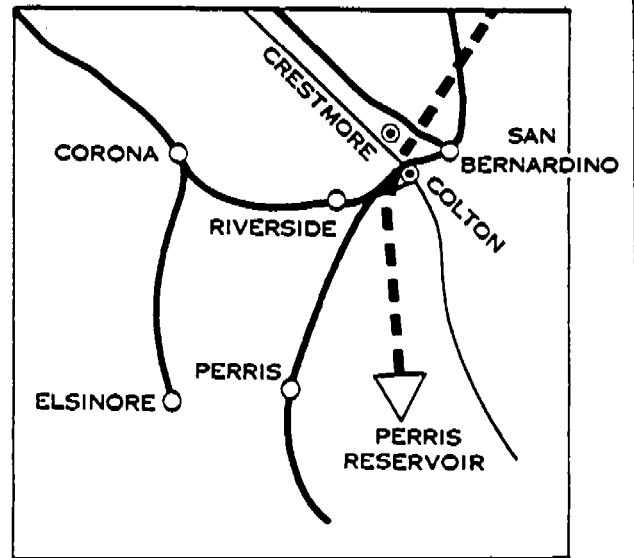
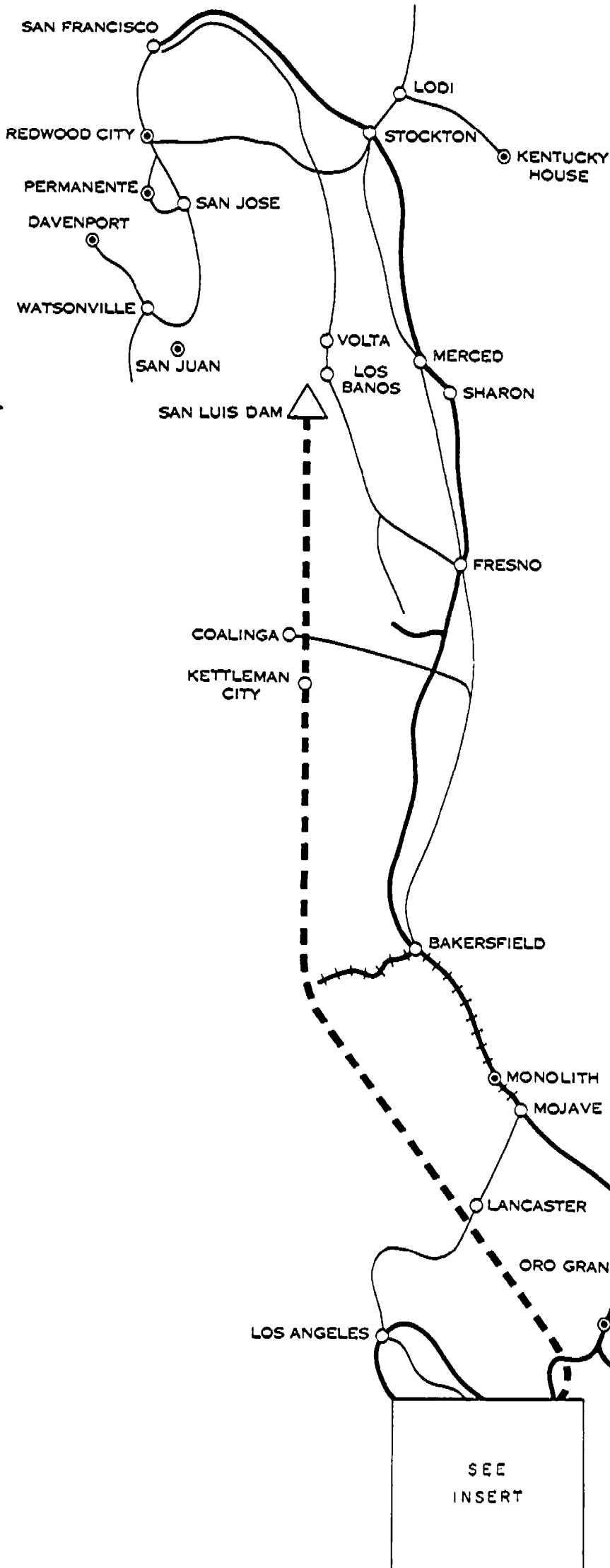
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 17th day of DECEMBER, 1963.

William L. Summit
President
John E. Mitchell
Charles W. [unclear]
George T. Trover
Fredrick B. Hilduff
Commissioners

APPENDIX "A"

CASE NO. I & S 7598



LEGEND

- A.T. & S.F. RWY.
- S. P. CO.
- +++++ JOINT TRACK, A.T. & S.F.-S.P.
- AQUEDUCT SYSTEM
- CEMENT PLANTS