

ORIGINAL

Decision No. 67948

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 Item 2010 of Tariff Cal. P.U.C.)
 No. 21 publishing a certain rule)
 and rate on cement by truck to)
 points in California, published)
 by W. J. Knoell, P. O. Box 3244,)
 Huntington Park, California.)

(I & S)
Case No. 8014

ORDER DENYING PETITION FOR
SUSPENSION AND INVESTIGATION

By petition filed September 24, 1964, Monolith Portland Cement Company seeks investigation and suspension of Item 2010 of Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17, Cal.P.U.C. No. 21, which was filed with the Commission on September 21, 1964, to become effective October 1, 1964.

In support of its petition for suspension protestant states that it has been engaged in the production, selling and shipping of Portland cement at and from its mill located at Monolith, California, since about 1920. Petitioner also states that during these many years it has competed with the production, selling and shipping of cement from mills located at points in California, in a manner materially different from its competitors, in that Monolith has, at great expense to itself, conceived of and engineered a novel method of

handling the cement at railhead, to wit: at nominal expense it has developed a machine called a Cemtote to be installed and operated at any point on a railroad. On the other hand, petitioner alleges that its competitors maintain and operate bulk cement silos at points at railhead, which silos are permanently installed at capital expenditures exceeding a Cemtote installation by approximately 1000 times.

According to the petition Monolith's method of transporting and handling of Portland cement in bulk permits of the accomplishing of one of the legislatively stated objectives of the enactment of the Cement Carrier and Cement Contract Carrier statutes by the 1963 Legislature, to wit: the relieving of the use of the highways of the State for the transportation of the cement, in that Monolith's method of transporting and handling permits of the efficient transportation by rail to a point upon a railroad closest to the point of use of the bulk cement.

The petition recites that Item No. 2010 of the above tariff specifically provides for "an arbitrary charge of 3¢ per 100 lbs. shall be added" to the rail rate, unless the destination point is at an historically established bulk cement silo, or a cement plant and the average distance cement is transported from a railhead is 10 miles.

The petition refers to the current rates of the above tariff ranging from 3-1/4¢ to 3-3/4¢ per 100 lbs. for the transporting of bulk cement in southern territory, the territory in which Monolith markets most of its cement for distances not exceeding 3, 5 and 10 miles. Petitioner avers that the transportation conditions for transporting bulk cement distances of

3, 5 or 10 miles are the same, for the reason that this Commission has, when determining these distances, which are "constructive distances," equalized all highway conditions to determine said distances at any given point in the State of California. It is alleged that the "arbitrary charge of 3¢ per 100 lbs." is discriminatory, is preferential to the competitors of Monolith and prejudicial of Monolith and is per se in excess of a lawful maximum rate, in that the 3¢ arbitrary charge is practically equal to the 3-1/4 to 3-3/4¢ rate for the entire service of transporting the cement distances of from 3 to 5 to 10 miles, all in violation of the Constitution and Statutes of the State of California.

Petitioner requests that Item No. 2010 be suspended until hearing be had. Monolith is informed and believes, and upon information and belief alleges this Commission has exercised its discretion to suspend such original tariffs under similar circumstances, to wit: River Lines, I & S 7539.

Monolith states that it has inquired of its competitors California Portland Cement Company, Southwestern Portland Cement Company, and American Cement Company, before filing this petition, as to whether or not they would oppose suspension of this Item and was advised they would not so oppose.

The petition shows that a copy thereof was mailed to each of the above-named companies and to W. J. Knoell on or about September 23, 1964.

In reply, respondent states that protestant's competitors have an appliance known as the Bazooka which accomplishes the same purpose as the Cemtote and is described in Paragraph (B) of Item 2120 of subject tariff as a "mechanical device used in the loading or unloading of carrier's equipment". Respondent further states that to the best of its knowledge, no point from which protestant is

shipping cement from a railhead at the present time has been omitted from the list of origin points as shown in the item involved herein. Respondent alleges that protestant has not given one single example of a point from which Cemtote or Bazooka operations are being performed and for which specific provisions are not made in Item 2010 and that there is nothing in the subject tariff that would contravene the objectives of the State Legislature.

Respondent also takes issue with protestant's statement to the effect that Item 2010 of the tariff specifically provides an arbitrary charge of 3 cents per 100 pounds to be added to the rail rate unless the destination point is at a historically established bulk-cement silo or a cement plant. It states that no reference to rail rates is even contained in Item 2010. The 3-cent arbitrary rate, respondent avers, applies to any rate, rail competitive or not, if the point of origin is not shown in the Note contained in Item 2010. Respondent further avers that the statement is erroneous, in that a review of the points shown in the Note will indicate a number of named points which are not historically established bulk cement silos or cement plants, viz: the Miramar-Monolith Portland Cement Company, located at Miramar Teamtrack 0 4 W M.A.S. West Gate, Miramar Road and West Hollywood-Monolith Portland Cement Company, located at 8796 Santa Monica Boulevard.

Respondent requests that the Commission deny the petition of Monolith Portland Cement Company for suspension of the provisions of Item 2010 of Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17, Cal.P.U.C. No. 21, and by such denial allow the aforementioned tariff to become effective exactly in the same form and manner as it has been filed with the Commission.

The Commission is of the opinion and finds that the rate herein in issue has not been shown to be one which should be suspended pending a hearing to determine its lawfulness. The petition for investigation and suspension will be denied without prejudice to the consideration of any complaint which may be filed concerning the reasonableness of the tariff.

IT IS ORDERED that:

1. The petition of Monolith Portland Cement Company filed on September 24, 1964, in this proceeding, is hereby denied without prejudice.

2. Copies of this order shall be forthwith served upon petitioner, upon W. J. Knoell, Issuing Officer, Western Motor Tariff Bureau, Inc., Agent, upon California Portland Cement Company, upon Southwestern Portland Cement Company, and American Cement Company.

3. This proceeding is hereby discontinued.

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

Dated at Los Angeles, California, this 30th day of

SEPTEMBER, 1964.

Fredrick B. Holloff
President
Edith E. Hildner
William L. Bennett
George H. Brown
Commissioners

-5- Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.