

ORIGINALDecision No. 70172

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 (commodities for
which rates are provided in Minimum
Rate Tariff No. 10).

Case No. 5440
Petition for Modification
No. 27
Filed July 23, 1965
Amended September 30, 1965

Kenneth P. Harrison, for Harrison-Nichols Co.
Lt'd., petitioner.

Russell & Schureman, by R. Y. Schureman, for
Matich Transportation Co., Moore Truck Lines,
Daniel Lohnes Trucking Co. and Phillips
Trucking, respondents.

Arlo D. Poe, J. C. Kaspar and H. F. Kollmyer, for
California Trucking Association; H. H. Lowthian, Jr.,
for Kaiser Cement and Gypsum Corp.; Geo. B.
Shannon, for Southwestern Portland Cement Co.;
L. L. Conley, for Riverside Cement Co.; Wallace K.
Downey, for California Portland Cement Co. and
Waldo A. Gillette, for Monolith Portland Cement
Co.; interested parties.

J. M. Jenkins and Geo. L. Hunt, for the Commission
staff.

O P I N I O N

This petition was heard and submitted October 14, 1965,
before Examiner Thompson at Los Angeles. Notice of Hearing was served
in accordance with the Commission's procedural rules.

Harrison-Nichols Co. Lt'd. is a cement carrier as defined
in Section 214.1 of the Public Utilities Code. The rates maintained
by it for the transportation of cement in bulk are contained in
Western Motor Tariff Bureau, Inc. Local Freight Tariff No. 17, Cal.
P.U.C. No. 10, W. J. Knoell, agent. It seeks authority to publish
and maintain a rate of \$.0270 per one hundred pounds for transporting
cement from the Old Town Rail Siding Cement Plant of San Diego

Consolidated Company (Consolidated) to the latter's Mission Valley plant, and also a rate of \$.0370 per one hundred pounds for transportation of cement from the same point of origin to Consolidated's plant at La Mesa. The rates presently applicable to such transportation are \$.0375 and \$.0475, respectively. The sought authority is opposed by respondents appearing herein and by several interested parties.

Evidence was presented by petitioner and by respondents.

The authority sought in this proceeding is governed by Section 452 of the Public Utilities Code, which states:

"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 proposed rates are lower than maximum reasonable rates. The present rates, which applicant desires to reduce, are the same as those established by the Commission as the just, reasonable and non-discriminatory rates to be charged by cement carriers and cement contract carriers for the transportation involved. The proposed rates are less than those of competing carriers. The services to be provided by petitioner under the proposed rates are neither greater than nor less than the services it holds itself out to perform for the public generally nor are they different from the services offered

by competing carriers at rates equivalent to those presently maintained by petitioner. The present rates of petitioner are the same as those of its competitors so that its purpose in establishing a reduced rate is not to meet the competitive charges of other carriers but to go below such competitive charges.

The real purpose of the sought authority is inferred from the following evidentiary facts: San Diego Consolidated Company is engaged in the business of selling, among other things, rock and sand products, cement, and concrete in the San Diego area. It has plants in Mission Valley and La Mesa for the production, manufacture and distribution of its products. It competes with other producers and distributors of those products in the San Diego area. It receives bulk cement in carloads, as well as other materials, at its rail siding at Old Town, San Diego. In the course of its business it requires motor transportation services to move materials from its rail siding to its plants and to distribute products from its plants. A number of years ago it performed such transportation services. Thereafter it sold its tractors to Compton Equipment Company and in March of 1963 it sold its trailer equipment to Harrison Trucking, Inc., an affiliate of petitioner. From that date Consolidated engaged petitioner to perform the transportation services. Until October, 1965 (a few days prior to the hearing) petitioner had no motor vehicle equipment. It performed the services with trailers leased from its affiliate and engaged subhaulers with tractors to pull the trailers. As a result of certain requirements established by the Commission in its Decision No. 69557, dated August 17, 1965, in Case No. 5440, petitioner in October of 1965 purchased a 1955 Peterbuilt tractor from Compton Equipment Company and two trailers from Harrison Trucking, Inc. This tractor was one the equipment company acquired from Consolidated

in 1963, sold to a trucking company under a conditional sales contract and later repossessed immediately prior to selling it to petitioner. Petitioner's competitors have never participated in the traffic here involved. Petitioner's president testified that the traffic has not and would not be available to any for-hire carrier other than petitioner. The evidence as a whole points towards an affiliation or some degree of common interest, ownership or management of Consolidated, Harrison-Nichols, Co. Lt'd., Harrison Trucking, Inc. and Compton Equipment Company. The proposed reduced rate would permit Consolidated to compete more effectively in its production and distribution and inferentially would be advantageous to said common interest in the aforesaid companies.

There is nothing in the record which would indicate whether Consolidated is at a disadvantage in competing in the San Diego area nor is there any indication that the savings in its transportation cost which would result from the proposed reduced rates would redound to the public interest. The transportation, being a truckload one-way haul, will not increase petitioner's load factor. Petitioner's unit cost of transportation therefore will not be reduced so as to lessen the transportation burden upon the public served by petitioner.

The only evidence offered by petitioner in justification of the proposed rates was an estimate of the cost of transporting the property, which purportedly shows that the rates are compensatory, and the statement by petitioner's president that if the authority is not granted, Consolidated will undertake to transport the traffic. Presumably the latter is intended to show that unless the authority is granted, for-hire carriage will suffer the loss of this traffic.

The cost estimate presented by petitioner was attacked by respondents and by California Trucking Association. Substantial doubt was cast upon the reliability of that estimate. We need not

consider the contentions of the parties regarding the estimates, however, because, assuming arguendo that the proposed rates would be compensatory, they nevertheless are clearly unreasonable.

The proposed rates would be applicable only to the traffic of Consolidated. On their face the proposed rates would be preferential to Consolidated. A common carrier must not give preference in time, in price or otherwise to one person over another. (Civil Code, Sec. 2170.) No cement carrier shall, as to rates, charges, service or facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No cement carrier shall establish or maintain any unreasonable difference as to rates, charges, service or facilities, or in any other respect, either as between localities or as between classes of service (Public Utilities Code, Sec. 453). Although not all preferences are unlawful, the record in this proceeding does not provide any basis upon which we can find that the differences between the rates which would be applicable to Consolidated's traffic and those applicable to shipments made by other persons or corporations similarly situated would be reasonable. On the contrary, the only "favorable transportation conditions" alleged by petitioner in its pleading are: (1) 95 percent of the route traversed is on a freeway system and (2) loading and unloading conditions are unusually fast. The evidence offered at the hearing supports the allegation concerning the route. According to the testimony the cement is loaded at origin by gravity from a silo and is unloaded at destinations by releasing the gates on the bottom dump trailers. Bulk cement is usually and ordinarily transported in hopper-bottom dump trailers and is ordinarily unloaded in

the manner described above. It is also not unusual for bulk cement to be loaded by gravity from a silo. It has not been shown that there is any reasonable basis for the differences between the proposed rates and those which petitioner would charge to other shippers similarly situated.

The proposed rates would be lower for a longer distance than rates applicable to a shorter distance over the same route in the same direction, the shorter being included within the longer distance. Such rates are unlawful (Const. Art XII, Sec. 21; Pub. Util. Code, Sec. 460) unless after investigation in special cases the Commission authorizes them. Such authorization is granted by the Commission in special cases in order to permit carriers to meet competition from other carriers or other modes of transportation but not on the basis of the facts presented here.

We find:

1. The proposed rates are lower than maximum reasonable rates.
2. The proposed rates are not required by the needs of commerce or by the public interest.
3. The proposed rates are unreasonable and unjustly discriminatory by reason of comparison with other rates maintained by petitioner.
4. The proposed rates are not justified by transportation conditions.

We conclude that the petition should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 27 in Case No. 5440 filed by Harrison-Nichols Co. Lt'd., a corporation, is hereby denied.

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

Dated at San Francisco, California, this 4th day of JANUARY, 1966.

Frederick B. Holcomb
President

John E. Nichols

George H. Crover

Augustus

William H. Bennett
Commissioners