

ORIGINAL

Decision No. 71230

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Protest and)
 Request of PACIFIC CEMENT & AGGREGATES,)
 division of Lone Star Cement Corporation,)
 RHODES & JAMIESON, LTD., CALIFORNIA ROCK)
 & GRAVEL CO., and KAISER INDUSTRIES)
 CORPORATION, for Investigation and)
 Suspension of Rail Freight Rates) (I&S) Case No. 8508
 Proposed on Rock Products from Logan,)
 California to Sunnyvale, California,)
 to become effective August 31, 1966)
 in Supplement 37-G, Item 420.5 to)
 Pacific Southcoast Freight Bureau)
 Tariff No. 166-H, issued by)
 W. O. Gentle, Tariff Publishing Officer)

ORDER DENYING PETITION FOR
SUSPENSION AND INVESTIGATION

By petition filed August 19, 1966, Pacific Cement & Aggre-
 gates, a division of Lone Star Cement Corporation, Rhodes &
 Jamieson, Ltd., California Rock & Gravel Co. and Kaiser Industries
 Corporation (hereinafter called petitioners) seek suspension and
 investigation of a rate of 72 cents per ton from Radum, East
 Pleasanton and Pleasanton (Livermore Valley points) to Sunnyvale and
 a rate of 77 cents per ton from Logan (near Watsonville) to Sunny-
 vale. These rail rates apply to the transportation of crushed rock,
 sand or gravel by Southern Pacific Company when in unit lots of
 10 cars or more, subject to a minimum weight marked capacity of car
 used but not less than 180,000 pounds per car (10-car basis). The
 rates are published to become effective August 31, 1966.

¹ By letter dated August 24, 1966, Pacific Cement & Aggregates, a division of Lone Star Cement Corporation, requested that it be withdrawn as a protestant from the original petition.

² The rates are set forth in Item 420.5 of Supplement 37-G to Pacific Southcoast Freight Bureau Tariff 166-H.

Kaiser Industries Corporation, each of the other petitioners and Granite Rock Company maintain large rock, sand and gravel plants on the lines of the Southern Pacific Company at Radum, East Pleasanton and Logan, respectively. Each of the petitioners markets its rock products in Sunnyvale in direct competition with the shipper at Logan. Southern Pacific Company is a corporation operating in California under the jurisdiction of the Commission for the transportation of property by railroad under tariffs also on file with the Commission.

Petitioners assert that the rates to Sunnyvale from Logan and Livermore Valley points have been related for many years with a differential of 25 cents per ton (single marked-capacity-of-car basis) in favor of shippers of rock products from Livermore Valley points and that this differential has been maintained because their plants in the Livermore Valley are nearer to Sunnyvale than the Logan plant. According to petitioners, Southern Pacific is seeking to reduce the existing differential of 25 cents per ton (single marked-capacity-of-car basis) to a differential of 5 cents per ton (10-car basis).

Petitioners point out as shown in Exhibit A attached to the petition, that the differential on a single marked-capacity-of-car basis maintained at other San Francisco Bay Area points where multiple car rates are in existence from both Logan and the Livermore Valley points is generally maintained on a 10-car basis. However, petitioners state, this is not the case at Sunnyvale where the proposed tariff filing would result in disrupting the existing differential of 25 cents per ton on a single marked-capacity-of-car basis. In effect, petitioners declare that Southern Pacific proposes by publication of the sought rates to grant a reduction of

28 cents a ton on shipments from Logan as compared to a reduction of only 8 cents a ton from points in the Livermore Valley. Petitioners aver that they are not advocating that a 28 cent reduction be granted to them but only that the historical rate differential be maintained.

According to the petition, Southern Pacific is basing its action on a marked-capacity-of-car, 10-car rate of 90 cents a ton on rock to the more distant point of Redwood City which, in turn, is based on an old, unrealistic Olympia sand rate held maximum at Logan because of the authorized abandonment of the Olympia-Los Gatos line of Southern Pacific. Petitioners allege, that Southern Pacific apparently seeks to scale down such rate for application at points intermediate to Redwood City without due regard to factors, such as distance and transportation conditions to Sunnyvale. Petitioners assert that the proposed rates are not justified under the provisions of Section 452 of the Public Utilities Code and that such rates are unduly preferential to the shipper at Logan and unduly prejudicial to them in violation of Section 453 of said Code.

Replies were filed by M. A. Nelson, Chairman, Pacific South-coast Freight Bureau (PSFB), for and on behalf of Southern Pacific Company (respondent), and by Granite Rock Company.

Respondent states that the expressed opinion of the petitioners that the proposed rate adjustments to Sunnyvale are based on the 10-car rate of 90 cents per ton on rock from Logan to Redwood City is in itself incorrect. According to respondent, the aforementioned Redwood City rate was not the basis on which the protested adjustments were approved and published by the PSFB Freight Traffic Committee but the adjustments to Sunnyvale were related to rates approved under PSFB Proposal 1836 from Logan and Livermore Valley points to San Jose, Campbell and Alamos.

Respondent avers that petitioners were aware of the basis under which the shipper at Logan requested the rates to Sunnyvale and Santa Clara and that all petitioners were advised by the PSFB Freight Traffic Committee well in advance of the public notice of disposition made in the PSFB Traffic Bulletin of July 30, 1966, of the original proposal as well as Supplement 1 thereto. Respondent declares that, until the protest herein was filed, no dissents were received from petitioners concerning the approved publication and no attempt was made to invoke Article 10, Section 9, paragraph (f), Articles of Organization and Procedure, Western Railroad Traffic Association, under which petitioners could have held up publication for 30 days in order to present to respondent any objections to the approved record.

Respondent submits that the approved relationship between Logan and Livermore Valley origins was itself concurred in, if not suggested, by one of the petitioners themselves. Respondent points out that Rhodes and Jamieson Ltd., indicated, by letter dated April 11, 1966, that the 10-car rate of 72¢ per ton from East Pleasanton to Sunnyvale in light of the San Jose rates and the proposed rate from Logan is a desirable and satisfactory adjustment.³

Respondent indicates that, in any analysis of the proposed rates, San Jose obviously is the pivotal point and that the mileages beyond San Jose to Sunnyvale and Alamos are almost identical, i.e. Sunnyvale being 8 miles north of San Jose and Alamos 9 miles south thereof with the latter involving branch line service. In establishing incentive 10-car rates from Livermore Valley origins, respondent states that the rail carriers set a differential of 5

³ Copy of the letter is set forth in Exhibit No. 2 attached to respondent's reply.

cents per ton in favor of San Jose over Alamitos for the additional 9 miles involved. Respondent avers that it would not be justified in denying the same basis on movements northbound from Logan for the additional mainline service of 8 miles over San Jose bearing in mind the greater distance from Logan than from Radum to San Jose.

Respondent contends that petitioners' insistence that the existing differential of 25 cents per ton on single car rates (although applicable on rock only) be maintained on multi-car rates published to Sunnyvale from Livermore Valley points and Logan is not valid. According to respondent, the subject tariff is replete with publications wherein differentials have changed as minima per car have increased and multi-car rates have been established. Respondent declares that the petitioners do not consistently insist upon maintaining historical relationships in connection with multi-car versus single car rates.

Respondent shows, by comparisons of the per-ton-mile earnings produced by the present and protested rates from Logan and Radum to Sunnyvale with the current rates from the same origins to destinations in the San Jose area, that the rates involved are not out of line. Respondent asserts that petitioners have not attacked the compensativeness of the protested rate nor shown that the rates are in violation of Section 453 of the Code, that its study establishes that the proposed rates are satisfactorily compensatory, and that the rates are in accordance with the provisions of Section 452 of the Code.

Granite Rock Company (Granite) states that the proposed rate from Logan to Sunnyvale is designed to provide its customers in Sunnyvale with a multiple-car freight rate that is competitive with and comparable to similarly effective rates from Logan to adjacent and related points such as Alamitos, Campbell and San Jose. Granite avers that it should be free to market its products in Sunnyvale and the greater San Jose area and that it must be accorded realistic rail rates based upon volume of movement, not essentially related to geographic locations nor rate differentials.

Respondent and Granite request that the rates not be suspended.

The Commission is of the opinion and finds that the rates herein in issue have not been shown to be ones which should be suspended pending a hearing to determine their 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 rates.

IT IS ORDERED that:


1. The petition of Rhodes & Jamieson, Ltd., California Rock & Gravel Co. and Kaiser Industries Corporation filed on August 19, 1966, in this proceeding, is hereby denied without prejudice.

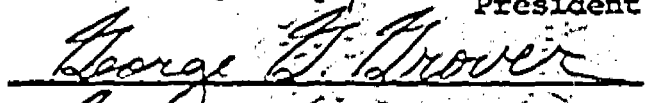
2. Copies of this order shall be forthwith served upon petitioners, upon Southern Pacific Company, upon Pacific Southcoast Freight Bureau and upon Granite Rock Company.

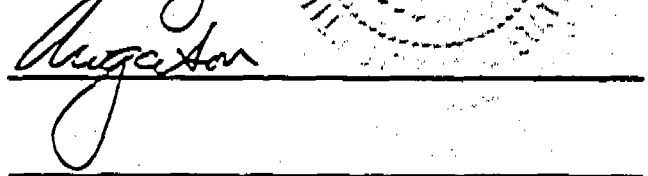
3. This proceeding is hereby discontinued.

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

Dated at San Francisco, California, this 30th day of
August, 1966.



President




Commissioners

Commissioner Frederick E. Holeboff, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.