

ORIGINAL

Decision No. 73586

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 No. 45

Filed April 7, 1967; amended
May 29, 1967, and July 31, 1967

- Wallace K. Downey, for California
Portland Cement Company, petitioner.
- D. H. Marken and John G. Parlett, for
The Airox Company, protestant.
- J. C. Kaspar, H. F. Kollmyer, Arlo D.
Poe, for California Trucking Associa-
tion, interested party.
- John P. Rohrer, David K. Graham, for
Kaiser Cement and Gypsum Corporation,
interested party.
- Eugene R. Rhodes, J. T. Enright, for
Monolith Portland Cement Company,
interested party.
- George B. Shannon, for Southwestern
Portland Cement Company, interested
party.
- William Mitze, for Riverside Division,
American Cement Corporation, inter-
ested party.
- Robert W. Stich, Theodore H. Peceimer,
of the Commission's staff.

INTERIM OPINION

Petitioner, the California Portland Cement Company, is engaged in the manufacture and sale of cement. Its plants are located at Creal -- about eight and one-half miles west of Mojave -- and at Colton. Petitioner also manufactures pozzolana

(or pozzolan) at its Creal plant and ships said material to various destinations within California.

Pozzolana is a finely ground powder, made principally from siliceous or siliceous and aluminous materials. It is used as an admixture to portland cement concrete to produce a concrete which is less porous than ordinary concrete and which, as a consequence, is particularly suitable for use in the construction of hydraulic systems such as dams, tunnels, irrigation canals and water conduits.

Under present provisions of the Commission's minimum rate tariffs the transportation of pozzolana by highway carriers is subject to class rates. Petitioner alleges that pozzolana will be shipped in increasing volume in the near future, and that the class rates will be unreasonably high for the movements involved. By this petition it seeks the establishment of commodity rates for pozzolana which are lower than the applicable class rates for distances of about 300 miles or less and higher than the class rates for distances of more than about 300 miles. It also asks that said rates be incorporated in Minimum Rate Tariff No. 10, which tariff sets forth the minimum rates and regulations which the Commission has prescribed for the transportation of cement by highway carriers.

Public hearing on the petition was held before Examiner C. S. Abernathy at Los Angeles on July 31, 1967. The matter was taken under submission with the filing of briefs on September 12, 1967.

Evidence in support of the sought rates was submitted by petitioner through five witnesses: its vice-president of marketing, its vice-president of manufacturing, the superintendent of its plant at Creal, its sales office and transportation manager, and its traffic manager.

The vice-president of marketing testified that a substantial quantity of pozzolana will be required for the construction in connection with the Feather River Project (California Water Plan); that approximately 800,000 to 900,000 tons of said material will be needed between now and 1973; that in response to this need, petitioner recently began the manufacture of pozzolana at its Creal plant, and that other manufacturers or producers of pozzolana for the California market are the Airox Corporation whose plant is near Santa Maria, the Basalt Company in northern California, and two companies in Nevada.

The testimony of the vice-president of manufacturing dealt mainly with the materials of which pozzolana is made and certain practices which are followed in the transportation of pozzolana. He stated that pozzolana may be made from a rather broad range of siliceous or aluminous materials which are generally of volcanic origin; that not all of such materials, however, may be used for pozzolana; that to be suitable for the manufacture of pozzolana, the materials must possess certain physical and chemical characteristics which give them (the materials) cementitious properties when processed and mixed with cement, slack lime or other activating agents; that with the exception of fly ash¹

¹ Fly ash is a residue from the burning of coal.

which itself may be used as a pozzolana, pozzolana is a manufactured product made by grinding the basic materials to a fineness of about three to four times that of portland cement, calcining it and drying it; that the resultant product has a density of about 50 pounds per cubic foot,² and that its value is about \$14 a ton f.o.b. transportation unit at manufacturing plant site.

In his testimony regarding practices which are followed in connection with the transportation of pozzolana by highway carriers, petitioner's vice-president of manufacturing stated that pozzolana in bulk is transported in pneumatic hopper equipment, and that pozzolana in sacks is transported on flatbed equipment;³ that the normal truck-and-trailer load of pozzolana weighs about 50,000 pounds; that the loading of bulk pozzolana to the normal weight capacity of the vehicles is somewhat difficult because of a tendency of pozzolana to entrain air and to become more bulky in the loading processes; that to overcome this difficulty petitioner initially had followed the practice of partially filling the vehicles and requiring them to wait until the material had settled to the point that the loading could be completed; that the loading of the vehicles in these circumstances required about two and one-half hours; that in order to expedite the loading petitioner had developed a procedure whereby the entrained air could be expelled pneumatically, and that under this procedure the vehicles can be, and are being, loaded in about one-half hour.

² The density of pozzolana is about half that of cement.

³ It appears that about 95 percent of the pozzolana shipments move or will move in bulk and that the remainder moves or will move in sacks.

Regarding the time required for loading pozzolana in sacks the vice-president of manufacturing said that the time would depend on whether the loading were performed by hand or by lift trucks loading palletized lots. He expressed the view that the hand loading of pozzolana would require about twice the time required to load by hand as that required for loading a like shipment of cement, inasmuch as the loading of pozzolana requires the handling of about twice the number of sacks that are handled in the loading of an equivalent quantity of cement. He thought, however, that the loading of sacked pozzolana in palletized lots by means of lift trucks could be accomplished in about the same time as that required for the loading of a like quantity (by weight) of cement.

The procedure which petitioner follows to overcome the difficulties stemming from the tendency of pozzolana to entrain air in the loading processes was described in detail by the superintendent of petitioner's plant at Creal. Basically, the procedure consists of alternately loading bulk pozzolana by gravity into the carriers' pneumatic hopper equipment, compacting the material by compressed air to expel the entrained air, and repeating the process until the loading is completed. The superintendent testified that the procedure was developed after considerable experimentation, and has been improved and automated to the point that in the future the loading can be accomplished almost as a continuous process. The witness said the experimentation was limited to the equipment of but one of the carriers

which serves petitioner. Nevertheless, in its present form the procedure is compatible with pneumatic hopper equipment operated by other carriers also.

The specific rates which petitioner seeks to have adopted as minimum rates for the transportation of pozzolana were submitted and explained by petitioner's sales office and transportation manager. Essentially, said rates are those which would return to the carriers the same revenues per load from the transportation of pozzolana as the carriers receive per load for the transportation of cement. In addition, however, they would return an amount of about \$10 per load for excess time spent in the loading of pozzolana. Petitioner's sales office and transportation manager said that he had developed the proposed rates by computing the cement revenues per load on the basis of the rates for cement which were prescribed by Decision No. 72503 to become effective July 1, 1967, and on a load weight of 52,000 pounds.⁴ For pozzolana he used a load weight of 50,000 pounds. His additive of \$10 per load was derived from a charge for stand-by time which various cement carriers assess pursuant to a tariff which they have published on their own behalf.⁵ Said additive is intended to compensate the carriers for one and one-quarter hours loading time in excess of an unloading time allowance of one-half hour.

⁴ The rates which were prescribed by Decision No. 72503 were suspended by Decision No. 72640, dated June 20, 1967, before the rates became effective. The suspension was continued by Decision No. 72816, dated July 25, 1967, and the proceeding was reopened for further inquiry into the matters involved.

⁵ Western Motor Tariff Bureau Local Freight Tariff No. 17, Cal. P.U.C. No. 21, Item No. 2000.

In the development of his rate proposals petitioner's sales office and transportation manager followed substantially the same procedure both in his calculation of the rates for pozzolana in bulk and those for pozzolana in sacks. However, he pointed out that the procedure would result in lesser rates for pozzolana in sacks than for pozzolana in bulk for distances in excess of 90 constructive miles. For this reason he proposed that for such distances the rates for pozzolana in sacks be set at the level of the rates for pozzolana in bulk.

Another proposal which petitioner's sales office and transportation manager made in connection with the sought rates is that said rates apply to the exclusion of the class rates under which pozzolanic materials are being transported at present. He submitted a comparison to show that for distances of more than 280 constructive miles the charges under the class rates would be less than those under the sought rates for pozzolana. He asserted that the charges under the class rates are influenced by the use of the carriers' equipment in gainful transportation in return trips from outbound loads; that in connection with the transportation of pozzolana the carriers have relatively few opportunities for loads on their return trips, and that for this reason the class rates should not be applicable to the transportation of pozzolana.

Petitioner's proposals in this matter were opposed by the Airox Company, which company, as has been previously mentioned herein, produces pozzolana at a plant near Santa Maria.

Evidence which was submitted by this company is to the effect that the company expects to supply considerable pozzolana in connection with the construction of the California Aqueduct through and across the Tehachapi Mountains, Antelope Valley, Cajon Pass to the Ferris terminus; that the company also expects to supply a considerable quantity of pozzolana in connection with collateral construction projects of the Metropolitan Water District of Southern California; that these projects are substantially more distant from the Airox Company's plant at Casmalia (near Santa Maria) than from petitioner's plant at Creal; and that petitioner's proposed rates, if adopted, would result in increases in the transportation costs of the Airox Company in shipping pozzolana to said construction projects while resulting in reductions in the transportation costs of petitioner.

The Airox Company particularly opposed the adoption of the definition which petitioner proposed for pozzolana. According to an engineer who testified on behalf of said company, the materials which can be processed to make them suitable as a pozzolana include, amongst others, pumice, pumicite, rhyolite, rhyolitic pumice, tuff, tufa, scoria, diatomites, and diatomaceous earth. The witness said that these materials can also be used for other purposes than pozzolanas, and he asserted that the materials should be rated according to their basic descriptions instead of as pozzolana.

In addition to opposing the adoption of petitioner's proposed definition of pozzolana, the witness also opposed the

proposed rates, and the recommendation that the rates be included in Minimum Rate Tariff No. 10.

With reference to the operations and practices of the Airox Company, the engineer testified that the company's principal product is pozzolana; that in 1966 the company produced and shipped approximately 40,000 tons -- virtually the total production in California for that year; that about 90 to 95 percent of this tonnage moved in bulk and the remainder was shipped in sacks; that for the transportation of this material the company used highway carriers who were predominantly engaged in the transportation of cement; that the loading of the carriers' vehicles was accomplished mainly by gravity; that the loading process required from one and one-half to two and one-half hours; and that the loads ranged in weight from about 45,000 pounds to about 50,000 pounds.

Other witnesses who presented evidence in this matter appeared on behalf of various cement companies.⁶ These witnesses testified that they did not oppose the establishment of the rates for pozzolana which petitioner seeks but that they were opposed to the inclusion of said rates in Minimum Rate Tariff No. 10. This tariff, they asserted, was developed as a specialized tariff for cement. They objected to any action which would result in a broadening of the tariff to include other commodities also.

⁶ Southwestern Portland Cement Company, Kaiser Gypsum Corporation, Ideal Cement Company, Calaveras Cement Company, Lone Star Cement Company, Monolith Cement Company, and American Cement Corporation.

A representative of the California Trucking Association and members of the Commission's staff participated in the development of the record through examination of the witnesses.

Discussion

Petitioner is here seeking the establishment of reduced minimum rates for the transportation of pozzolana from southern California points of origin. The grounds upon which it principally relies as justification for said rates are that it expects to ship a substantial quantity of pozzolana from its plant at Creal during the next several years; that except for a lesser density and some loading problems stemming therefrom, the transportation characteristics of pozzolana are similar to those of portland cement; that pozzolana is transported by the same carriers and in the same vehicles as those used for the transportation of cement; that the rates which have been established as minimum rates for the transportation of cement are less than those which apply for the transportation of pozzolana, and that the rates which petitioner seeks to have established would return to the carriers approximately the same revenues per load as those which they receive from the transportation of cement.

On various occasions heretofore the Commission has prescribed or approved reduced minimum rates on substantially the same justification as that upon which petitioner's proposals in this matter are made. The recognition through reduced rates of economies which are achieved when transportation is performed in favorable circumstances is consistent with requirements of

Section 3662 of the Public Utilities Code that

"In establishing or approving (minimum rates to be charged by any highway permit carrier for the transportation of property) the Commission shall give due consideration to the cost of all of the transportation services performed."

Petitioner's showing is convincing that reductions in the minimum rates which apply for the transportation of pozzolana are justified by the volume of the pozzolana to be shipped during the next several years to construction projects of the California Water Plan and by the circumstances in which the transportation is being performed. We are persuaded, moreover, that the level of any commodity rates which should be established for pozzolana should generally correspond to the level of the minimum rates which are set forth in Minimum Rate Tariff No. 10 for the transportation of cement as defined in said tariff.

By Decision No. 73585, issued today, rates for cement were adjusted effective March 1, 1968. While it is not clear from the record herein what the ultimate basis of rates for pozzolana should be, it appears that an interim basis of rates should be established related to the cement rates but differentially higher to give consideration to the loading time involved. To assure that the parties now being assessed class rates for this transportation would not be deprived of the rates in question, the proposed rates will be established in Minimum Rate Tariff No. 2 on an interim basis.

Findings

Upon consideration of the record in this matter, the Commission finds that:

1. Petitioner's proposal is reasonable to the extent hereinafter indicated.
2. The resulting minimum rates and charges as herein proposed will be just, reasonable and nondiscriminatory minimum rates and charges for the transportation involved pending further consideration and disposition of this matter based on evidence to be adduced at further public hearing or hearings.

Conclusions

The Commission concludes that:

1. The petition should be granted on an interim basis as hereinafter indicated.
2. The proposed rates should be established in Minimum Rate Tariff No. 2 on an interim basis.
3. This matter should be reopened for further hearing or hearings to permit further development of a record upon which permanent minimum commodity rates for the transportation of pozzolana may be prescribed.

INTERIM ORDER

IT IS ORDERED that:

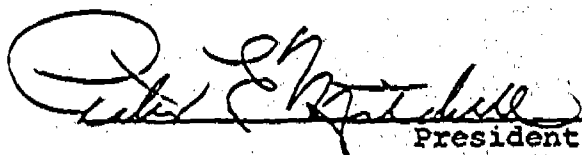
1. Further public hearing shall be scheduled in this proceeding for the receipt of evidence on this petition and final disposition thereof.

2. The Secretary is directed to cause appropriate notice of the time and place of further hearing to be mailed at least ten days before such hearing.


3. Pending final disposition of this proceeding, Minimum Rate Tariff No. 2 (Appendix D of Decision No. 31606, as amended) shall be further amended by separate order establishing therein commodity rates for the transportation of pozzolana on an interim basis.

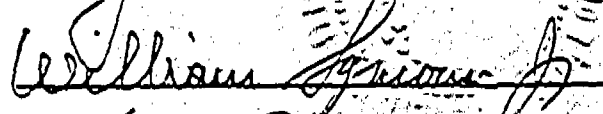
This order shall become effective twenty-five days after the date hereof.


Dated at San Francisco, California, this 9th day of January, 1968.



President






Commissioners

DISSENT

BENNETT, WILLIAM M.

I DISSENT

Not in the record where properly staff positions should be urged -- but after the close of the record and unbeknownst to parties affected hereby the Commission for the first time was urged to equalize the rates between pozzolana and cement. Whether such be a decision of perfect wisdom and completely suited to the public interest begs the question of the manner and method in which the Commission reaches its decision. As the Examiner whose views were rejected stated "The newly established cement rates to which pozzolana is tied were developed in hearings in another case long since closed." I am not aware that this Commission may lawfully consider as evidence in this proceeding material received in another proceeding. Even if such were to be the result, the staff certainly should have asked the Commission to take such action on the record where parties who would either approve or disapprove of such would have opportunity to take a position with reference thereto.

My real objection to the majority decision herein lies in the fact that it is clear evidence that the Commission is returning to the "institutional decision" from which, in my judgment, no party and no position is safe from attack, no notice or other requirement of due process is followed and the result is often totally at variance with any evidence presented, any position taken and a complete surprise to the parties affected.

If the Commission is going to be guided into rejection of an Examiner's decision based upon positions or material not presented in the record, then Commission conference should be opened to those parties disagreeing with newly enunciated staff positions so that such parties may have their opportunity to persuade the Commission, if possible, as to their views. My position herein agrees with that of the Examiner's proposal. I refer specifically to his proposed findings that:

"1. The prescription of minimum commodity rates for the transportation of pozzolana has been justified, but that the specific rates which petitioner seeks to have established as minimum commodity rates for pozzolana have not been shown to be just, reasonable and nondiscriminatory within the meaning of Section 3662 of the Public Utilities Code.

"2. In the establishment of just, reasonable and nondiscriminatory minimum commodity rates for pozzolana, consideration should be given to the rates which are established as just, reasonable and nondiscriminatory rates for the transportation of cement upon review (upon rehearing) of the rates for cement which were prescribed by Decision No. 72503, dated May 31, 1967, in Case No. 5440."

And I also agree with his proposed ordering paragraph which would have set down this matter for further proceeding to determine whether or not the minimum commodity rates for pozzolana are lawful rates. One is struck by the oddity of the majority opinion which permits the imposition of minimum rates on an interim basis and then sets forth for the hearing to establish permanent minimum commodity rates. In short, the Commission has not the faintest notion whether the interim rates are just and reasonable and therefore lawful but for reasons not contained in the record herein the Commission is permitting their charge to the public. If the rates presently are lawful no further hearings need be held; if the Commission does not presently know whether the present rates are lawful then they should not permit their effectiveness upon an interim basis. I view the rates authorized on an interim basis as being suspect. If the Commission hereafter finds that the presently charged interim rates are not just and reasonable and were therefore unlawful, persons operating under such rates or charging those should consider seriously the question of whether they are subjecting themselves to reparations claims.

William M. Bennett
WILLIAM M. BENNETT
Commissioner