

Decision No. 78022

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Authority to Make Effective Increases in Local and Joint Rail and Rail-Highway Freight Rates and Charges (Ex Parte 265 Increases).

Application No. 51944
(Filed June 5, 1970;
Amended June 12, 1970)

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 any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432 OSH 592

AND RELATED MATTERS.

Case No. 5330	OSH 50
5433	33
5435	154
5436	100
5437	201
5438	78
5439	122
5440	67
5441	199
5603	89
5604	23
7857	35
7858	78
8808	10

Dated July 21, 1970

Charles W. Burkett and Leland E. Butler, for applicant.
William T. Barklie, E. J. Bertana, Joseph T. Enright,
Eugene A. Fiese, Harvey H. Lowthian, Jr.,
William Mitze, Eugene Rhodes, and George B. Shannon,
for protestants.
J. C. Kaspar, A. D. Poe, H. F. Kollmyer, Thomas B.
Kircher, Karl L. Mallard, William D. Mayer, Thor C.
Olsen, John T. Reed, Richard A. Starr and Raymond
Mosser, for interested parties.
Dale R. Whitehead and Jerome Parke, for the Commission
staff.

O P I N I O N

These matters were heard August 4 through 7, 1970 before Examiner Thompson at San Francisco and were submitted on oral argument held August 13, 1970. Pacific Southcoast Freight Bureau, on behalf of carriers participating in its tariffs, seeks authority to increase local and joint rail-highway freight rates except carload commodity rates on sugar beets which are the subject of proceedings in Application No. 51963, and except certain rail rates which historically have been maintained at minimum rate levels prescribed by the Commission for highway carriers.

On July 21, 1970, the Commission ordered that hearings be held in the several minimum rate cases for the purpose of determining whether common carriers should be authorized and directed to adjust their rates maintained under the "alternate application of common carrier rates" provisions of the various minimum rate tariffs.

The sought increases are the same as those authorized by the Interstate Commerce Commission to apply, effective June 9, 1970, as interim increases in rates on interstate rail traffic pending completion of a full investigation as to the revenue needs of the rail lines in Ex Parte No. 265, Increased Freight Rates, 1970. The aforesaid authority provides that if as a result of that investigation the Interstate Commerce Commission reduces or eliminates said increase with respect to any particular interstate rate, the rail carriers will make refund of the difference between the rates charged and those authorized after said investigation, plus 4 percent interest. Similar refund provisions are proposed by applicant herein regarding increases applicable to California intrastate traffic. Counsel for applicant stated that it is the

A. 51944, et al. hjh

proposal of the railroads to make applicable to intrastate traffic any authorizations or directives that are or may be made by the Interstate Commerce Commission in Ex Parte 265 concerning interstate commerce. In that connection applicant requested that the record in this application be held open pending completion of the investigation by the Interstate Commerce Commission at which time applicant will file a supplemental pleading herein to have adjustments in intrastate rates conform with whatever further adjustments may be ordered in interstate rates.

Virtually all cement producers with mills in California oppose the proposed five percent increase. They presented evidence to support their position that the proposed increase is not justified in connection with rates for the transportation of cement in interplant movements. We will consider such issue following the discussion of the application of the proposed increase generally.

The last general increase in California intrastate rail freight rates was authorized by Decision No. 77184, dated May 5, 1970, in Application No. 51480. That decision authorized the railroads to make effective on California intrastate traffic increases similar to those authorized by the Interstate Commerce Commission in Ex Parte No. 262, Increased Freight Rates, 1969, (Six Percent) except that in lieu of the six percent increase the railroads were authorized to increase rates on cement by one cent, and carload rates on sugar beets by three percent, maximum five cents per net ton. The rates which have been maintained at minimum rate levels were also excluded from the authorized increase.

The presentation of applicant's case in chief was substantially the same as its presentation in Application No. 51480. Some modifications were made by the railroads in procedures for separating and allocating expenses to California intrastate operations. The principal modifications concerned adjustments in revenues and expenses involving transit privileges. Those adjustments and the other modifications were made in consultation with the Commission staff.

Applicant presented estimates of revenues and expenses of the four major railroads and their subsidiaries attributable to California intrastate traffic for the year 1969^{1/}. Those results are summarized below:

^{1/} In Decision No. 77184 it is stated that the four major railroads and their subsidiaries receive about 97 percent of the total California intrastate revenues.

TABLE I

ESTIMATED FREIGHT REVENUES, EXPENSES
AND NET RAILWAY OPERATING INCOME OF THE
FOUR MAJOR RAILROADS AND THEIR SUBSIDIARIES
ATTRIBUTABLE TO CALIFORNIA INTRASTATE TRAFFIC
FOR THE YEAR 1969.

	In Thousands of Dollars		
	<u>Revenues</u>	<u>Expenses</u>	<u>Income</u>
Southern Pacific Transportation Company	\$65,311	\$ 71,244	(\$5,933)
Northwestern Pacific Railroad Company	3,930	4,971	(1,041)
San Diego and Arizona Eastern Railway Company	971	1,099	(128)
Holton Inter-urban Railway Company	175	142	33
Petaluma and Santa Rosa Railroad Company	19	17	2
Visalia Electric Railroad Company	1	1	-
Sunset Railway Company ^{1/}	169	134	35
The Atchison, Topeka and Santa Fe Railway Company	20,715	23,303	(2,588)
Western Pacific Railroad Company	1,559	2,262	(703)
Sacramento Northern Railway Company	107	141	(34)
Tidewater Southern Railway Company	26	35	(9)
Central California Traction Company ^{2/}	88	130	(42)
Union Pacific Railroad Company	<u>1,556</u>	<u>1,737</u>	<u>(181)</u>
Totals	\$94,627	\$105,216	(\$10,589)

() - Indicates loss

^{1/} - Jointly owned by SP and ATSF^{2/} - Jointly owned by SP, WP and ATSF

The above estimates make no provisions for State or federal income taxes. The amounts of the revenues and expenses were taken from the annual reports of the carriers for the year 1969 and then were separated and apportioned to California intrastate operations. The Commission staff believes the separations formula used by applicant may overstate the allocation to California intrastate operating expenses and that refinements of the formula must be developed before the true California expenses can be firmly established. Until this is accomplished, the staff asserts that it is not in a position to either affirm or deny the appropriateness of the showing made by applicant at this time. Applicant's witnesses responsible for the separations and allocations of expenses underwent lengthy cross-examination by the staff. If there are any significant overstatements of estimates of operating expenses assignable to California intrastate transportation, such has not been demonstrated on this record.

A projection of the above-tabulated estimates of the 1969 results of operations to forecast the results under the proposed rate increase and at 1970 expense levels would require

upward adjustments of gross operating revenues of between 10 and 12 percent.^{2/} Increases would also have to be made in the estimates of expense. Estimate made by generally accepted methods of indices is that 1970 expenses will exceed those for 1969 by about 8.34 percent. While we do not accept such estimate as necessarily accurate, the evidence shows that indices of wage and materials levels for western railroads prepared by the Association of American Railroads disclose an increase in such wages and prices of materials from 1968 levels to 1969 levels of 5.99 percent. Aside from any estimates, it was shown that effective July 1, 1969 there was a 3 percent increase in wages for virtually all employees of railroads.

2/ This estimate considers:

- (a) Increasing the charges by 3 percent on traffic moving between January 1 and January 18, 1969 (X-259 A)
- (b) Increasing the charges by 2 percent on traffic moving between January 1 and October 16, 1969 (X-259 B)
- (c) Increasing charges on sugar beet shipments in 1969 by 3 percent and other traffic by 6 percent (X-262)
- (d) Increasing the charges on all traffic other than sugar beet shipments by 5 percent (the increases proposed herein).

Even without any consideration of losses mentioned by applicant resulting from transportation by railroad of passengers in California intrastate commerce it is readily apparent that if the additional revenues resulting from the proposed rates will provide any return at all on the investment in properties and facilities used in such service, such return will not be excessive.

We come now to the issues regarding the rates on cement. The cement mills contend that the sought increases, and more particularly the increases as they may apply to interplant rates, should be denied because: (1) applicants have not made a showing that the increases are justified; (2) by reason of the form of prior increases in the rates on cement, and more particularly those in Ex Parte 259 and Ex Parte 262, the cement mills have already assumed their fair share of rate increases and the proposed increases will unreasonably burden cement as compared to other traffic; and (3) the increases will result in interplant rates which will exceed the value of the service and therefore be unreasonable.

With respect to the first contention we have already discussed the showing made by applicant. Concerning the second allegation, the increases in the rates on cement since March, 1961 have been as follows:

X-256 = Rates not exceeding 10¢ cwt increase by 1/2 cent
Rates over 10¢ but not over 30¢ increase by 1 cent
Rates over 30¢ but not over 80¢ increase by 2 cents.
Rates over 80¢ increase by 3 cents.

X-259 = Increase all cement rates by 1 cent cwt.

X-262 = Increase all cement rates by 1 cent cwt.

With respect to the rate increases as they applied to commodities generally, the X-256 increases indicated above applied to interstate and intrastate movements of commodities generally; in X-259 the one cent increase applied to both interstate and intrastate movements of

cement and as to other commodities the increase was on the order of five percent generally; in X-262 the one cent increase applied only to intrastate movements of cement and the increase applicable to interstate movements of cement and to both interstate and intrastate movements of commodities in general was on the order of six percent.

In this record it was shown that the commodity rates on bulk cement are lower than the rates for commodities generally and in particular are lower than the rates for nonmetallic minerals transported in covered hopper cars. From the standpoint of revenue per ton-mile, because of the form of the increases it is more probable that cement contributed less, rather than more, than commodities generally to increases in X-256. In Decision No. 77184, supra, the Commission found that a one cent increase in the rates on cement would return approximately the same revenue as would an increase in rates of six percent. To that extent, the increase of one cent in cement rates in X-259 may have resulted in the rail lines receiving additional revenues from cement traffic equivalent to a six percent increase in rates whereas commodities generally were subject to a five percent increase. With respect to the X-262 increase, as has been stated, the Commission found that the one cent increase was equivalent to the six percent increase which was applicable to commodities generally.

Protestants presented evidence showing the effects of the proposed increases together with the increases that have been made applicable to carload cement rates since 1961. The evidence shows that on California intrastate cement movements the increases in rates since said date which will result from the proposed X-265 A increases range from 20.00 percent to 41.18 percent.

Examples of the effects of the increases in rates, including the proposed increases, upon the rates for interplant movements of cement in California compared with the effects upon similar carload rates for the movement of cement in interstate commerce and for the movement of commodities generally are shown below.^{3/} It is to be noted that the disparity between the intrastate cement rates are magnified in Example II because of the results of applying the percentage increases to the other rates of small numerical values and rounding off. In applying the table in Tariff of Increases X-265 A a rate of 11 cents is increased to 12 cents (a 9% increase), whereas the rate of 10-1/2 cents is increased to 11 cents (a 4.76% increase). While it is true that the proposed increases, together with the aforementioned prior increases, will have the result generally of the intrastate cement rates which were lower than 11-1/2 cents in 1961 incurring greater increases than their counterparts applicable to

	Base X223	X256	X259	X262	% Incr. to Base	X265A	% Incr. to Base
<u>3/</u>							
EXAMPLE I							
Cement Intra	7-1/2	8	9	10	33.33	10-1/2	40.00
Cement Inter	7-1/2	8	9	9-1/2	26.67	10	33.33
Com. Gen'l	7-1/2	8	8-1/2	9	20.00	9-1/2	26.67
EXAMPLE II							
Cement Intra	8-1/2	9	10	11	29.41	12	41.18
Cement Inter	8-1/2	9	10	10-1/2	23.53	11	29.41
Com. Gen'l	8-1/2	9	9-1/2	10	17.65	10-1/2	23.53
EXAMPLE III							
Cement Intra	11-1/2	12-1/2	13-1/2	14-1/2	26.09	15	30.43
Cement Inter	11-1/2	12-1/2	13-1/2	14	21.74	15	30.43
Com. Gen'l	11-1/2	12-1/2	13	14	21.74	15	30.43
EXAMPLE IV							
Cement Intra	16	17	18	19	18.75	20	25.00
Cement Inter	16	17	18	19	18.75	20	25.00
Com. Gen'l	16	17	18	19	18.75	20	25.00
EXAMPLE V							
Cement Intra	20	21	22	23	15.00	24	20.00
Cement Inter	20	21	22	23	15.00	24	20.00
Com. Gen'l	20	21	22	23	15.00	24	20.00

interstate shipments of cement and to intrastate shipments moving under carload commodity rates generally, the same is not generally true regarding rates which were 11-1/2 cents or greater in 1961. It is to be noted that if the sought increases were to be denied, the California intrastate rates on cement which were at levels of 11-1/2 cents or greater in 1961 would become lower than their counterparts applicable to commodities generally. Protestants asserted that the bulk of the movement of cement in California is for short distances and would be governed by the lower rates. Such assertion is not supported by the evidence in this proceeding which shows that a one cent increase in the rates on California intrastate cement traffic will provide the same additional revenues as would a six percent increase in said rates. This indicates that the average rate for the transportation of cement in California is around 16¢ cwt. Concerning protestants' allegations that interplant movements of cement are for short distances, the record shows that Kaiser Cement & Gypsum Co. ships bulk cement by rail from its mill at Permanente to its distribution plant at Eureka, Calaveras Cement Co. has shipped bulk cement by rail from its mill near Redding to its distribution plant at San Leandro, and American Cement Co. has shipped bulk cement by rail from its mill at Oro Grande to its distribution terminals at Stockton and San Diego.

Cement is a commodity that is manufactured to specifications prescribed by the Federal government. Its main use is in construction and the principal markets for cement are the population centers. Ultimate destination of the cement sold by the manufacturers is the jobsite of a construction project which usually is not at railhead. Competition among the cement mills is keen and a difference in price of 1/4¢ per barrel can determine which mill will supply the cement. The commodity is ordinarily

sold F.O.B. jobsite and the competitive price ordinarily is around the price of cement at the nearest mill plus the transportation charges computed at the minimum rates in Minimum Rate Tariff No. 10 from the nearest mill to the jobsite. Other than price, the only other apparent factor of competition in the market is service. Protestants' allegations regarding the proposed increased rates exceeding the value of the service can best be understood by reciting the circumstances of the participation by Calaveras Cement Co. in the San Francisco Bay Region market.

Calaveras' mill nearest the San Francisco market is located at Kentucky House, approximately four hours by truck away from the market. Kaiser has a cement mill at Permanente which is about one hour or less by truck away from points in the market. Ideal Cement Co. has a plant at Redwood City which is even closer to the points in the market. Sometime prior to 1960^{4/} Calaveras and Southern Pacific discussed the possibility of Calaveras establishing a terminal in the market area and Southern Pacific transporting bulk cement from the mill at Kentucky House to the terminal at rates which would permit Calaveras to compete more effectively in the market. The discussions showed such plan to be feasible and Calaveras constructed a terminal for bulk cement at San Leandro. The plan was beneficial to both Calaveras and Southern Pacific, the railroad's participation in Calaveras' traffic increased from 1,300 carloads during 1960 to 5,700 carloads during 1969 and the movement of cement from Kentucky House to San Leandro is the largest regular cement movement by Southern Pacific in Northern California if not in the State. The cost to Calaveras of marketing its cement, other than its costs F.O.B. mill, constitute the charges for rail transportation from Kentucky House to San Leandro, the unit cost of terminal

^{4/} The record indicates around 1956.

operations at San Leandro, and the charges for truck transportation from the terminal to jobsite. Until 1968 this cost was substantially lower than the cost which would result from transporting the cement by truck direct from the mill to the jobsite. The subsequent railroad rate increases reduced this margin and with the increase in X-262, effective May 30, 1970, it became less expensive to ship directly into the San Francisco market by truck from the mill rather than distribute cement through the terminal. The proposed increase in rates will widen the differential by one cent per hundred pounds (the Kentucky House - San Leandro rail rate is that shown in Example II, above). Calaveras asserts that the additional one cent per hundredweight will lessen its ability to compete with those mills located near the market that ship direct via truck, more particularly Kaiser and Ideal. In order for it to maintain its competitive relationships from a price standpoint it will have to ship direct by truck from its mill at Kentucky House. This, however, will lessen its ability to compete from the standpoint of service as it will put it four hours away from the market. Calaveras asserts that if the proposed increase is granted it will have to make a determination of whether it should close the San Leandro facility and that if such is done the Southern Pacific will no longer enjoy the volume movement of cement from Kentucky House to San Leandro.

Virtually all of the mills maintain terminal facilities in various markets. They presented evidence indicating similar circumstances. The thrust of their presentations is that the railroads can participate in cement traffic in California only in connection with those terminal operations, and where the combined cost of the rail movement plus the local truck movement exceeds the

through rate by truck direct, the railroad's participation in the traffic will cease. As a result of the X-262 increase The Atchison, Topeka and Santa Fe Railway Company assertedly has lost cement traffic from Colton to San Diego that it formerly enjoyed amounting to gross revenues estimated at \$250,000 per year. The sales office manager of California Portland Cement Company testified that the company has a customer that utilizes large quantities of cement at a plant at Mission Valley. The customer maintained a facility at railhead in San Diego to receive bulk cement by rail and to load trucks to transport the cement from the facility to its plant at Mission Valley. Until October 16, 1969 the combined cost of rail transportation and truck transportation was either equal to or less than the cost of shipping the cement from Colton to Mission Valley directly by truck. After said date and until May 30, 1970 the combined rail-truck cost exceeded the direct truck cost by $3/4$ cent per one hundred pounds. The customer continued to receive cement shipments by rail. On the latter date the increases in X-262 became effective which increased the differential in cost to $1-3/4$ cents. Following this the customer required its shipments from Colton to be transported directly to Mission Valley by truck.

Protestants have shown that the preponderance of California intrastate transportation of cement by railroad is from the mills to terminals operated by said mills, that such transportation is only a portion of the movement of cement from the mill to ultimate destination in the markets which ordinarily is a construction jobsite off railhead, and that the rail rates with the proposed increases will result in instances where the combined rates for a rail-truck movement from mill to jobsite via the terminal will exceed the rate for the transportation of cement by truck direct from mill to jobsite. Eliminating from consideration

the "service" advantages present in the rail-truck operation indicated in our discussion regarding the marketing of cement by Calaveras in the San Francisco market, to the extent that the combined rates for the rail-truck transportation of cement exceed the rates for transportation of cement by truck direct, the proposed increases in rail cement rates will result in rates higher than the traffic will bear and will therefore exceed the value of the service. As was pointed out by counsel for one of the protestants, it is not a case of whether the cement will move, the question is whether the railroads will continue to participate in the traffic. Squarely presented, the issue is whether under the conditions here presented the railroads should be compelled to maintain rail rates at levels such that the combined rates for rail-truck transportation will meet the competition of direct truck rates.

The reported decisions of the Commission are replete with matters concerning cement rates and the parties herein cited a number of them in their arguments.^{5/} Generally, market competition has been the principal consideration in the fixing of rates on cement. That is the main, if not the only reason that increases in the general level of rates, both rail rates and highway carrier rates, have been in the form of flat increases in cents per one hundred pounds rather than in the form of percentage increases in rates. That the maintenance of the historical rail rate relationships among the mills has been considered to be desirable is stated in the aforementioned decisions. It has also been expressly so stated by the Commission in connection with truck rates in Decision No. 76480, dated November 25, 1969, in Case No. 5440, and in

^{5/} Investigation of Cement Rates, 50 Cal. P.U.C. 622, and Inv. AT&SF Ry. Co. Cement Rates, 62 Cal. P.U.C. 49 set forth the considerations involved in the fixing of rates for the transportation of cement and refer to a long list of decisions of the Commission in matters involving rates on cement.

Decision No. 77703, dated September 1, 1970, in Case No. 5440, of which decisions we take official notice. In Decision No. 76480 the truck rates on cement applicable to Southern California were increased a flat 1-1/4 cents and in Northern California by varying amounts which were not directly proportional to a single percentage increase. In Decision No. 77703 the truck rates on cement applicable in Southern California were increased by a flat one cent per hundred pounds. This type of treatment in the adjustment of truck rates has contributed to the result whereby the combined rates for rail-truck movements are exceeding the rates for direct truck transportation. The truck rate adjustments prescribed in Decisions Nos. 76480 and 77703 increased the direct truck rate from Colton to Mission Valley by 2-1/4 cents but they also increased the rate from San Diego to Mission Valley by 2-1/4 cents. With adjustments such as those in the truck rates there is no room for adjustment in the railroad portion of the combined rail-truck rates if the competitive relationships between the direct truck rates and the combined rail-truck rates are to be maintained.

In the reported decisions concerning rail rates on cement referred to above, the rail rates have been characterized as "depressed rates". In some decisions the rates have been compared with the out-of-pocket costs of providing the service and the comparisons indicate the rates to be close to cost levels. The evidence in this proceeding shows cement rates to be lower than the rates on similar commodities and the reason for this to be conditions of market competition and carrier competition. This record shows that the railroads have incurred increases in the costs of operation. The situation confronting us is that there may be instances wherein the combined rates for the rail-truck

movement of cement will exceed the truck rate between the same points (however this circumstance results not only from adjustment in rail rates but also by reason of the nature of adjustments in truck rates) and the rail portion of the combined rail-truck rates may be so low as not to be compensatory. Under such circumstances to require the railroad to maintain its rates in order that the combined rail-truck rates will meet the competition of direct truck rates would be unjustified and unreasonable.

All of protestants were accorded opportunity to state whether any increases in rates that may be found justified in this proceeding should be on a flat basis or on a percentage basis. Monolith Portland Cement Company advocated a flat increase if any were shown to be justified. Calaveras Cement Co. opposed a flat increase pointing out that its competition in the San Francisco market is from mills that ship to jobsite directly by truck and that by reason of the flat increase provided in X-262 the margin of its disadvantage in competing with said mills increased one cent per hundred pounds rather than one-half cent which would have been the case if a percentage increase had been authorized. The other protestants did not support a flat increase. Applicant stated that it is not opposed to a flat increase provided such type increase results in the same additional revenue as the percentage increase being sought.

As has been previously observed, any change in rates will disturb the conditions under which cement is marketed. In order for a flat increase to return the required additional revenues to the carriers it would have to be on the order of one cent per 100 pounds. This would result in the cement manufacturers with

terminals a shorter distance from their mills being burdened with a greater share of that increase than the manufacturers with terminals a longer distance from the mills and a greater increase than would be borne by commodities generally. The unequal distribution of the burden of the past increases was one subject of the protests. On the other hand, the application of the percentage increase proposed herein will probably result in disturbing the relationships among the mills of rates for the transportation of cement into the primary markets. Reference to the importance of those rate relationships has been made. The basis of that importance is set forth in Pacific Portland Cement Co. v. A.T. & S.F. Ry., 33 C.R.C. 300, in which it is stated,

'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 compelling 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)'

We cannot find that in connection with each and every rate from every mill into every primary market that the proposed rail rates will accord the mills rail transportation into the primary markets on equally favorable terms. Protestants did not raise that issue herein; however, historically the principle cited above has always been in the forefront of the controversies regarding the reasonableness of the rates on cement. After consideration of all of the issues and matters that were presented by protestants we find that the increases proposed by applicant to the rates for the California intrastate transportation of cement, including the interplant rates,

are justified. A finding of the reasonableness of the proposed rates is neither necessary nor desirable in that such finding might prejudice any future adjustment in said rates that may be necessary by reason of the aforementioned principle.

No one opposed the matter of requiring highway common carriers maintaining rates at the level of the current rail rates which are below the level of the specific minimum rates set by the Commission for truck transportation to increase such rates to the level of the proposed rates. The justification for increases in said rates is explained in Decision No. 73520, dated December 7, 1967, in Application No. 49493, and need not be repeated herein.

Findings and Conclusions

We find that:

1. The increase in rates being sought by applicant herein is, with certain specified exceptions, the same as was authorized by the Interstate Commerce Commission as an interim increase in interstate rates and charges in Ex Parte No. 265-A, Increased Freight Rates, 1970. Said interim increase is generally 5 percent and became effective June 9, 1970, on interstate traffic.

2. The results shown in Table I in this opinion reasonably reflect the operating results of the carriers shown therein for the transportation of property in California intrastate commerce for the year 1969, and the total revenues shown therein amount to over 95 percent of the total revenues derived for all transportation of property by railroad in California intrastate commerce for said period.

3. Projection of said results to reflect operations under current conditions would require upwards adjustments in both revenues and expenses, the precise amount of said adjustments not being ascertainable from the evidence in this record; however, it is

readily apparent that if the adjustments together with the additional revenues to be derived from the proposed increases will result in net operating revenues from California intrastate railroad operations by any railroad such earnings will not be excessive.

4. The proposed increased rates on cement are substantially lower than the rates of highway carriers applicable to the transportation of cement between the same points, and they are lower than the rates applicable to commodities generally and lower than the rates applicable to similar commodities, including nonmetallic minerals, moving in identical types of railroad equipment. Cement rates have been maintained at depressed levels by reason of market competition and carrier competition.

5. In the marketing of cement the origins of the traffic are cement mills at railhead and the destinations are ordinarily jobsites not at railhead, and the railroads participate in the cement traffic to the extent of transportation from the mills to terminals where the commodity is transshipped via truck to destination.

6. In some instances the proposed increased rail rates from the mill to the terminal combined with the truck rate from the terminal to the jobsite destination will result in higher combined rates for such transportation than the rate for truck transportation from mill to jobsite, and, in those instances, unless there are ancillary advantages to moving cement through the terminals, the traffic will be diverted from the rail carriers.

7. The aforesaid circumstance will not result in the proposed rates being unreasonable per se nor will the loss of the cement traffic because of such circumstance necessarily place a burden upon other traffic for the reasons stated in the opinion herein.

8. The proposed increases, together with the prior increases in rates, do not unreasonably burden cement as compared with other traffic.

9. The proposed increases have been shown to be justified.

10. The rates and charges of highway common carriers and other common carriers published and maintained on the level of the present rail carload rates are insufficient, unreasonable and not justified by transportation conditions to the extent such rates and charges are both lower than the increased rail carload rates and below the applicable minimum rates.

We conclude that:

1. Application No. 51944 should be granted to the extent provided in the order that follows.

2. Common carriers maintaining rates based on rail rates should be authorized and directed to increase those rates to the level of the increased rail rates or to the level of the otherwise applicable minimum rates, whichever is the lower.

3. Common carriers maintaining rates based on rail rates which rail rates have been canceled or changed should be required to adjust such rates to conform to the changed rail rates or to the minimum rates otherwise applicable.

4. Applicant and common carriers should be authorized to depart from the provisions of Section 460 of the Public Utilities Code and from the terms and rules of General Orders Nos. 80-A and 125 to the extent necessary to establish the increased rates authorized or required herein.

O R D E R

IT IS ORDERED that:

1. Pacific Southcoast Freight Bureau, on behalf of the carriers listed in Application No. 51944, is authorized to establish the increases in rates proposed in said application subject to the exceptions set forth in Appendix A attached hereto and by this reference made a part hereof.
2. Applicant is authorized to publish the increased rates and charges by appropriate supplement to its Tariff of Increased Rates and Charges X-265 A, and to the extent that departure from the terms and rules of General Order No. 125 is required to accomplish such publication, authority for such departure is hereby granted.
3. Tariff publications authorized to be made as a result of the foregoing authorities shall be filed not earlier than the effective date of this order and may be made effective not earlier than five days after the effective date hereof on not less than five days' notice to the Commission and to the public, and said authorities shall expire unless exercised within sixty days after the effective date of this order.
4. The authorities set forth above are granted subject to the express condition that applicant and the carriers on whose behalf it is participating herein will never urge before the Commission in any proceeding under Section 734 of the Public Utilities Code, or in any other proceeding, that the opinion and order herein constitute a finding of fact of the reasonableness of any particular rate or charge; and that the filing of rates pursuant to the authority herein granted constitutes an acceptance by applicant and said carriers as a consent to this condition.

5. Common carriers maintaining, under outstanding authorization permitting the alternative use of rail rates, rates below the specific minimum rate levels otherwise applicable, are authorized and directed to increase such rates to the level of the rail rates established pursuant to the authority granted in paragraph 1 hereof or to the level of the otherwise applicable specific minimum rates, whichever is lower. To the extent such common carriers have maintained such rates at differentials above previously existing rail rates, they are authorized to increase such rates by the amounts authorized in paragraph 1 hereof, provided, however, that such increased rates may not be lower than the rates established by the rail lines pursuant to the authority granted in paragraph 1 hereof, nor higher than the otherwise applicable minimum rates.

6. Common carriers maintaining, under outstanding authorizations permitting the alternative use of rail rates, rates based on rail rates which have been changed or canceled and which are below the specific minimum rate levels otherwise applicable, are hereby directed to increase such rates to applicable minimum rate levels and to abstain from publishing or maintaining in their tariff rates, charges, rules, regulations and accessorial charges lower in volume or effect than those established in rail tariffs or the applicable minimum rates, whichever are lower.

7. Tariff publications required or authorized to be made by common carriers as a result of ordering paragraph 5 hereof may be made effective not earlier than the fifth day after the publication by applicant made pursuant to the authorities granted in ordering paragraphs 1 and 2 hereof, on not less than five days' notice to the Commission and to the public; and such tariff

publications as are required shall be made effective not later than thirty days after the effective date of the tariff publications made by applicant pursuant to the authorities granted in said ordering paragraphs 1 and 2.

8. Tariff publications required to be made by common carriers as a result of ordering paragraph 6 hereof, may be made effective not earlier than the effective date of this order on not less than five days' notice to the Commission and to the public and shall be made effective not later than sixty days after the effective date of this order.

9. In making tariff publications authorized or required by ordering paragraphs 5 through 8, inclusive, common carriers are authorized to depart from the terms and rules of General Order No. 80-A, to the extent necessary to comply with said ordering paragraphs.

10. Applicant and common carriers, in establishing and maintaining the rates authorized hereinabove, are authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published

A. 51944, et al. hjh

under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

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

Dated at Los Angeles, California, this 1st
day of DECEMBER, 1970

[Signature]
Chairman
[Signature]
[Signature]
Vernon L. Stinson
Commissioners

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

APPENDIX A

EXCEPTIONS FOR APPLICATION TO CALIFORNIA
INTRASTATE FREIGHT TRAFFIC OF EX PARTE 265 INCREASES

Exception 1. The following rates, charges and provisions of Pacific Southcoast Freight Bureau, Agent Tariff 294-F (ICC No. 1862).

(A) - Items 220-A and 320-A

Exception 2.

(A) - Carload rates on Sugar in following items of Pacific Southcoast Freight Bureau, Agent Tariff 300-A (ICC No. 1819), which are flagged with a (510) reference mark:

Items 3400-B thru 3550-B, 3560-D, 10754-B, 10763-B, 10766-C thru 10781-C, 10784-B, 10787-B, 10853-C, 10859-B thru 10877-B, 10880-D, 10883-B, 10889-C, 10892-C thru 10895-C, 10901-B, 10904-B, 10913-B thru 10919-B, 10925-B, 10928-B, 10931-C, 10934-B, 10937-B, 10946-B thru 10964-B, 10970-B.

(B) - Item 510-B

Exception 3. Minimum LCL charges in Item 205-P of Pacific Southcoast Freight Bureau, Agent Tariff 1016 (ICC No. 1590).

Exception 4. Commodity rates on sugar beets published in Pacific Southcoast Freight Bureau Tariff 65-N (ICC No. 1726).