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ORIGINAL

Decision No. 78695

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Southcoast Freight Bureau for Authority to Make Effective Increases in Local and Joint Rail and Rail-Highway Freight Rates and Charges (X-265 B and X-267).	Application No. 52329 (Filed November 25, 1970)
In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers and highway 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 624 (Filed January 13, 1971)
And Related Matters.	Case No. 5330, OSH 55 Case No. 5433, OSH 36 Case No. 5435, OSH 172 Case No. 5436, OSH 107 Case No. 5437, OSH 208 Case No. 5438, OSH 82 Case No. 5439, OSH 138 Case No. 5440, OSH 73 Case No. 5441, OSH 219 Case No. 5603, OSH 95 Case No. 5604, OSH 26 Case No. 7857, OSH 43 Case No. 7858, OSH 91 Case No. 8808, OSH 13 (Filed January 13, 1971)

(Appearances listed in Appendix A)

INTERIM OPINION

These matters were heard before Examiner Thompson at San Francisco and Los Angeles during February, 1971 and were taken under partial submission on oral argument held March 2, 1971 before Chairman Vukasin.

This is an application by Pacific Southcoast Freight Bureau for authority to increase rail freight rates (excepting rates on sugar beets in carloads) by amounts set forth in Tariff of Increased Rates and Charges X-265-B (1 percent), and in addition thereto, to increase the aforementioned increased rates and the rates on sugar beets by amounts set forth in Tariff of Increased Rates and Charges X-267 (15 percent). On January 13, 1971, 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.

At the prehearing conference held January 20, 1971, applicant stated that the Interstate Commerce Commission had before it for decision in Docket Ex Parte 267 the matter of the application of the requested 15 percent increase on interstate traffic and in said proceeding had authorized an interim increase of 8 percent which became effective November 20, 1970 (Ex Parte 267 A). It declared that the railroads do not desire to effect increases in rates on California intrastate traffic which are greater than those applicable to interstate rates and, therefore, applicant desired to go forward at this time with evidence which will support the Commission granting increases in freight rates on California intrastate traffic the same as those then applicable to interstate commerce, namely those in X-265-B and X-267-A. It asked that this record be kept open for the receipt of further evidence that would support the authorization of any additional rate increases or rate adjustments as may be authorized by the Interstate Commerce Commission in said Docket Ex Parte 267. Applicant stipulated that at such time as it seeks further adjustments

herein it will file and serve a pleading requesting further hearings in this application.1/

The principal issue in this interim opinion, therefore, is whether the increases set forth in Tariff X-265-B (1 percent) and Tariff X-267-A (8 percent) are justified for California intrastate transportation. The Commission staff and virtually all of the cement producers with mills in California oppose the granting of the authority sought. Sugar beet growers and sugar refiners originally protested the granting of the sought authority but withdrew their protests when at the hearing applicant amended its proposal to limit the proposed increases in rates on sugar beets in carloads set forth in PSFB Tariff 65-N to the increases set forth in Tariff X-267-A (8 percent) subject to a maximum increase of 16 cents per ton.

Before proceeding to the aforementioned issue there is a procedural issue to be discussed. Monolith Portland Cement Company protested and objected to the scheduling of the prehearing conference and of the hearings on the grounds of insufficient notice of hearing. It cited Section 1704 of the Public Utilities Code which states in part,

> "Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the corporation or person complained of .... The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than 10 days before the time set for such hearing, unless the commission finds that public necessity requires that such hearing be held at an earlier date."

The cited section refers to complaint proceedings; however, we take notice of Rule 51 of the Commission's Rules of Practice and Procedure which provides,

1/ On March 1, 1971, applicant filed a petition to assign this matter for further hearing for consideration of the 15 percent increase sought in the application.

> "(Rule 51) Notice. In complaint or investigation proceedings, the Commission will give notice of hearing at least ten days before such hearing, unless it be found that public necessity requires hearing at an earlier date. Comparable notice ordinarily will be given when hearings are held in application proceedings."

Monolith had notice of the application approximately two months before the initial date of hearing. It was served with applicant's proposed testimony and exhibits approximately 20 days before the initial date of hearing. Notice was mailed to Monolith on January 6, 1971 stating that prehearing conference in the application would be held January 20, 1971 at which time consideration would be given to "(h) specifying dates commencing February 1, 1971 for hearing." Monolith participated at the prehearing conference on January 20, 1971 at which the hearing schedule commencing February 1, 1971 was established. It served its prepared testimony and exhibits on February 10th after the initial date of hearing and presented its case on February 16th.

Monolith had in excess of ten day's notice of hearing. It had reasonable time to prepare for cross-examination of applicant's witnesses and reasonable time in which to prepare its own case. It should also be pointed out that in Decision No. 78184, herein, the Commission concluded this proceeding should be set for an early hearing because of the fact "that the railroads are incurring additional expense each day as a result of the provisions of Public Law 91-541 and that such expense cannot be recovered retroactively from rate increases that are prospective".

Applicant presented estimates of the revenues and expenses of the four major railroads and their subsidiaries in connection with the transportation of property in California intrastate commerce under the proposed rates and at present expense levels. The foundation of such estimates are the results shown in Table I of Decision

No. 78022, dated December 1, 1970, in Application No. 51944. In said decision the Commission found,

> "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."

Applicant made adjustments to said results so as to reflect revenues at present rate levels and at proposed rate levels, and to reflect December 31, 1970 expense levels. Essentially the adjusted results purport to show the earnings of the various carriers that would result from transporting the traffic that moved during the calendar year 1969 at the proposed rates if the costs of moving such traffic were at expense levels of December 31, 1970. Said estimates are shown in Appendix B attached hereto.

The revenue adjustments were made to reflect general rate increases and increases in rates on sugar beets which became effective after December 31, 1968. This was accomplished by first separating from the 1969 freight revenues the revenues derived from the transportation of certain commodities, such as newspapers and milk, which rates are not subject to the general increases, and then separating the revenues derived from carload movements of sugar beets. The distribution of the total 1969 freight revenues of $94,627,000 shown in Appendix B was $83,339,000 subject to the general increases, $8,789,000 from sugar beets, and $2,789,000 not subject to increases. The manner in which the various increases (X-259-A thru X-265-A)[2/] were applied was pursuant to standard methods; for example,

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2/ The various increases except as to sugar beets are:
X-259-A effective January 19, 1969, approximately 3%.
X-259-B effective October 16, 1969, approximately 2.3%.
X-262 effective May 30, 1970, 6%.
X-265-A effective December 26, 1970, 5%.

the increases in X-259-A became effective on January 19, 1969 and were estimated to be 3 percent; therefore, 18/365 x 3.0000% which is equal to 0.147945% was applied to the revenue which was subject to that general increase. The aforementioned increased revenues were then adjusted to reflect the increases in X-259-B, and so on through X-265-A. The result of such adjustments reasonably reflects the amount of revenue the carriers would have received from transporting the 1969 traffic at the rates that were in effect December 31, 1970. Said adjusted revenues are shown in Appendix B under the caption "Revenue, Present Rates" and the total of $106,262,000 consists of the aforementioned $94,627,000, $388,000 additional revenue resulting from increases in rates on sugar beets, and $11,247,000 additional revenues resulting from the application of the present rates to the 1969 traffic that was subject to the general increases in X-259-A through X-265-A.

The distribution of the calculated $106,262,000 shown as total revenue under present rates is $9,177,000 from sugar beets, $2,449,000 revenue not subject to general increases, and $94,636,000 revenue subject to general increases.

The amounts shown under the caption "Sought Increases" were developed by taking one percent of the revenue under present rates subject to increases (in total 1% of $94,636,000), adding that figure to the revenue subject to general increases and taking 8 percent of that sum (in total 8% of $95,582), and then taking 5.2 percent[3/] of the revenue from sugar beets under present rates (5.2% of $9,117,000). The total sought increases of $9,070,000 consists of $946,000 from the

3/ The X-265-B increases do not apply on sugar beets. The X-276-A increases provide for an 8 percent increase in rates on sugar beets subject to a maximum of 16 cents per ton. It was estimated that the effect of the "hold-down" was to provide an increase in revenues of 5.2%.

increases in X-265-B, $7,647,000 from increases in X-267-A except as to sugar beets, and $477,000 from the X-267-A increases on sugar beets. This calculation is over-estimated for three reasons. The X-265-B tariff of increases has tables which provide a general increase of 6 percent to be applied in lieu of the 5 percent provided in Tariff X-265-A. It therefore does not result in increasing any rates which are presently less than 25 cents. The significance of this over-estimate becomes apparent in light of the testimony in this record that cement in bulk ranks about seventh in carloads or tonnage of commodities transported by railroad in California, and as pointed out in Decision No. 78022, the average rate on bulk cement in carloads in California was around 16 cents per 100 pounds. This initial over-estimate was then compounded by applying 8 percent to the revenues which were overstated. The third reason is that the estimate assumes an 8 percent increase in the rates for the transportation of lumber and forest products, whereas Tariff X-267-A provides only a 6 percent increase in rates on those commodities. That error would have a substantial effect upon the estimated results for Northwestern Pacific Railroad Company and would significantly affect the results of Southern Pacific Transportation Company and Western Pacific Railroad Company in that those three lines originate a large amount of lumber traffic in California.

The column in Appendix B entitled "1969 Expenses" was taken from Table I in Decision No. 78022. The next column which is captioned "Adjusted Expenses" is 111.85 percent of the 1969 expenses. This ratio was developed from the system-wide experience of Southern Pacific Transportation Company and reflects the increase in total operating expenses as of December 31, 1970 over 1969 expenses resulting from changes in the levels of the following categories of expenses: Wages, materials, fuel, health and welfare contributions, retirement

supplemental annuities, and equipment rents. The increases in contributions to health and welfare benefits were generally effective March 1, 1970. The actual amount of health and welfare accounts of Southern Pacific for the seven months from March 1, 1970 through September 30, 1970 totaled $11,560,908 which extrapolated for twelve months amounts to $19,818,699. Said amount was compared to the sum of the health and welfare accounts in Schedule 320 of Southern Pacific's Annual Report for 1969 of $17,327,883 to indicate an increase in this expense item of 14.37 percent. Payments under the Railroad Retirement Act for supplemental annuities are designated as taxes and are shown in Schedule 350 (Railway Tax Accruals) of the Annual Report Form A. In 1969 the tax was 2 cents per man per hour which was increased in 1970 to 7 cents per man per hour. Southern Pacific paid taxes on 105,948,741 man hours in 1969 for a total of $2,118,975.[4/] The 7 cent tax would increase that amount to $7,416,412 for an additional amount of $5,297,437.

On January 29, 1970, the Interstate Commerce Commission ordered the railroads to adopt revised rules covering payment for use of foreign line freight cars which require, in addition to payment of per diem charges, settlement based on mileage. Such payments are reflected in the Annual Report in the income account (Schedule 300). The effect of the changes in rules regarding settlements on use of foreign cars was determined from a waybill sample. It was estimated that the charges for freight cars and tank cars under the revised rules would have been increased by $9,497,078. This amount results in an increase in the net of total equipment and joint facility rents of 19.27 percent.

4/ This figure agrees with that shown on line 87 of Schedule 350 of the Annual Report.

The effect of the increases in wages of the various classifications of employees was made and indices were developed for five categories of employees; namely, passenger operating employees, freight operating employees, yard operating employees, shop craft employees, and other non-operating employees. The price of fuel as of December 1970 was indexed to the fuel costs of 1969. The change in the costs of materials was determined by utilizing the forms and procedures prescribed by the Association of American Railroads for utilization in the preparation of indices of costs of materials. After the indices of wages for the various employee categories, fuel and materials were developed, the various accounts in the Schedule 320 of the 1969 Annual Report were grouped into those same categories, and the categories of health and welfare, depreciation, loss and damage, Pullman operations and other items of expense that could not be classified in any of the aforementioned categories of expense. The percentages of the amounts of expense in each category to the total operating expense (excluding health and welfare expense) were calculated and such percentages were utilized to weight the percentages of increase developed from the indices so as to obtain an estimate of the percentage increase in operating expenses over those incurred in 1969.

The estimates of the increases in expense upon the costs of Southern Pacific are summarized and restated below. The format of the table is different from the presentation by applicant in order to show the increases in terms of dollars so that the relative impact of the various increases in expense is more apparent.

TABLE I

SUMMARY OF ESTIMATED INCREASES IN EXPENSES
IN SYSTEM OPERATIONS OF SOUTHERN
PACIFIC TRANSPORTATION COMPANY
YEAR 1969 TO DECEMBER 31, 1970

Item	1969 Expenses [1]	Dollar Increase	Percent Increase
Wages-Passenger Operations	$ 5,976,599	$ 1,121,210	18.76
Wages-Freight Operations	91,799,494	16,670,788	18.16
Wages-Yard Operations	45,494,961	7,110,682	15.63
Wages-Shop Crafts, etc.	71,530,578	8,261,782	11.55
Wages-Non-Operating Empl.	173,417,837	23,532,800	13.57
Subtotal - Wages	$388,219,469 [2]	$ 56,697,262	14.60
Fuel	35,798,123	2,412,793	6.74
Materials	187,468,338	23,096,099	12.32
Other - No Increase	90,503,353	-	-
Subtotal	$701,989,283	$ 82,206,154 [3]	11.71
Health and Welfare	17,327,883	2,490,816	14.37
Subtotal - Schedule 320	$719,317,166	$ 84,696,790	11.77
Tax-Supplemental Annuities	2,118,975	5,297,437	250.00
Taxes-Other Except Income	73,871,231	-	-
Equipment Rents - Net	49,290,590	9,497,078	19.27
Demurrage	(5,000,304)	-	-
Total Expenses Other Than Income Taxes	$839,597,658	$ 99,491,485 [4]	11.85

Notes: 1/ Per Annual Report Form A, Southern Pacific Transportation Company.

2/ This figure agrees with that on Line 188 Sched. 320 of the Annual Report as "Amount of employee compensation chargeable to operating expenses".

3/ Applicant's estimates show this figure as $82,202,945. The difference in figures results from the application of a weighted average increase to the total 1969 expenses rather than application of percentage increases to each category of expense. The difference has no significance in the end result.

4/ Applicant's estimates show this figure as $99,488,276. The difference is attributable to the calculations described in Note 3.

The reasonableness of the use of the 11.85 percent ratio as an index in the development of December 31, 1970 expenses shown in Appendix B presupposes the following circumstances: (1) The 11.85 percent properly reflects the increase in the December 31, 1970 expense level as compared to the year 1969 expense level of Southern Pacific in conducting railroad operations over its entire system, (2) the experience of Southern Pacific in that regard is typical of the experience of the other railroads listed in Appendix B, and (3) the index developed for system operations is valid with respect to railroad operations conducted in California intrastate freight transportation.

Much of the development of the index was by sampling methods and procedures. Such procedures necessarily result in estimates or approximates rather than what might be called "actual figures". The application of the index developed pursuant to the A.A.R. procedures to the category of accounts grouped as "Materials" may provide some margin of error depending upon the degree with which the types of materials and the quantities prescribed in the A.A.R. procedure coincide with the materials and their respective quantities reflected in the expenses set forth in those accounts. While there could be refinements in the methods and procedures utilized by applicant in the development of the estimates, the magnitude of the operating expenses in accounts in the Annual Report which are clearly in the categories of labor, depreciation, pullman, health and welfare, fuel, loss and damage and materials (rails, ties, ballast, stationary, etc.) as compared to the amounts of expense in accounts that are not so clearly designated, makes it apparent that such refinements in methods or procedures would provide results not significantly different from the estimates by applicant.

The record shows that the railroads listed in Appendix B are subject to the same labor contracts, the same requirements regarding supplemental annuity taxes and the same requirements regarding settlement of equipment rents. With respect to materials, the record shows that indices prepared under the A.A.R. procedures for the year 1968 to the December 31, 1969 level were: Southern Pacific, 5.97 percent; Union Pacific, 5.98 percent; Western Pacific, 6.26 percent; and AT&SF, 6.28 percent. It would appear that at least for the rate of increase in expenses involved herein the experience of Southern Pacific may be considered typical of the other railroads.

The total impact of the rates of increase of the various types of expenses upon total cost rests upon the proportion of the various expenses to total cost. In general, labor and materials comprise the bulk of railroad operating expenses and because operations in transporting property are conducted by all California railroads in substantially the same manner it can reasonably be expected that the experience of Southern Pacific would be typical with respect to the impact of the increases in expenses involving labor and materials. In the case of net rents on equipment and facilities that is not necessarily the case. All of the railroads listed in Appendix B had debit net balances in rents for equipment and facilities for the year 1969. The ratios of net rents to operating expenses of the four major lines were: Southern Pacific, 6.9 percent; AT&SF, 3.1 percent; Union Pacific, 0.9 percent; and Western Pacific, 4.8 percent. The subsidiary lines except for Visalia Electric and Sacramento Northern had ratios substantially higher than 6.9 percent. The foregoing would indicate that the impact of the increases in net rents upon total cost would be somewhat less in the cases of the other three major railroads, and somewhat greater in the cases of the subsidiaries, than in the case of Southern Pacific.

Generally, the railroad operations in California intrastate commerce are substantially the same as those in interstate commerce except that the average length of haul in California intrastate commerce is shorter than the system averages of the rail lines. The only reasons why the index for system operations might not be valid with respect to operations conducted in California intrastate freight operations would concern the inclusion of expenses related to passenger operations in the index and the use of the "system" figure regarding net rents. With respect to the latter, it is reasonable to expect that the percentage of traffic moving under local rates (i.e., origin and destination on a single railroad) would be greater in the case of California intrastate movements than would be in the case of system operations and therefore there would be a smaller percentage of traffic moving in "foreign" cars in California intrastate traffic than in system operations. When "foreign" cars are used in California intrastate commerce the distances involved are shorter than in the case of system operations so that it is probable that the impact of the change in settlements from the per diem basis to a combined per diem and mileage basis would be less in connection with California movements than it would be for system movements. With respect to the inclusion of passenger expenses in the index, the index was applied to the estimated expenses attributable to the movement of freight in California intrastate commerce.

The foregoing indicates that the only areas of applicant's estimates where a different approach in the treatment of expenses might provide a significantly different result are in the treatment of net rents and in the inclusion of expenses related to passenger operations in an index of change in expense of conducting freight operations. It is readily ascertainable from Table I that if net rents were excluded

entirely from consideration (and this assumes that all California intrastate traffic moved under local rates in the railroad's own freight cars or that the debits and credits in the accounts for equipment rents of the railroads balanced in connection with California intrastate movements - a very unlikely circumstance) the index would be 11.39 percent instead of the 11.85 percent index estimated by applicant. The significance of the inclusion of passenger expenses can be tested from figures in the Annual Report. In Schedule 320 (Operating Expenses) the amounts of operating expenses are separated and allocated to freight service and passenger service in accordance with the Interstate Commerce Commission's Rules Governing the Separation of Railway Operating Expenses, Taxes, Equipment Rents, and Joint Facility Rents. 95.7 percent of the total operating expenses in Schedule 320 are allocated to freight service. Utilizing the indices of the increases in wages, fuel, health and welfare and materials developed by applicant and applying them to the expenses allocated to freight service provides an increase in freight service operating expenses of about 11.55 percent as compared to the 11.77 percent shown on Table I as the percent increase in the operating expenses listed in Schedule 320.

Although refinements may be made in the methods and calculations of applicant in arriving at its estimate of the increase in expenses as of December 31, 1970 as compared with the year 1969, it is apparent that there has been an increase of at least 11 percent in the cost of California intrastate freight operations as of December 31, 1970 as compared to the year 1969. If that increase is applied to the 1969 expenses shown in Appendix B the adjusted expenses would be $116,790,000, and the operating income at the proposed rates would be a red figure of $1,458,000. This latter figure is a conservative

estimate because the 11 percent increase estimate is conservative and, as earlier stated herein, the revenue estimates are overstated. The evidence is sufficient to show that at December 31, 1970 expense levels the California Railroads as a whole would transport 1969 California intrastate freight traffic at a loss under the proposed rates. Only the Holton Inter-urban Railway Company, a wholly owned subsidiary of Southern Pacific, and Sunset Railway Company, jointly owned by Southern Pacific and Santa Fe, would conduct such operations at an operating profit.

We come now to the arguments of the parties regarding this showing made by applicant. Staff asserts that the separations and allocations of revenue and expense to California intrastate commerce are based upon formulae developed by Southern Pacific and provide figures different from those set forth in the quarterly reports and annual reports filed by the railroads; and that there is no way, other than working alongside the railroad employees and computer programmers preparing applicant's estimates, to test the validity of those estimates. It is true that the revenues shown in the quarterly reports and the Annual Reports differ from those shown herein as 1969 California intrastate freight revenues. The quarterly reports require that applicant report revenue from baggage and revenue from demurrage and from transportation of property between California points of which a portion is in interstate commerce. The 1969 revenues in applicant's estimates differ from those set forth in the Annual Reports because of adjustments to reflect movements between California points under transit privileges which are portions of interstate movements. That adjustment resulted from the Commission's findings in Decision No. 76181 in Application No. 50445. In the Annual Report expenses are allocated on a mileage basis to California operations pursuant to an order of the Commission issued in 1910, which order has not been

rescinded or modified. For at least the past ten years no one, including applicant, the Commission staff or the Commission, has considered apportionment of system expenses to California intrastate operations on a mileage basis to be reasonable.[5/] The procedures and allocation methods used by applicant are known and have evolved from admonitions and suggestions from the Commission and from its staff. In discussing the 1969 California intrastate expenses which are the basis of applicant's showing herein, the Commission in Decision No. 78022 stated,

> "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."

Monolith and other protestants called attention to the Annual Report to stockholders issued by Southern Pacific Company for the year 1969 and point out that this company reported income from railway operations of over 115 million dollars and had increased its dividends and had issued securities under favorable terms. They assert that the report to stockholders show this company to be in a very healthy condition and not in need of additional earnings. They also question how Southern Pacific Transportation Company and its wholly owned subsidiaries could have a railway operating income of over 115 million dollars for the year 1969 and yet during that same year have an operating loss from California intrastate railway operations of about 7 million dollars as the estimates in Table I of Decision No. 78022 indicate.

Applicant points out that the report to stockholders covers Southern Pacific Company and consolidated subsidiary companies and that some subsidiary railroad companies do not operate in California.

5/ For example, see Decision No. 58226, dated April 7, 1959, in Application No. 38557; 57 Cal. P.U.C. 117.

In its argument applicant stated that it makes a showing regarding intrastate operations only because of the insistence of the Commission; that until 1952 the Commission had considered the system results of the railroads in arriving at its determinations regarding the justification for proposed rail rate increases; that by the very nature of railroad operations, particularly because of lengths of haul and terminal costs, expenses properly allocated to California intrastate operations will be proportionately higher than those allocated to other railway operations; that it necessarily follows that if certain increases in rates are necessary to provide the railroads with reasonable earnings with respect to their system operations, those same increases should be applied to California intrastate transportation if the latter is to assume a fair share of the transportation burden. It argued that proceedings of the type herein have only served to delay the application of necessary increases to California intrastate commerce and that California is the only jurisdiction which requires the expensive and time-consuming studies which are necessary to show the estimated revenues and expenses attributable to intrastate transportation.

It is apparent that the parties are not fully cognizant of the duties and responsibilities, and the limitations thereon, of the Commission in considering the justification of general increases in the rates of railroads. On two occasions (52 Cal. P.U.C. 336 & 55 Cal. P.U.C. 293) this Commission denied the railroads authority to make certain increases in rates which had been authorized for interstate commerce effective as to California intrastate commerce. In each instance the Interstate Commerce Commission under powers conferred in Section 13(4) of the Interstate Commerce Act found the California rates to be unlawful and stated that it would order the

increases effective as to California intrastate transportation unless the rates were permitted to become effective by this Commission. (See 53 Cal. P.U.C. 4 & 56 Cal. P.U.C. 90.) The United States Supreme Court in Florida v. United States, 282 U.S. 194, discussed the powers of the Interstate Commerce Commission under said Section 13(4),

> "The authority granted under section 13(4) is...to be considered in the light of the affirmative duty of the Commission (I.C.C.) to fix rates and to take other important steps to maintain an adequate national railway system.
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> "As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it."

The Interstate Commerce Commission has authorized the increases sought herein in Ex Parte 265-B and Ex Parte 267-A. It had the financial conditions of the rail lines as well as the "system" results of operations of the railroads available to it in arriving at its determination that the increases were necessary.[6/] In substance the Supreme Court of the United States has held that it is

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6/ We point out here that the Public Utilities Commission has actively participated in the railroad freight rate increase proceedings before the Interstate Commerce Commission for at least the past ten years, including proceedings in Dockets Ex Parte 265 and 267. Our participation has been in opposition to the increases sought by the railroads and the decisions issued by the Interstate Commerce Commission in those many proceedings have not coincided with the positions taken by this Commission therein.

not within our province to determine and fix reasonable earnings for the railroads that operate in California. It is within our province, however, to determine whether the rates for the transportation of property in intrastate commerce in California are paying in excess of "a fair proportionate share" of the cost of maintenance of an adequate national railway system. Comparisons of earnings from California intrastate transportation with system earnings as well as comparisons of California intrastate rates with their interstate counterparts are material and are the basis of the aforesaid determination. The development of earnings from California intrastate transportation necessarily involves separations and allocations of revenues and expenses. While the results presented by applicant in this proceeding and in prior proceedings have shown earnings from California intrastate transportation to be less favorable than earnings from "system" operations, those results rest upon the separations and allocations procedures utilized by applicant. The Commission has not yet promulgated rules as to separations of railroad property, revenues and expenses where interstate and intrastate operations are involved although it notified applicant of its intention to do so in 1951.7/ The Commission staff has notified the Commission and the parties that it is now engaged in a study of the operations and accounting of the rail carriers for the purpose of developing suitable rules for the separations and allocations of properties, revenues and expenses and that it is anticipated that said study will be completed towards the end of 1971. We desire to have the benefit of that study, and any

7/ In Decision No. 46572, dated December 18, 1951 in Application No. 32219, 51 Cal. P.U.C. 341, 350,

"In light of this general rule, we hereby place these applicants upon notice that this Commission will take action with a view to promulgating rules as to separations of property, revenues and expenses where interstate and intrastate operations are involved and require compliance with such rules when established."

other analyses of the separations problem, before considering the validity of applicant's contention that earnings from California intrastate transportation necessarily will be less favorable than the earnings from interstate transportation.

The evidence presented by protestant cement mills was substantially the same type of evidence they presented in Application No. 51994. That evidence shows that in the marketing of bulk cement the mills have maintained terminals in primary markets and have utilized rail transportation from the mills to the terminals. The circumstances regarding the marketing and transportation of cement are related in Decision No. 78022 and need not be recited herein. The effect of adjustments in truck rates and in rail rates upon the marketing of cement through terminals was clearly brought out by the evidence presented by California Portland Cement Company. It has a mill at Creal which is near Mojave and has had terminals at Sun Valley, which is in the northern portion of the Los Angeles area, and at Carmenita, which is near the boundary of Los Angeles and Orange Counties. From Creal the constructive mileage upon which truck rates are based is 93 to Sun Valley and 133 to Carmenita. For a period of time prior to October 10, 1970, the rail rates to Sun Valley and Carmenita were 11 cents and 11 1/2 cents, respectively, and the truck rates were 17 1/2 cents and 22 1/4 cents, respectively. The differences between the rates were 6 1/2 cents and 10 3/4 cents, respectively. The rail-truck movement from mill to jobsite through the terminal would be competitive with the direct truck movement only when the truck rate from the terminal to jobsite was 6 1/2 cents or less in the case of the Sun Valley terminal and 10 3/4 cents in the case of the Carmenita terminal. This meant that at that time the rail-truck

movement would be competitive with the direct truck movement to jobsites within 5 miles of Sun Valley and within 45 miles of Carmenita.[8/] On October 10, 1970 the truck rates were increased by a flat 1 cent per 100 pounds. The differences between the rail rates and the truck rates from Creal to the terminals increased to 7 1/2 cents in the case of Sun Valley and 11 1/2 cents in the case of Carmenita, but because the truck rate from the terminals to jobsites also increased 1 cent per 100 pounds, there was no change in the competitive relationships between the rail-truck movements and the direct truck movements. At that time the relationships of the rail rates to the truck rates were such that it was less costly to ship direct by truck only to points in the northwest portion of the Los Angeles area (Pacific Palisades and north of Beverly Hills) and to points in a strip extending generally from El Segundo to Exposition Park. North of that strip it was advantageous to ship via the terminal at Sun Valley and to points south of that strip it was generally advantageous to ship via the terminal at Carmenita.

When the X-265-A increases became effective in December, 1970, pursuant to Decision No. 78022, the combined rail-truck rate via Carmenita still provided an advantage (although a lesser one) for cement shipments to points south of the aforementioned strip. In the case of the Sun Valley terminal, however, it was less costly to ship to all points in the Los Angeles area via direct truck or via

8/ This is not exactly true in all cases because the truck rates are based upon constructive mileages. Obviously to points directly intermediate on the highway route between Creal and Carmenita the mileages from Creal become shorter and the mileages from Carmenita become longer as the point gets farther from Carmenita; and, conversely, when Carmenita is intermediate on a direct truck route to points beyond, the distances to such points from both Creal and Carmenita increase by the same amount of miles. The statement in the opinion is for illustrative purposes.

Carmenita. Insofar as marketing bulk cement from Creal into the Los Angeles Basin area is concerned, rail-truck movements via Carmenita are competitive from a rate standpoint only to points generally south of a line from El Segundo to Monrovia. To points north of that line it is less costly to ship by truck direct from Creal.

The proposed X-267-A increase will further reduce the area in the Los Angeles Basin in which the rail-truck movement via Carmenita will be competitive with direct truck movements from Creal to points generally south of a line from San Pedro to Duarte. Increases in rail rates result in diminishing the radius about a terminal within which the combined rail-truck rate is competitive with the rate for truck transportation direct from the mill. The increases in the truck rates have not changed the relationships because the same rate increase has been equally applicable to the combined rail-truck rate and the direct truck rate.

The above described situation prevails generally among the cement companies that now maintain or have maintained terminals in the primary markets. In some instances, as in the case of Sun Valley,

the combined rail-truck rate now exceeds the direct truck rate to points less than one mile from the terminal. In other instances the radius of the area that can be served out of the terminal without rate disadvantage has been so reduced that terminal operations are not economical. California Portland Cement Company ceased its terminal operations at Sun Valley. Southwestern Portland Cement Company closed its terminal at Paramount. The manager of traffic and marketing services for the Cement Division of Kaiser Cement and Gypsum Corporation has recommended that the company's terminal at Long Beach be closed. Monolith terminated rail shipments from its plant to a bulk cement terminal at Norwalk. It has utilized rail transportation from its plant to team tracks where it transfers bulk cement to trucks by means of a portable unloading device known as a "Cemtote"; however, increases in rail rates diminish the economic feasibility of such operation at a number of points in the Los Angeles Basin area.

The evidence shows that the rail lines have lost cement traffic as a result of the reduction in the distribution of cement via terminals operated by the cement mills. The traffic that has been lost, as well as the traffic that may be lost if the proposed increases are made effective, has been or will be diverted to other forms of transportation. While the rate comparisons that have been made consider only the minimum rates for transportation of cement by for-hire carriers, the principal competition of the rail-truck movement via a terminal is the transportation from the mills via the proprietary trucks operated by the customers of the cement mills. Proprietary hauling of cement by customers of cement mills, particularly transit mix concrete companies, has been increasing steadily.

Protestants argue that because the proposed increase in rail rates on bulk cement will divert traffic from the rail carriers to other forms of transportation, mainly proprietary trucking, the increases are not justified in that (1) the proposed increased rates will exceed the value of the service, (2) the increases will promote the excessive use of the highways by the hauling of bulk cement by motor vehicle contrary to the intent of the Highway Carriers Act,[9/] and (3) the increase in the participation by motor vehicles in the transportation of cement will result in increasing the discharge

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9/ Section 3502 of the Public Utilities Act states in part,

> "It is the further purpose of this chapter to eliminate, so far as reasonably possible, the excessive crosshauling of portland and similar cements which has heretofore pertained, when they are hauled in a motor vehicle or motor vehicles loaded substantially to capacity with such commodity or commodities, since these commodities move in great volume in vehicles that are loaded substantially to the permissible gross weight limits provided by the Vehicle Code."

of pollutants into the atmosphere contrary to the intent and purpose of the Environmental Quality Act of 1970 (Division 13 of the Public Resources Code effective November 23, 1970).[10/]

Protestants' arguments regarding the combined rail-truck rate, by reason of increases in the rail rates, exceeding the rates of highway carriers or other forms of transportation were discussed at some length in Decision No. 78022. The issue here, as it was there, is whether under the conditions which have been described the railroads should be compelled to maintain rail rates at levels such that the combined rates for rail-truck transportation will meet the

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10/ Section 21000 of the Public Resources Code states in part,

"(a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern."

"(e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment."

"(g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage."

Section 21001 of the Public Resources Code states in part,

"The Legislature further finds and declares that it is the policy of the state to:"

"(d) Ensure that the long-term protection of the environment shall be the guiding criterion in public decisions."

"(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment."

competition of direct truck rates. It is not a matter of the rails meeting truck competition between points that are at railhead; in fact, the rail rates are lower than the minimum rates for highway carriers and probably lower than the cost of proprietary truck operations between railheads. Under the provisions of the Public Utilities Code the railroads may establish rates to meet existing competition from other modes of transportation unless such rates are below out-of-pocket costs and will thereby burden other traffic or are below the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation. There is no provision under which the railroads may be compelled to meet the charges of competing carriers or the cost of other means of transportation. This record shows that the rail lines have lost cement traffic as a result of increases in carload commodity rates on cement; it shows that if the proposed increases are authorized the railroads will lose additional cement traffic. The rates for the transportation of 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. The rates on cement from mills to terminals were established at levels above out-of-pocket costs and below fully allocated costs by the rail lines in order to permit the mills to meet the competition of other mills in the primary markets and in order to meet the competition from other forms of transportation. (See Inv. Reduced Rates on Bulk Cement, 50 Cal. P.U.C. 622.) In view of the substantial increases in operating costs the loss of traffic which will result from the establishment of the proposed increased rates will not impose an undue burden on other traffic. With respect to the matter of whether the loss of traffic under the proposed rates or the

retention of traffic under the present rates will be more beneficial to the railroads themselves, as we stated in Inv. Reduced Rates on Bulk Cement, supra, the Commission will not assume the functions and responsibilities of railroad management.

We doubt that Section 3502 of the Public Utilities Act and The Environmental Quality Act of 1970 apply to the issues here. The objective of those statutes, insofar as the facts in this case are concerned, is the undesirable effects upon the public of the operations of motor trucks engaged in transporting cement in truckload quantities on the public highways. Assuming arguendo that a denial of the authority sought herein will curb excessive use of the highways by motor vehicles hauling cement and thereby will prevent the additional release of harmful emissions of smoke and gas into our environment, the denial of the relief sought on said grounds would result in the railroads bearing the entire financial impact of the cost of curbing, for the benefit of the public, undesirable effects caused by operations of their competitors. The denial of the proposed increases purely upon said grounds would not be just. When viewed in the light of the evidence herein that California intrastate rail transportation at the proposed rates will not provide revenues in excess of operating expenses and that cement ranks seventh among the commodities in tonnage transported by railroad in California intrastate commerce, the denial of the relief sought by applicant because of the statutes cited could well be a confiscation of property prohibited under the Constitution.

In its argument Calaveras Cement Company asserted it is now paying, and under the proposed increased rates will pay, more than its fair proportionate share of the increases in rates. Under the increases that have been authorized by the Interstate Commerce Commission through Ex Parte 265-A, the rate for the transportation of bulk cement from Calaveras' mill at Kentucky House to its terminal at San Leandro would be 11 cents instead of the 12 cents rate published by the railroads pursuant to authority granted in Decision No. 78002; and under the increases authorized by the Interstate Commerce Commission in Ex Parte 267-A the rate is 12 cents rather than the rate of 13 cents proposed by applicant herein. There are two factors that produced the result that the present and the proposed rate are one cent higher than the rates resulting from increases which have been authorized by the Interstate Commerce Commission. At the request of certain cement mills, and upon showings that a flat increase on all cement rates in lieu of a percentage increase was desirable, and on evidence presented by Atchison, Topeka and Santa Fe Railway that a flat increase of one cent per 100 pounds would provide revenues equivalent to a 6 percent increase in the rates on cement, the Commission in Decision No. 77184 authorized the rail lines to increase the rates on cement by one cent per 100 pounds in lieu of the 6 percent increase sought by applicant and which had been authorized by the Interstate Commerce Commission in Ex Parte 262. Because of the rounding off to the nearest whole cent in the application of the 5 percent increase authorized in Decision No. 78022 (X-265-A), the effective increase in the aforesaid rate was 9.1 percent instead of 5 percent. As a result of those two circumstances the present rate and the proposed rate on bulk cement

between Kentucky House and San Leandro are one cent higher than would have resulted had the increases authorized by the Interstate Commerce Commission, and requested by applicant, been adopted. The aforesaid situation, together with its impact upon the distribution of cement by Calaveras in the San Francisco area market, is discussed at some length in Decision No. 78022.

Calaveras did not participate in Application No. 51480 which led to Decision No. 77184 and therefore was not one of the cement mills that urged a flat increase rather than the percentage increase sought by applicant.[11/] In Application No. 51944 Calaveras opposed the authorization of a flat increase rather than a percentage type increase. The reason for the flat increase was to maintain historical competitive relationships among the mills. The purpose of maintaining freight rate relationships is to permit the cement mills to compete in the markets within their respective spheres of interest. This has been of particular importance in connection with the competition among the mills in the southern California market. Calaveras' direct competition in the San Francisco Bay area market includes Kaiser, Ideal Cement Company, and Pacific Cement and Aggregates. Kaiser utilizes rail transportation from its mill to points of ultimate destination in the San Francisco Bay area only to serve customers, such as manufacturers of concrete and concrete

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11/ It should be noted in Decision No. 77184 it is stated that the cement mills urged a flat increase of 1/2 cent would be appropriate, and the one cent increase that was authorized was based upon a finding from evidence presented by Santa Fe that a one cent increase would provide additional revenues equivalent to a percentage increase in rates of 6 percent.

articles, that are located at railhead and utilize bulk cement in volume. It distributes bulk cement in the Bay area generally by truck direct. This record is silent regarding the manner in which Ideal and Pacific market bulk cement in the San Francisco area. It is within our knowledge from prior proceedings that Ideal has a mill at San Juan Bautista not at railhead and a terminal at Redwood City where it receives bulk cement by vessel, and that Pacific has its mill at Davenport served by Southern Pacific Company and utilizes rail transportation.[12/]

It is true that Calaveras is paying charges for rail transportation of bulk cement from Kentucky House to San Leandro in excess of those which would have been effective had the increases authorized by this Commission in Decision No. 77184 corresponded to those authorized by the Interstate Commerce Commission in Ex Parte 262. However, that circumstance also pertains to the rail movements by California Portland Cement from Creal to Sun Valley and Carmenita, by American Cement from Oro Grande to Sun Valley and Long Beach, by Kaiser from Cushenbury to Long Beach, by Monolith from its plant at Monolith to Los Angeles, and by Pacific from Davenport to the destination it shipped the majority of its rail shipments in California. In every one of those instances the rate is the same as that from Kentucky House to San Leandro. If Calaveras is entitled to rate relief on the grounds that it is paying more than its "fair proportionate share" on transportation from its mill

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12/ Exhibit 10 in Application No. 51480, discussed in Decision No. 77184, shows that during 1969 there were rail shipments of bulk cement from Davenport to only four California destinations. Well over one-half of the tonnage of those rail shipments was to a single destination and was subject to the same level of rate as that applicable from Kentucky House to San Leandro.

to its terminal, the other mills are entitled to the same relief on the same grounds. It was the testimony of the witnesses for the cement mills, however, that the preponderance of the bulk cement moving by rail in California intrastate commerce is from the mills to their terminals. If the aforesaid rate were to be maintained at a level corresponding to those authorized by the Interstate Commerce Commission, then other rates which are now lower than the corresponding rates authorized by the Interstate Commerce Commission should be raised, otherwise cement would not "pay its fair proportionate share".

It is true that Calaveras did not support a flat rate adjustment in Application No. 51944 and succeeding proceedings; however, Pacific did support such adjustment and the primary market for the output of its mill at Davenport is the San Francisco Bay region. It is not possible from the record to be assured that an adjustment in the rate from Kentucky House to San Leandro would not result in unjustly discriminating against Pacific or other mills in the marketing of bulk cement in the San Francisco region.

We find that:

1. On June 5, 1970, Pacific Southcoast Freight Bureau filed Application No. 51944 requesting authority to increase railroad freight rates on California intrastate traffic by amounts equivalent to increases authorized by the Interstate Commerce Commission in

an order dated May 27, 1970 in Docket Ex Parte 265 and which authority had been exercised by the railroads by the publication of Tariff of Increased Rates and Charges X-265-A.

2. Hearings in said Application No. 51944 were held August 4 through 7, 1970 at which Joseph T. Enright and Eugene Rhodes appeared on behalf of Monolith Portland Cement Company, a protestant. Said Joseph T. Enright actively participated at the hearings and at oral argument held August 13, 1970 in said proceeding.

3. On November 4, 1970, the Interstate Commerce Commission issued an order in Docket Ex Parte 265 authorizing the railroads to make effective increases in freight rates not to exceed 6 percent to be established in lieu of the 5 percent increase it had authorized in its order of May 27, 1970. Said authority was exercised by the railroads with the publication of Tariff of Increased Rates and Charges X-265-B effective November 20, 1970.

4. On November 4, 1970, the Interstate Commerce Commission issued an order in Docket Ex Parte 267 suspending the operation of Tariff of Increased Rates and Charges X-267 which had been filed by the railroads and ordered an investigation thereof. It further ordered that pending said investigation the railroads were authorized to make effective increases in freight rates not to exceed 8 percent over the level of rates it had authorized in its order in Docket Ex Parte 265. Said authority was exercised by the railroads by the publication of Tariff of Increased Rates and Charges X-267-A effective November 21, 1970.

5. On November 25, 1970, applicant filed the instant application for authority to make effective as to California intrastate traffic Tariff X-267 (which had been suspended by the I.C.C.) and

Tariff X-265-B, together with "Petition for Interim Increase Pending Holding of Hearings" in which applicant sought authority to make effective, prior to hearing, Tariff X-265-B and Tariff X-267-A. Applicant averred that it had served a copy of said application and petition upon "each of the parties appearing in Application No. 51944 and consolidated cases".

6. In a letter dated December 3, 1970, on the letterhead of Monolith Portland Cement Company and signed by E. R. Rhodes, the Commission was informed that in regard to the Petition for Interim Increase Pending Holding of Hearings in Application No. 52329, "Monolith protests the granting of any rate increase without a public hearing".

7. On December 15, 1970 applicant filed an amendment to the application of "Supplemental Petition for Interim Increase Pending Holding of Hearings", and on January 4, 1971 filed Second Amendment to Application No. 52329 of "Submission of Exhibit Showing Summary of Earnings in Support of Proposed Interim Increases". Certificates state that said pleadings "were sent by first-class mail, postage prepaid, to each of the parties appearing in Application No. 51944 and consolidated cases".

8. On December 1, 1970, the Commission issued Decision No. 78022 in Application No. 51944 and consolidated cases, and on December 2, 1970 a copy of said decision was mailed to Joseph T. Enright, Monolith Portland Cement Company, 606 South Hill Street, Los Angeles, California 90014, and to Eugene R. Rhodes, Monolith Portland Cement Company, 3326 San Fernando Road, Los Angeles 90065.

9. On January 6, 1971, there was mailed to all parties who had been served with Decision No. 78022 a notice that a prehearing conference in Application No. 52329 was scheduled for 10:00 a.m., Wednesday, January 20, 1971, at San Francisco to give consideration to, among other things, "(h) Specifying dates commencing February 1, 1971 for hearing".

10. On January 13, 1971, the Commission ordered hearings in Case No. 5432 and other minimum rate investigations consolidated with proceedings in Application No. 52329, and issued its Decision No. 78184, herein, denying without prejudice applicant's Petition for Interim Increase Pending Holding of Hearings and concluding that this proceeding should be set for an early hearing. Said order, decision and a notice that prehearing conference in Application No. 52329 and Case No. 5432 (OSH 624) and related matters would be held January 20, 1971 for the purpose, among other things, of: "(h) Specifying dates commencing February 1, 1971 for hearing", were served upon interested parties, including Joseph T. Enright and E. R. Rhodes at the addresses stated in Finding No. 8.

11. Prehearing conference was held January 20, 1971 at San Francisco at which time, among other things, a schedule of hearings commencing February 1, 1971 was determined. Joseph T. Enright and Eugene R. Rhodes attended said prehearing conference.

12. Public hearings in Application No. 52329 and Case No. 5432 (OSH 624) and other consolidated matters commenced February 1, 1971 at San Francisco at which time applicant presented its case in chief consisting of the prepared testimony of J. H. Lyons (Exhibit 1), the prepared testimony of Thor H. Sjostrand (Exhibit 2), and estimates of revenues and expenses (Exhibit 3). Exhibits 1 and 2

were served by applicant January 11, 1971 upon all parties of record in Application No. 51944, and Exhibit 3 was mailed to all parties of record in Application No. 51944 on January 4, 1971.

13. Monolith Portland Cement Company presented its case in chief at public hearing held February 16, 1971 at Los Angeles.

14. California intrastate transportation of property by railroads at the rates resulting from the proposed increases in Tariffs X-265-B and X-267-A will not provide revenues in excess of the expenses reasonable and necessary for the conduct of said transportation operations.

15. To the extent that the increases in rates resulting from the application of Tariffs X-265-B and X-267-A will result in net operating revenues from California intrastate railroad operations by any railroad, such earnings will not be excessive.

16. The proposed rates on bulk cement are substantially lower than the rates of highway carriers for the transportation of cement between the same points, and they are lower than the proposed rates applicable to commodities generally and lower than the proposed rates for similar commodities, including nonmetallic minerals, moving in identical types of railroad equipment.

17. In the marketing of cement the origins of the traffic are cement mills at railhead and the destinations ordinarily are construction jobsites not at railhead, and the greater portion of the rail transportation of bulk cement has been from mills to terminals where the commodity is transshipped via truck to destination.

18. By reason of increases in rates authorized by the Commission in the past year the combined rates for rail transportation

of bulk cement from mill to terminal and for truck transportation from terminal to jobsite in many instances have exceeded the rate for the transportation by highway carrier direct from mill to construction jobsite, and have exceeded the cost of other means of transportation, including proprietary carriage, from mill direct to jobsite. Said circumstance has resulted in mills discontinuing their terminal operations at a number of locations. In such instances the movement of bulk cement has been diverted from the rail carriers.

19. The application of the increases in Tariffs X-267 to the rates on bulk cement will result in additional instances wherein the combined rates for rail-truck transportation from mill to jobsite via a terminal will exceed the rate of highway carriers, or the cost of other means of transportation, for the hauling of bulk cement from the mill direct to jobsite. In such instances, unless there are ancillary advantages to moving cement through the terminals, the traffic will be diverted from the rail carriers.

20. The aforesaid circumstance will not result in the increased rates on bulk cement being unreasonable, per se, nor will the loss of cement traffic because of such circumstance necessarily place an undue burden upon other railroad traffic.

21. The diversion of cement traffic from the rail carriers may result in greater use of the public highways by motor vehicle for the transportation of portland cement and thereby result in the release of additional amounts of smoke and gases into the atmosphere; however, the prevention of such circumstance by denial of the increases in rail rates sought herein would require the railroads involuntarily to bear the entire economic burden of preventing said undesirable effects caused by the operations of their competitors and is not justified.

22. The increases which will result from the application of Tariffs X-265-B and X-267-A, together with the prior increases in rates, will not unreasonably burden cement as compared with other traffic, nor will the transportation of cement pay in excess of its fair proportionate share of the burden of said general increases in rates.

23. The increases in rates that will result from the establishment of Tariffs of Increased Rates and Charges X-265-B and X-267-A have been shown to be justified.

24. The rates and charges of highway common carriers and other common carriers published and maintained on the level of the present railroad 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. The assertions by Monolith Portland Cement Company that it had not sufficient notice of prehearing conference and of hearing, and that it had not been afforded opportunity to present its case are without merit.

2. Applicant should be authorized to establish by appropriate supplement to Tariff of Increased Rates and Charges X-265-B the increases in said tariff provided, however, that said increases shall not be applied to commodity rates on sugar beets published in Pacific Southcoast Freight Bureau Tariff 65-N (ICC No. 1726).

3. Applicant should be authorized to establish by appropriate supplement to Tariff of Increased Rates and Charges X-267-A the increases in said tariff provided, however, said increases shall not

exceed 16 cents per ton on rates on sugar beets in carloads set forth in Pacific Southcoast Freight Bureau Tariff 65-N (ICC No. 1726).

4. 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 the level of the otherwise applicable minimum rates, whichever is the lower.

5. 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.

6. 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.

7. The record should be kept open for further proceedings herein.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Southcoast Freight Bureau, on behalf of the carriers listed in Application No. 52329, is authorized to establish by appropriate supplement to Tariff of Increased Rates and Charges X-265-B the increases in rates set forth in said tariff provided, however, that said increases shall not be applied to commodity rates on sugar beets published in Pacific Southcoast Freight Bureau Tariff 65-N (ICC No. 1726).

2. Pacific Southcoast Freight Bureau, on behalf of the carriers listed in Application No. 52329, is authorized to establish by appropriate supplement to Tariff of Increased Rates and Charges X-267-A the increases in rates set forth in said tariff provided, however, that said increases shall not exceed 16 cents per ton on rates on sugar beets in carloads maintained in Pacific Southcoast Freight Bureau Tariff 65-N (ICC No. 1726).

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. To the extent that departure from the terms and rules of General Order No. 125 is required to accomplish such publications, authority for such departure is hereby granted.

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 authorities granted in paragraphs 1 and 2 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 paragraphs 1 and 2 hereof provided, however, that such increased rates may not be lower than the rates established by the rail lines pursuant to the authorities granted in paragraphs 1 and 2 hereof, nor higher than the otherwise applicable minimum rates.

6. Common carriers maintaining, under outstanding authorization 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 under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

11. The record shall remain open for further proceedings herein.

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

Dated at San Francisco, California, this 18th day of MAY, 1971.

Chairman

Commissioners

APPENDIX A

LIST OF APPEARANCES

For Applicant: Charles W. Burkett, Jr., W. Harney Wilson and Leland E. Butler, Attorneys at Law.

Protestants: J. Randolph Elliott, Attorney at Law, William T. Barklie and Hugh M. Flanagan, for California Portland Cement Company; Joseph T. Enright, Attorney at Law, and Eugene R. Rhodes, for Monolith Portland Cement Company; Eugene A. Feise, for Calaveras Cement Division of Flintkote Company; Harvey H. Lowthian, Jr., for Kaiser Cement and Gypsum Corporation; William E. Mitze, for Riverside Division of American Cement Corporation; George B. Shannon, for Southwestern Portland Cement Company; E. J. Bertana, for Pacific Cement and Aggregates; and Jack Cedarblade, by E. J. Bertana, for Rock, Sand & Gravel Producers Association of Northern California.

Interested Parties: Richard E. Costello*, Attorney at Law, for Spreckles Sugar Division Amstar Corporation, Union Sugar Division of Consolidated Foods Corporation, and California Beet Growers Association; Thomas B. Kircher*, for Spreckles Sugar Division Amstar Corporation; Kenneth C. DeLaney, for Los Angeles Area Chamber of Commerce; K. L. Mallard, for California Hawaiian Sugar Company; Arthur D. Maruna, H. F. Kollmyer and A. D. Poe, Attorney at Law, for California Trucking Association; William D. Mayer, for Canners League of California; James L. Roney, for Dart Transportation Service; Richard A. Starr, for Morton Salt Company; and Ralph Hubbard, for California Farm Bureau Federation.

Commission Staff: B. A. Peeters, Attorney at Law, and A. L. Gieleghem.

*Originally a protestant but withdrew the protest.

APPENDIX B

ESTIMATED FREIGHT REVENUES, EXPENSES AND NET RAILWAY OPERATING INCOME ATTRIBUTABLE TO CALIFORNIA INTRASTATE TRAFFIC BASED ON THE YEAR 1969 WITH ALLOWANCE FOR APPLICATION OF SOUGHT INTERIM INCREASES AND EXPENSES AT DECEMBER 31, 1970 LEVEL

(In Thousands of Dollars)

	1969(1) Frt. Rev.	Revenue Pres. Rates	Sought Increases	Revenues Prop. Rates	1969(1) Expenses	Adjusted Expenses	Operating Income Proposed Rates
Southern Pacific Transportation Company	$65,311	$ 73,032	$6,080	$ 79,112	$ 71,244	$ 79,686	$ (574)
The Atchison, Topeka and Santa Fe Railway Company	20,715	23,486	2,117	25,603	23,303	26,064	(461)
Northwestern Pacific Railroad Company	3,930	4,459	404	4,863	4,971	5,560	(697)
Western Pacific Railroad Company	1,559	1,769	161	1,930	2,262	2,530	(600)
Union Pacific Railroad Company	1,556	1,752	149	1,901	1,737	1,943	(42)
San Diego and Arizona Eastern Railway Company	971	1,101	99	1,200	1,099	1,229	(29)
Sacramento Northern Railway Company	107	121	11	132	141	158	(26)
Sunset Railway Company	169	192	17	209	134	150	59
Central California Traction Company	88	100	9	109	130	146	(37)
Holton Inter-Urban Railway Company	175	199	18	217	142	159	58
Tidewater Southern Railway Company	26	29	3	32	35	39	(7)
Petaluma and Santa Rosa Railroad Company	19	21	2	23	17	19	4
Visalia Electric Railroad Co.	1	1	-	1	1	1	-
Total	$94,627	$106,262	$9,070	$115,332	$105,216	$117,684	$(2,352)

(Red Figure)

(1) From Table I, Decision No. 78022, dated December 1, 1970, in Application No. 51944