

Decision No. 19893.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of
 SOUTHERN PACIFIC COMPANY for authority
 to establish certain rules covering non-) Application No. 14351.
 intermediate application of rates apply-)
 ing to milling in transit of grain.)

- F. W. Mielke and W. S. Dawson, for applicant.
- R. P. McCarthy, for Globe Grain and Milling Company.
- C. R. Schulz, for San Francisco Milling Company,
 Consolidated Milling Company, and H. Pini Company.
- E. B. Smith, for Sperry Flour Company.
- Charles S. Connolly, for Albers Bros. Milling Company.
- C. A. Teutschel, for Sacramento Chamber of Commerce.

BY THE COMMISSION:

O P I N I O N

This is an application filed by the Southern Pacific Company January 19, 1928, and amended March 29, 1928, seeking authority under the provisions of Section 24 (a) of the Public Utilities Act of the State of California for permission to amend Note 2 of Paragraph "A" Item 1390 and Paragraph F of Item 1400 of its Terminal Tariff No. 230-J, C.R.C. 3183, by adding the following provision:

"This rule causes higher per car charges on like shipments originating at and/or destined points intermediate from and/or to more distant points, which carry other authorized routes. This departure from Section 24 (a) of the Public Utilities Act is authorized by authority of the Railroad Commission of the State of California....."

The items sought to be amended relate to milling in transit on grain and grain products and are as follows:

"Item 1390.

SECTION No. 3. - POINTS OF ORIGIN, TRANSIT POINTS AND POINTS OF DESTINATION.

A. - TRANSIT POINTS. - Milling, cleaning, storing or otherwise treating in transit points must be directly intermediate, between points of origin and final destination, except as otherwise specifically provided in Paragraph E of this Section and Paragraphs F, G and H, Section No. 4, Item No. 1400 Series. (See Notes 1 and 2.)

NOTE 1. - No back or out-of-line haul will be permitted, except as otherwise specifically provided in Paragraph E of this Section and Paragraphs F and H, Section No. 4, Item No. 1400 series.

NOTE 2. - The milling, cleaning, storing or otherwise treating in transit point will be considered as intermediate between point of origin and final destination, provided it is intermediate via any authorized route."

"Item 1400, Paragraph F.

THROUGH RATE ON OUT OF LINE, INDIRECT OR BACK HAUL SHIPMENTS. - The highest rate in the movement, that is:

ORIGIN TO TRANSIT POINT, OR ORIGIN TO DESTINATION, OR TRANSIT POINT TO DESTINATION in effect in tariffs lawfully on file with the Interstate Commerce Commission and/or respective State Commissions on date shipment leaves point of origin as shown on the freight bills surrendered, will apply when transit point is not directly intermediate from point of origin of the inbound commodity to final destination of the outbound product and in addition thereto out of line, indirect or back haul charges as shown herein will be assessed for such service.

The charge for the out of line, indirect or back haul shipments will be based upon the additional distance traversed in movement to and from transit point as against direct short line mileage or mileage via routes in which Southern Pacific Company (Pacific Lines) participates from point of origin of inbound commodity to final destination of the outbound product."

Item 1400 also contains a scale of rates for out-of-line indirect or back haul charges ranging from 2 cents per 100 pounds for distances not exceeding 45 miles to 6 cents per 100 pounds for distances over 100 miles and not over 125 miles.

A public hearing was held at San Francisco before Examiner Geary April 12, 1928, and the proceeding is now ready for an opinion and order.

The applicant avers the tariff provisions sought to be established are not for the purpose of increasing any rates or charges but are for clarification, because as now published they can be interpreted to permit transit at points via the line of applicant intermediate between the points where the milling in transit has been established, to meet the rates of a competing route as set forth in Note 2 to Item 1390. For illustrative purposes the through joint rate on grain from Sacramento to Santa Rosa is 12 cents per 100 pounds. This rate is applicable over the Southern Pacific to Shellville Junction, thence Northwestern Pacific, and the direct short line to Santa Rosa of 108 miles. The distance between these same points via San Francisco is 206 miles, or 98 miles longer than via the direct route. On grain moving from Sacramento, milled in transit at San Francisco, and the transitted product subsequently reshipped to Santa Rosa, no out-of-line charge is assessed for the reason that there is a rate of the same volume applicable on like traffic moving over the Western Pacific to San Francisco, thence Petaluma and Santa Rosa Railway to destination. On grain from Davis, a point not served by a carrier other than the Southern Pacific, the same competitive conditions do not exist, therefore on traffic from that point milled in transit at San Francisco, an out-of-line charge is assessed for the additional distance hauled. Similar situations exist in other sections of the state.

With respect to Item 1400, the out-of-line or back haul charges are absorbed on certain shipments milled in transit when the distance via the transit point is less than via

another authorized route of the applicant between the same points. On shipments originating at or destined to points intermediate the out-of-line or back haul charge is not absorbed under the present tariff, due to the fact that no other authorized route is available from or to such intermediate points. An illustration is in the movement of grain from Sacramento to Gilroy milled in transit at San Francisco, where the direct short line distance from point of origin to final destination via Port Costa and Niles is 154 miles, and the distance via the transit point is 165 miles. The other authorized route is via Sacramento, Martinez, Newark and Niles, involving a haul of 211 miles, or 46 miles greater than the short line distance via San Francisco, consequently there is no out-of-line charge assessed for the transit movement to and from San Francisco. Elk Grove is located between Sacramento and Stockton, and the only authorized route from that point to Gilroy is through Stockton and Niles, therefore on grain milled in transit at San Francisco there is an out-of-line charge for the additional distance to San Francisco and return to Niles, as provided for in the scale of rates published in Item 1400. Applicant contends the lower rates and charges at the more distant points are justified because of the competitive conditions existing at those points which do not exist at the intermediate points.

Protestants presented no testimony or exhibits in opposition to the proposed publication, but in their cross-examination of witnesses and in the arguments contended that the out-of-line and back haul charges moving from or to certain intermediate points were not always assessed because of different tariff interpretations.

The out-of-line and back haul rate privileges are

established primarily to enable all milling companies at common points to secure shipments of grain which ordinarily would move into mills directly intermediate between points of origin and final destination, and the influences surrounding the absorption of back haul or out-of-line charges are competitive, springing from the ability of other carriers under circumstances that do not necessitate either back haul or out-of-line services to transport the grains into designated transit stations at the through rate without additional charges. Competing carriers because of the physical disabilities of the routing via their lines can give the same character of service only by performing back haul or out-of-line service, and hence must either meet the competition by the performance of the service without an extra charge, or publish a charge for it and thus discourage the tonnage moving over their own rails. The instant application is purely for the purpose of permitting the meeting of competition at the key points without disturbing normal rates at points in territory where the competing influences are not controlling, and it is the intention of this application to protect any violations of the long and short haul provisions of the State Constitution and Section 24 of the Public Utilities Act. At the present time it is most difficult to interpret the rules, and the proposed provisions will have the effect of clarifying the tariffs.

After giving careful consideration to all the facts of record, we are of the opinion and find that the application has been justified and that applicant should be authorized to amend Item 1390 and Item 1400 of Southern Pacific Company Tariff 230-J, C.R.C. 3183, by adding the rule as set forth in the application.

O R D E R

This application having been submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that applicant, Southern Pacific Company, be and it is hereby authorized to amend Item 1390 and Item 1400 of its Tariff 230-J, C.R.C. 3183, by adding the provision as specifically set forth in the application.

Dated at San Francisco, California, this 13th day of June, 1928.

Leon Whitely
Chas. J. Seavey
Edmund C. Cotts
Paul D. Rountree
M. A. Cunn
Commissioners.