

Decision No. 18877.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Bay and River Boat Owners' Association,
 Carl Anderson,
 Berkeley Transportation Company,
 Beringer & Scott,
 Chris Johansen,
 Mrs. E. C. Jensen,
 Oakley & Allen Boat Company,
 Frederick Olsen,
 E. V. Rideout Company,
 Martin Schmidt,
 Henry Artur Troberg,
 Chas. Waack,
 George Wallenrod Estate,

Complainants,

vs.

John Anderson,
 W. J. Albach,
 Fred F. Ball,
 Walter G. Bloomfield,
 Peter Christensen,
 Erikson Navigation Co.,
 N. Fay & Son,
 G. V. Freethy,
 Ellen J. Freethy,
 S. Frederickson,
 Peter Hansen,

E. A. Hoffman,
 Harry Johnson,
 Larkin Transportation Co.,
 Fred Mennick,
 Merchants Transportation Co.,
 John W. Meyer,
 E. H. Risher,
 Ernest R. Stelter,
 Warren Transportation Co.,
 Jim Wilder,
 George C. Wright,

Defendants.

Case No.
2319.

Gwyn E. Baker and Thelen & Marrin, for complainants.
 Sanborn & Roehl, for California Transportation Company;
 Crowley Launch & Tug Boat Company; Erikson Navigation Co.
 Seth Mann and S. A. Everstine for San Francisco Chamber of
 Commerce.

Edson Abel for California Farm Bureau Federation.
 E. W. Hollingsworth and Bishop & Bahler, for California
 Hay, Grain & Feed Dealers Association; Berringer & Rus-
 sell; Commercial Hay Company; Hert-Hill Grain Company;
 Lewis-Simas-Jones Company; Russell & Macauley; A. W.
 Scott Company; Producers Hay Company; C. B. Westrope
 & Company; Coulson Poultry & Stock Food Company; Golden
 Eagle Milling Company; G. P. McNear Company.

C. S. Connolly for Albers Bros. Milling Company.

F. A. Somers for Grangers Business Association.

E. B. Smith for Sperry Flour Company.

J. C. Sommers for Stockton Chamber of Commerce.

Perry Small for California Wholesale Potato Dealers
 Association.

Jones & Dall, by W. K. Powell, for N. Fay & Son.

Henry G. W. Dinkelspiel, for Bird's Landing Warehouse.

E. S. Williams, for Sperry Flour Company.

WEINSELL, Commissioner:

O P I N I O N

Complainants and defendants are common carriers by water, operating vessels for the transportation of property between various points on San Francisco Bay and the San Joaquin, Sacramento, Mokelumne, Old and Middle Rivers and their tributaries. By complaint filed February 9, 1927, and as amended it is alleged (a) that the present rates in effect via both the complainant's and defendants' lines for the transportation of beans, peas, flour, mill stuff, mill feed, grain, hay, straw, lumber, potatoes and onions are unduly and unreasonably low, and (b) that the public interest demands, and the future financial welfare of these common carriers requires, the Commission to establish under the provisions of Section 32 (c) of the Public Utilities Act the uniform rates, rules and regulations to be observed alike by all carriers.

E. C. Dozier, California Farm Bureau Federation, Sonoma County Farm Bureau, Solano County Farm Bureau, Yolo County Farm Bureau, Sacramento County Farm Bureau, San Joaquin Farm Bureau Federation and Contra Costa County Farm Bureau intervened in opposition to the complaint.

Public hearings were held at San Francisco June 7 and 8, 1927, January 3 and 4, and February 2, 3, 10 and 11, 1928, and the matters having been duly submitted and final briefs filed May 21, 1928, are now ready for an opinion and order.

While the complaint brings into issue the rates of practically all carriers, some 60 in number, operating on San Francisco Bay and the San Joaquin, Sacramento, Mokelumne, Old and Middle Rivers and their tributaries, the evidence and testimony was directed to only 17 carriers, which complainants claim handle a very

large part of the tonnage moving in the territory here involved, and confined principally to their rates between Stockton, Port Costa, South Vallejo, San Francisco, Oakland and Petaluma and from the Delta regions of the Sacramento, San Joaquin and Mokelumne Rivers to the six terminal points just named. The following statement showing the present and proposed rates on the heaviest moving commodities between representative points is typical of the adjustment sought by complainants; hence it will not be necessary to show the situation in detail.

(Rates in cents per ton of 2000 lbs. except as otherwise noted)

Commodity	From	To	Present rate	Proposed rate	Percentage of Increase
Beans, dried	Delta Points	Stockton	180	230	28%
Peas, dried	Delta Points	Stockton	180	230	28%
Flour	Stockton	Port Costa	140	200	43%
Grain	Delta Points	Stockton	180	200	11%
"	Delta Points	Oakland	220	280	27%
Onions	Delta Points	Stockton	*10¢	*12½¢	25%
Potatoes	Delta Points	Stockton	*10¢	*12½¢	25%

* Rate per sack.

The seventeen carriers specifically before us are the Island Transportation Company, Vehmeyer Transportation Company, Nichols Transportation Company, Empire Barge Company, Wood & Seitz, Dealers Transportation Company, Wheeler Transportation Company, Higgins Transportation Company, Rio Vista Lighterage Company, Stockton Transportation Company, Heringer & Scott, Larkin Transportation Company, Merchants Transportation Company, N. Ray and Son, S. Frederickson, John W. Meyer and George G. Wright. Complainants contend that for some years there has been strenuous competition between these carriers and the smaller lines for the tonnage, due in some measure to the numerous kinds of services rendered by both common and private carriers operating on the bays and rivers, and to the further fact that the traffic is

practically all handled during a comparatively short season, in the summer and fall months. Individual carriers in their endeavor to secure tonnage or for other reasons have from time to time inaugurated reduced rates, and the competing lines in order to secure their share of the movement have invariably met the lower rates. It is claimed this competition has been prevalent for years and has finally placed complainants in a position where their financial security is jeopardized. They take the position that due to the competitive situations it would be useless to seek increased rates unless all the carriers operating in this territory were required to maintain the same rate levels. Thus the two primary issues here for consideration are first, whether or not the rates of complainants and defendants on the heretofore named commodities should be increased, and second, whether or not the Commission should prescribe the rates, rules and regulations to be applied uniformly via all common carriers.

A considerable portion of the evidence and testimony relating to the increased rates was devoted to showing the difficulties encountered in performing a common carrier service on the bays and rivers and the changed operating conditions justifying the rates sought. There appears no doubt from this record that there are hazards prevalent in the operations, particularly with respect to dangerous and inconvenient landings, also that the nature of the traffic has changed in the last few years from large individual consignments to small shipments. Some years ago the land in the Delta regions was farmed in large tracts and the tonnage presented to the carriers in very large consignments, but in recent years the land has been farmed in relatively small tracts and the tonnage correspondingly broken into small consignments that require more and frequent handlings. A showing of

this nature is pertinent in a general way, but in the final analysis the financial results of the operations must be given controlling weight.

The annual reports of the seventeen carriers here being considered for the years 1924, 1925 and 1926 show that with the exception of the Island Transportation Company, Wood & Seitz, Heringer & Scott and Wheeler Transportation Company, all earned over the three-year period an average return in excess of 3 per cent. on the property and equipment devoted to the public use, based upon an allowance of 5 per cent. for depreciation. On this same 5 per cent. depreciation basis the Island Transportation Company and Wood & Seitz operated at a claimed deficit, and Heringer & Scott and the Wheeler Transportation Company earned a small return above operating expenses. In arriving at these results the carriers' claimed value of the property and equipment has been accepted in all cases without modification, as well as the statements of revenues and expenses, except as to the percentage allowed for depreciation. An inventory valuation of the properties devoted to the public service might show either a greater or less value than that carried on the books of the operators.

Counsel for the California Farm Bureau Federation, protestant, argues in his brief that a depreciation in excess of 5 per cent. per annum would be excessive because much of the floating equipment employed by the operators in this territory shows an average life in excess of 20 years. The depreciation set up as expenses by these operators will run from 5 to 20 per cent.

Counsel for complainants in their brief maintain that depreciation on a 5 per cent. basis is insufficient, and claim that this depreciation should be at least 10 per cent. It may be on a more complete record that a depreciation in excess of 5

per cent. could be justified, but on the record before us I am not warranted in accepting anything in excess of 5 per cent. as the testimony offered shows that the life of the hulls of vessels is at least 20 years and the life of the machinery therein of a considerably longer duration. The property in use justifying depreciation in excess of 5 per cent. per annum, such as automobile equipment, etc., is negligible and will be offset by allowing a full 5 per cent. depreciation on the machinery. If an average depreciation in excess of 5 per cent. is justified, as complainants contend, the amount thereof should have been shown conclusively, for this proceeding is also an application under Section 63 (a) of the Act to increase rates, and the burden is upon complainants to justify the proposed rates. It is fundamental that depreciation, being a most important item of expenses, and a proper charge, should be correct and proven in order to accurately determine the financial condition of the carriers.

Complainants maintain that in determining the rate of return earned by the carriers, we should consider them as a whole rather than individually, and in support thereof cites the action of the Director General of Railroads during Federal Control and of the Interstate Commerce Commission under the provisions of Section 15 (a) of the Interstate Commerce Act in Increased Rates 1920 (58 I.C.C. 220), wherein horizontal increases in rates were authorized upon a showing that the rail carriers as a whole were not earning a fair return. If this procedure were followed, the seventeen carriers as a whole, allowing a 5 per cent. depreciation, earned an average of about 2.5% on the claimed valuation during the years 1924, 1925 and 1926, but this low return is attributable to the adverse showing made by a single carrier, the Island Transportation Company, and with the exclusion of this carrier from consideration the others as a group realized a re-

turn in excess of 8 per cent.

The Island Transportation Company claims the average value of its property and equipment devoted to the public use to be \$631,615.55, or about 54.5% of the average claimed valuation of \$1,160,368.58 for the entire seventeen carriers, yet during the three-year period, 1924, 1925 and 1926, this carrier, based on the revenue received, handled only about 15% of the total traffic. It appears obvious, and the record shows, that the financial difficulties of the Island Transportation Company are not primarily due to insufficient rates but to an overabundance of equipment, a large part of which is not entirely suited to the present day transportation requirements, it consisting principally of barges and towboats not now used to capacity. In the past when the tonnage was handled in relatively large individual consignments the barge and towboat undoubtedly constituted an economical method of operation, but the record discloses that since the advent of the small shipments this is not the most economical way to handle the traffic in the Delta regions.

Based on the revenues received during the three-year period by the four carriers not earning a return of at least 6 per cent., namely, Island Transportation Company, Wood & Seitz, Heringer & Scott and Wheeler Transportation Company, the tonnage handled via these lines was approximately 28% of the total transported by all seventeen carriers. Here we are confronted with a situation where the necessities of four carriers handling a relatively small portion of the total tonnage on the rivers would result in burdening the public by increasing the rates of other lines handling 72 per cent. of the traffic and which the record shows are not entitled to the increases. The fact that the lines transporting the bulk of the traffic realized reasonable returns

on their investment throughout a period of years, operating in the same territory as the Island Transportation Company, Wood & Seitz, Heringer & Scott and the Wheeler Transportation Company, leads me to the conclusion that the present rates are not the entire cause of their poor financial condition.

Complainants' plea for uniform rates, rules and regulations rests upon a desire to prevent the carriers reducing existing rates without authority of the Commission and to establish rules and regulations free from ambiguities so that they may be applied uniformly without misinterpretation. They claim, as previously stated, that where one carrier reduces its rate the others, if they are to secure their share of the tonnage, must of necessity establish rates of the same volume, even though they believe the reduced rates unremunerative. The evidence shows that in the past where a carrier has reduced its rate by proper tariff publication, the others have usually done likewise, but there is no evidence on this record to show that any of the rates when reduced were unduly low or non-compensatory.

The two largest operators of vessels, the California Transportation Company and the Southern Pacific Company's river lines, are now neither complainants nor defendants, although made parties defendant when the proceeding was filed. At the first hearing they were eliminated but the reasons for such action are not clearly set forth in the record.

The Southern Pacific Company operates vessels on regular schedules between San Francisco, Sacramento and the intermediate points, and the California Transportation Company between San Francisco, Sacramento, Stockton and the intermediate points, and also performs a service with two vessels not on regular schedules but which serve exclusively the Delta producing regions. In addition to the competition of these two strong lines, the named

complainants and defendants in this proceeding are confronted with the competition of privately owned water carriers, contract and common carrier trucks, and by the railroads, Southern Pacific, Santa Fe, Western Pacific and San Francisco-Sacramento, which collectively serve Sacramento, Stockton, Antioch, Pittsburg, Avon, Martinez, Port Costa, Benicia, South Vallejo, Petaluma, Oakland and San Francisco. Complainants contend that certain territory is not competitive with the rail carriers because much of the tonnage is inaccessible to them. The record however does not sustain this contention, as approximately 15 per cent. of the tonnage handled during the year 1926 moved solely between the points where there is rail competition.

Complainants contend that unless uniform rates are established it will be impossible to prevent the unscrupulous from rebating. Throughout the hearings there was a considerable amount of veiled testimony, principally by the President and Secretary of the Bay and River Boat Owners' Association, relating to the practices of some carriers in deviating from their published tariffs and by various devices according shippers preferential and unlawful rates. These witnesses testified they were unwilling to make any specific charges and although intimating they were in possession of the facts contented themselves with general allegations. If it is true that carriers are departing from their published tariffs, and complainants, as they intimate, are in possession of the facts, it is their duty to lay the matter before the Commission. Certainly the establishment of uniform rates will not automatically cure this evil, if such exists, but on the contrary would afford more leeway to the unscrupulous.

There is nothing inherently wrong with the principle of uniform rates, rules and regulations, and indeed in some instances they are imperative. Section 32 of the Public Utilities

Act in substance states that when necessary for the preservation of adequate service and when public interest demands, the Commission shall have the power to prescribe the uniform rates, rules, regulations and practices. This section of the Act, broadly interpreted, must apply to uniform rates where there are uniform circumstances and conditions and when the uniform rates can be made to apply to every operator performing a similar service in the territory involved.

It clearly appears to me that in a situation where the transportation services performed are by various methods and are totally different, no beneficial or practical results would be secured and in the end would only restrict defendants from voluntarily changing rates, which may in many cases be entirely justified under changing conditions. The absence of uniform rates as prayed for in this proceeding will not place a burden on complainants, for they now have the means, by use of the provisions of Section 63 (b) of the Public Utilities Act, to have suspended and investigated any reductions in rates which they may consider unduly low. Under these provisions of the Act the Commission has the power, either upon complaint or upon its own motion, to enter upon a hearing to determine whether or not the reduced rates are reasonable and compensatory.

After careful consideration of all the facts of record I am of the opinion that complainants have not justified the increased rates or the establishment of uniform rates, rules and regulations. The complaint should be dismissed, but without prejudice to any future action these complainants may desire to take.

I recommend the following form of order:

O R D E R

This case having been duly heard and 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 Case No. 2319 be and the same is hereby dismissed, without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2^d day
of July 1928.

Leon White
Chairman
Edward J. ...

M. J. ...
Commissioners.

I do not wish to be understood as favorable to an allowance of 5% depreciation in cases of this character. It seems to me that a depreciation of from 2% to 3 1/3% would be ample under the circumstances.

W. W. ...
Commissioner