JLA

Decision No. 20028.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, Complainant, vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, LOS ANGELES & SALT LAKE RAILROAD COMPANY, and SOUTHERN PACIFIC COMPANY, Defendants.	Case No. 2302.
COUNTY OF ORANGE, Complainant, vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, LOS ANGELES & SALT LAKE RAILROAD COMPANY, and SOUTHERN PACIFIC COMPANY, Defendants.	Case No. 2313.
COUNTY OF RIVERSIDE, Complainant, vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, LOS ANGELES & SALT LAKE RAILROAD COMPANY, and SOUTHERN PACIFIC COMPANY, Defendants.	Case No. 2314.
UNION ROCK COMPANY, a corporation, Complainant, vs. THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, and PACIFIC ELECTRIC RAILWAY COMPANY, Defendants.	Case No. 2359.

Everett W. Mattoon, County Counsel, and R. C. McCallister and S.T.O.Prichard, Deputy County Counsels; and Sanborn, Roehl & Smith, for complainant in case 2302 and Los Angeles County Flood Control District, intervener.

R. S. Sawyer, for complainant in Cases 2313 and 2314.

Hugh Gordon, Edwin Brooker and B. H. Carmichael, for Union Rock Company, complainant in Case 2359 and intervener on behalf of complainants in the other cases.

Jess E. Stephens and J. L. Ronnow, for the City of Los Angeles, intervener.

C. T. Helpling, for Consumers Rock and Gravel Company, Blue Diamond Company, Saticoy Rock & Gravel Company, Orange County Rock and Gravel Company, interveners.

J. E. Lyons, J. R. Fielding and F. W. Mielke, for Southern Pacific Company, defendant.

E. W. Camp and Platt Kent, for The Atchison, Topeka and Santa Fe Railway Company, defendant.

A. S. Halsted, J. P. Quigley and E. E. Bennett, for Los Angeles & Salt Lake Railroad Company, defendant.

Frank Karr and C. W. Cornell, for Pacific Electric Railway Company, defendant in Case 2359 and intervener in the other cases.

Richard T. Eddy and Herbert W. Kidd, for the Imperial Rock Corporation, intervener.

J. K. Hull, for the City of Long Beach.

LOUTTIT, Commissioner:

O P I N I O N

Complainants in the three first-named proceedings are counties organized and existing by virtue of the laws of the State of California, and complainant in Case 2359 is a corporation engaged in the business of producing and selling crushed rock, sand and gravel. The complaints in Cases 2302, 2313 and 2314 allege (a) that the local and joint rates for the transportation of crushed rock, sand and gravel in the territory south of Caliente and Santa Margarita, hereinafter referred to as Southern California, maintained by The Atchison, Topeka and Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company and Southern Pacific Company, hereinafter referred to as the Santa

Fe, Southern Pacific and Salt Lake respectively, are and for the future will be unjust and unreasonable, in violation of Section 13 of the Public Utilities Act; (b) that defendants Santa Fe and Southern Pacific maintain in Northern and Central California in the territory north of Caliente and Santa Margarita rates on crushed rock, sand and gravel lower than those contemporaneously in effect in Southern California and have refused to extend the rates to the territory south of Caliente and Santa Margarita, thereby creating an unjust and unreasonable difference in rates as between localities and affording Northern and Central California shippers unreasonable preferences and advantages, in violation of Section 19 of the Act; and (c) that effective September 1, 1926, defendants cancelled, without authority of this Commission, a mileage scale of rates applicable to the transportation of crushed rock, sand and gravel when consigned to the state, county or municipal governmental bodies in the Counties of Los Angeles, Orange, Riverside and San Bernardino, which action resulted in increased rates, violating Article XII, Section 20 of the Constitution of the State of California and Section 63 (a) of the Public Utilities Act.

The complainant (Union Rock Company) in Case 2359 alleges that the present rates for the transportation of crushed rock, sand and gravel in Southern California maintained by the Santa Fe, Southern Pacific, and Pacific Electric Railway Company (the latter hereinafter referred to as the Pacific Electric), are unjust and unreasonable, in violation of Section 13 of the Act.

Complainants ask the Commission to establish for the transportation of the commodities here at issue rates not to exceed those contemporaneously in effect for equal distances in Central and Northern California in the territory north of Caliente and Santa Margarita, hereinafter referred to as Northern California.

The Pacific Electric intervened in the first three cases and the Blue Diamond Company intervened in all four proceedings on behalf of defendants. The Los Angeles County Flood Control District and City of Los Angeles intervened on behalf of all complainants, and the Union Rock Company in support of complainants in Cases 2302, 2313 and 2314.

Public hearings were held in Los Angeles April 28 and 29, June 28, 29 and 30, September 20 to 23 inclusive, 1927, and February 7, 8 and 9, 1928. The proceedings having been duly heard, submitted, and the briefs filed, are now ready for an opinion and order.

The issues raised in all four proceedings being similar, they were by stipulation heard upon a common record, and will be disposed of in one report. Rates will be stated in cents per ton of 2000 pounds.

Crushed rock, sand and gravel are inherently low-grade commodities upon which the freight rate determines to a large extent the ultimate cost to the consumer and the ability of the producer to reach the common markets. The counties here complaining, and the interveners City of Los Angeles and Los Angeles Flood Control District, extensively use these commodities in the construction of streets, highways, bridges, flood control work, and other public building activities. The Union Rock Company, complainant in Case No. 2359, is the largest individual producer of rock in Southern California, as well as the largest shipper of rock by rail. It has crushing plants at Rivas, Kincaid, Crushton, Gravel Pit, Bowden, Claremont, Wahoo and Brush Canyon, and with the exception of the plants at Wahoo and Brush Canyon all are so situated that they may be served, either directly or through privately owned tracks, by two or more rail carriers.

The Brush Canyon plant is not served by any rail line, and the one at Wahoo by the Southern Pacific only. The locations were influenced to a large extent by the desire of complainant to market its products by the use of a single railroad, thus avoiding the higher charges for a joint movement. In addition to its crushing plants the Union Rock Company maintains storage facilities for distribution at Los Angeles, El Monte, Sherman, Home Junction, Vineyard, Wildasin, Cienega, Hermosa Beach, Compton, Wilmington, Thenard, Long Beach and Los Nietos. Other producers of rock shipping 50 or more cars per year by rail are located at Corona, Porphyry, McPherson, Gravel Pit, Colton, Declez, Kincaid, Puente Largo, Roscoe, Pacoima, Hewitt, Honda, Saticoy, Chrisman and Piru, and nearly all are within a radius of 50 miles from Los Angeles, the principal ones being situated in the San Gabriel wash and San Fernando Valley. In addition there are numerous small crushers or wayside pits adjacent to Los Angeles not utilizing the rail lines to any appreciable extent but marketing their products almost exclusively with motor truck. The motor trucks may be used economically for hauls not exceeding 17 or 18 miles but beyond these distances the record shows the rail services to be more economical.

Practically all of the tonnage moving from the crushers by railroads to points of consumption is now assessed the published tariff rates, although prior to September 1, 1926, a large tonnage for governmental use was transported at special rates without regular tariff publication, this under the provisions of Section 17 paragraph 4 of the Public Utilities Act, to which further reference will be made. All commercial rates are published in the tariffs as specific from point to point, although they are based on an unpublished mileage scale generally used by

the defendants, and this scale provides for single line hauls 60 cents for 25 miles or less, 70 cents for 26 miles to 35 miles, 80 cents for 36 miles to 55 miles, 90 cents for 56 miles to 75 miles, and for distances over 75 miles 10 cents for each additional 25 miles traversed. On sand the rates are ten cents less than on rock and gravel, and for two-line hauls a differential of 20 cents is added to the single line rates. There are some deviations from the scale because of competitive conditions, but for the most part the uniform basis is adhered to.

The tariff rates in so far as they involved one line hauls were found to be not unjust or unreasonable in Case No. 2087, Decision No. 15745, decided December 11, 1925, Union Rock Company vs. A.T.& S.F.Ry. et al., 27 C.R.C. 285. At the time decision was rendered defendants maintained a municipal scale of crushed rock, sand and gravel rates, applicable only when the material was consigned to or for the use of the county, state or municipal governments within the Counties of Los Angeles, Orange, Riverside and San Bernardino. This municipal scale, which was never regularly published and filed, was discontinued September 1, 1926, but while it was in use it provided these governmental agencies with rates substantially those maintained in the published tariffs of the Southern Pacific and Santa Fe in Northern California. Defendants claim that since the charges applied only to the governmental subdivisions they were special grants authorized by Section 17 (4) of the Public Utilities Act, required no filing with the Commission and were not subject to its jurisdiction. The discontinuance of the municipal scale automatically increased the rates to the basis of the tariff rates, which complainants contend was unlawful in violation of Article XII, Section 20 of the State Constitution and Section 63 of the Public

Utilities Act. The right of defendants to change this practice without first securing the Commission's authority will be disposed of later in this report.

The rates sought are those based on mileage hereafter referred to as the northern scale, maintained by the Southern Pacific and Santa Fe in Northern California, and applying uniformly to crushed rock, sand and gravel; they are for 40 miles or under, 50 cents, progressing 10 cents for the next two blocks of 10 miles each, then 10 cents for each additional block of 20 miles until the maximum limit of the scale, at 500 miles, is reached. The rates for two-line hauls are 10 cents over the single line rates.

The volume of the rock movement in Southern California is extremely heavy. During the year 1926 the total rail movement from crushers having a yearly output of 50 or more cars was 85,677 cars, or approximately 50 per cent. of the total estimated rock, sand and gravel production of 10,000,000 tons in Southern California. Practically 65 per cent. of the rail movement is to Los Angeles, either for delivery at that point or for subsequent movement to points beyond. The tonnage is handled in gondola-type cars, loaded to approximately 57 tons per car, and moves an average distance of from 32 to 34 miles. From some of the major plants to Los Angeles the movement is in train loads, but from the smaller plants and to points other than Los Angeles the tonnage is handled predominantly in local or way freights.

The larger establishments, particularly those of the Union Rock Company, have their loading and unloading facilities so arranged that tonnage may be handled with relatively little delay to the rail equipment. At the crushers of the Union Rock Company the cars are loaded and weighed by complainant, and set on the hold tracks to be segregated by defendants for movement

to their respective destinations, mainly to storage bunkers, where the unloading is accomplished by the use of endless chain buckets or clam shells and the rock subsequently distributed from the bunkers by motor truck to the ultimate point of consumption. The record shows that during the week of March 21, 1927, the average time required for the movement of 559 cars from various plants of the Union Rock Company to representative destination points, computed from the time the cars were billed until they were unloaded and released to the carriers, was 3.7 days per car. The return empty haul is conceded by both complainants and defendants to be approximately 100 per cent.

Loss and damage to the lading is practically negligible although there is a considerable amount of damage to equipment due to the use of the clam shells in unloading and also because particles of rock become lodged in the dumping mechanism and journals of the cars.

Complainants contend there is no justification for maintaining rates higher in Southern California than in Northern California, alleging that the cost of service, volume and density of traffic, and method of handling is on the whole more favorable than in Northern California and therefore the Northern California scale in Southern California is warranted.

Both complainants and defendants by different methods endeavored to secure the approximate cost of handling the rock traffic. Complainants have taken the average direct train costs (i.e. locomotive fuel, wages of enginemen and trainmen, locomotive repairs and expenses, engine-house expenses and train supplies) per 1000 gross ton miles for the handling of all commodities on the Southern Pacific, and applied these to the rock traffic moving between certain selected points. The unit cost thus

obtained is multiplied by three, this factor being the ratio the direct train costs bear to the total transportation expense, and to this result are added the federal and state taxes to determine the total transportation cost. By this method of computation the cost of service on the Southern Pacific between the points selected is generally less in Southern California than in Northern California and the net transportation revenue correspondingly greater. A similar computation made with respect to traffic via the Santa Fe showed the same situation. Obviously in obtaining these results complainants assume the cost of moving the rock traffic to be approximately the average direct cost of handling all traffic.

Defendants contend this assumption is incorrect, because the rock tonnage moves comparatively short distances, generally in local or way freight trains, and requires more terminal interchange and train handling than the average traffic, thus creating a higher unit cost per 1000 gross ton miles than the general average. The Southern Pacific during the months of January, February, July, October and November, 1926, made a cost study of 277 trains, originating at Roscoe, Wahoo, Pacoima, Hewitt, El Monte, Rivas, Crushton and McPherson in Southern California, and Eliot, Livermore, Niles, Suscol, Fair Oaks, Prattrock, Mayhews, Logan, Coyote, Lapis, Prattco, Lake Majella and Friant in Northern California, to the terminals of those trains, using actual expenses for locomotive fuel, wages for enginemen and trainmen and the average expenses for other direct train costs. An allocation was then made for the terminal expense, defendants contending that this was necessary in order to reach even an approximate cost, for 64.5 per cent. of the Southern California rock tonnage via the Southern Pacific is handled through the Los Angeles

terminal district as compared with but 43.7 per cent. of the Northern California traffic through the San Francisco and Oakland terminals. The average direct cost for this terminal service is claimed to be $3.66 per car, the composite average expense for handling revenue cars during 1925 in the major terminals of California on the lines of the Southern Pacific, Santa Fe, Los Angeles & Salt Lake Railroad, Western Pacific Railroad, and San Diego and Arizona Railway Company. Defendant then multiplies the direct line haul and terminal costs by 2.13, the ratio these expenses bear to the total transportation expenses less certain deductions not related to the rock traffic, such as loss and damage to freight, floating equipment repairs, maintenance of tunnels, subways, wharves and docks, and to this result adds the federal and state taxes to determine the total costs.

This method of computation results in a higher unit cost per 1000 gross ton mile than obtained by complainants' formula, and shows that the cost of service is greater in Southern California than in Northern California, and consequently the net transportation revenue per car considerably less than obtained by the complainants' method.

The record does not justify accepting either complainants' or defendants' cost computations as controlling, for while both used general methods they have relied extensively on certain average costs to determine the unit total cost, and in so doing have reached radically different results. For example, complainants contend the approximate cost of handling a carload of rock weighing 52.7 tons from Crushton to Los Angeles, a distance of 19.6 miles, is $10.37. The revenue received under the present rate of 60 cents is $31.62 and under the proposed rate of 50 cents, $26.35, resulting in a net transportation revenue of

$21.25 and $15.98 respectively. Under defendants' method of computation the cost of moving the same car of rock is $39.09, resulting in an actual loss of $7.47 per car under the present rate and $12.74 under the proposed rate. (This latter figure would be slightly changed by applying actual tares.) Average total costs do not reflect with any reasonable degree of accuracy the cost of handling a particular commodity, and this apparently holds true with respect to the rock traffic in Southern California.

The record substantiates complainants' claim that the volume of the rock traffic on defendants' lines in Southern California is greater than in Northern California. Measured by the tonnage originating at plants having an output of 50 or more cars per year the volume of movement by rail in the former territory during 1926, as heretofore stated was 85,677 cars and in the latter territory during the same period 65,579 cars. Likewise the traffic density in Southern California in so far as the Southern Pacific is concerned exceeds that in Northern California. With respect to the Santa Fe the density of traffic per net ton mile per mile of road is about the same in Southern and Northern California, and per gross ton per mile slightly lower in Southern California.

Complainants, by comparing the rates on petroleum and petroleum products, sugar beets, fertilizers, cement, brick, live stock, dried fruit and flour for various distances in the two territories, endeavor to show that the general level of rates in Southern California is as low as in Northern California. If the comparisons used by complainants were accepted as controlling, their contention would be sustained, but defendants have also shown certain class rates and commodity rates on dried fruits, hay and straw, flour, lumber, acid, asphaltum, canned

goods, iron, lime, paper and other selected commodities which are higher in Southern California than in Northern California. While the record shows that on some selected commodities the rates in Southern California are the same as or lower than in Northern California for comparable distances, the preponderance of evidence leads me to conclude that the general rate level in Southern California is somewhat higher than in the northern territory.

Complainants in support of the contention that the Northern California rates are reasonable for Southern California rely almost entirely on a comparison of the transportation conditions in the two territories, but in so doing obviously have assumed that the rates in Northern California are reasonable per se. Defendants contend the Northern California rates are controlled and depressed by competitive conditions not existing in Southern California, and hence should not be used as a measure for reasonable rates in the latter territory. They further claim that due to voluntary reductions the Southern California rock rates are not only as low or lower than the rock rates prescribed by the Interstate Commerce Commission or maintained by carriers in other states, but at many points are lower than the rates effective prior to June 25, 1918 would be when subject to all of the general war-time increases and reductions.

As illustrative of the latter contention, the rate on all three commodities, rock, sand and gravel, from Crushton to Los Angeles prior to June 25, 1918, was 35 cents. This rate was increased to 60 cents by General Order No. 28 of the Director General of Railroads, and further increased to 75 cents, effective August 26, 1920, by authority of this Commission in Decision No. 7983 (18 C.R.C. 646) following a similar action of the Interstate Commerce Commission in Ex Parte Order No. 74. Effective December 17, 1920, carriers voluntarily reduced the 75-cent rate to 70 cents, and on July 1, 1922, made a further reduction to 60

cents. On July 31, 1922, a further voluntary reduction to 50 cents was made in the rate on sand only.

The present rates in Southern California compare favorably with rates prescribed by the Interstate Commerce Commission for comparable distances from points in Minnesota to points in North Dakota; from points in Western Pennsylvania to destinations in Ohio, western Virginia and New York; between points in Louisiana, Arkansas, Oklahoma and Texas Common Points; between Shreveport, Louisiana and Texas Common Points; between points in Tennessee and points in Georgia and Mississippi and between Georgia and points in other states in southern territory. The Southern California rates also compare favorably with rates maintained by the major rail lines for application between points within the States of Oregon and Washington.

Below is a condensed statement compiled from defendants' exhibits comparing the rates in Southern California for distances ranging from 25 to 100 miles with those in Northern California and also with rates prescribed by the Interstate Commerce Commission or maintained by carriers in other territories for similar distances.

Rates in Cents per Ton of 2000 pounds

Miles:	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
25	60	50	50	70	70	70	60	60	70
30	70	60	50	70	70	70	60	60	70
35	70	60	50	70	70	70	70	70	80
40	80	70	50	70	70	70	70	70	80
50	80	70	60	70	80	80	80	80	90
60	90	80	70	80	80	80	80	90	100
70	90	80	80	90	90	100	90	100	120
80	100	90	80	100	90	100	90	110	130
90	100	90	90	110	100	110	100	120	140
100	100	90	90	120	100	110	100	130	140

Column 1 rates apply on rock and gravel in Southern California.
Column 2 rates apply on sand in Southern California.
Column 3 rates apply on rock, sand and gravel in Northern California.
Column 4 rates apply on sand and gravel from points in Minnesota to points in North Dakota and prescribed by the Interstate Commerce Commission in Hopeman Materials Company et al. vs. Northern Pacific Ry. et al., 98 I.C.C. 361.

Column 5 rates apply on sand and gravel from points in Western Pennsylvania to points in Ohio, West Virginia and New York, and prescribed by the Interstate Commerce Commission in Pennsylvania Sand and Gravel Producers Association et al. vs. B.& O.R.R. et al., 104 I.C.C. 717.

Column 6 rates apply on crushed rock, sand and gravel between points in Louisiana, Arkansas, Oklahoma and Texas Common Points and on sand and gravel between Shreveport, La., and Texas Common Points, prescribed by the Interstate Commerce Commission in Memphis Southwestern Investigation, 77 I.C.C. 473, and in Railroad Commission of Louisiana vs. Arkansas Harbor Terminal Railway Co., 48 I.C.C. 312.

Column 7 rates apply on sand and gravel from Montgomery, Alabama, and Chattanooga, Tennessee, to points in Georgia and Mississippi, and between points in Georgia and points in other states in Southern Territory, prescribed by the Interstate Commerce Commission on Chert, Clay, Sand and Gravel, 122 I.C.C. 133.

Column 8 rates apply on crushed rock, sand and gravel between points in Oregon and are maintained by the major rail lines in that state.

Column 9 rates apply on crushed rock, sand and gravel between points in Washington and are maintained by the major rail lines in that state.

Thus it may be seen from the above that the Northern California scale shown in Column 3 is the only one of record that provides rates consistently lower than those in Southern California, for distances corresponding to the average haul of the traffic here involved, 32 to 34 miles.

As previously stated, defendants contend the Northern California scale is depressed by reason of water competition. This competition was particularly keen in the early days and although not now so intensive at all points its influence is controlling at points adjacent to the San Francisco Bay and the navigable portions of the San Joaquin and Sacramento rivers and their tributaries. An exhibit filed by defendants shows that for the years 1925 and 1926 there were handled by vessels between points on San Francisco Bay, the San Joaquin and Sacramento rivers and their tributaries, 3,977,917 tons of rock, sand and gravel, or the equivalent of approximately 34,883 carloads per year, and

practically no crushed rock is moved into San Francisco by the rail carriers. The record in this proceeding with respect to the influence of water competition, either directly or indirectly, upon the level of the Northern California scale is substantially in accord with our finding in Union Rock Company vs. A.T. & S.F.Ry., supra, wherein Commissioner Squires, speaking for the Commission, stated:

> "The record shows that at the time the rail carriers first felt the effects of this water competition they endeavored only to establish low rates at points where the competition was active and where it was necessary to go below the normal rates in order to secure to the rail carriers a portion of the water-borne traffic. But as additional plants were opened up at inland points the carriers were forced to establish rates whereby producers at those points could reach the consuming markets in competition with shippers enjoying the water-influenced rates. Following the San Francisco fire and earthquake of 1906 an abnormal demand was created for building materials. This condition resulted in the development of many sand and gravel deposits, and in order to permit shippers at the new points to compete for San Francisco business rates were established comparable with the water-compelled rates. Thus the low basis of rates originally intended to apply only between points where there was actual water competition gradually extended to the inland points not served by water until the rates were practically uniform in Northern California. Defendants contend that the entire Northern California scale reflects either water or market competition and is manifestly less than reasonable, per se."

Complainants in Cases 2302, 2313 and 2314 admit the rates in Northern California between points touched by the navigable portions of San Francisco Bay, the San Joaquin and Sacramento rivers and their tributaries are water-compelled but they contend that in the territory where water competition is not now nor in the past was present, the rates were established voluntarily by defendants without any compelling circumstances whatsoever, and therefore the presumption of reasonableness is attached to them. It is true that in a large portion of Northern California where the scale applies there is no active water competition, but the fact remains that the scale was originally

established between the points where the competition did exist and was gradually extended inland to enable producers at those points to reach the common markets. It seems axiomatic that if the basic scale is, as complainants concede, depressed by water competition, the mere fact that the scale is extended to other points where water competition does not exist does not change its status and make it reasonable per se.

Complainants, while alleging the refusal to establish the northern scale in Southern California created an unreasonable difference in rates between localities and unduly prefers the Northern California shippers, submitted no evidence or testimony to show in what manner, if any, the maintenance of the lower scale in Northern California has been a source of undue disadvantage to them or of undue advantage to the Northern California shipper. In Union Rock Company vs. Atchison, Topeka and Santa Fe Railway, supra, the following language is employed:

> "Complainant's allegation of undue discrimination and preference is founded upon the premise that there are lower rates on crushed rock, sand and gravel in Northern California than in Southern California; but there is no showing in this record that the crushed rock, sand and gravel producers in Northern California are in commercial competition with the producers in Southern California. Mere differences in the rates on these commodities, such as exist between the two districts referred to, do not authorize the Commission to condemn one schedule as unlawful when the record fails to show that the adjustment is a source of disadvantage to one party and of advantage to the other. In this situation there is no competition between the localities, the persons or the commodities."

After a careful consideration of the testimony and exhibits of record in this proceeding, I do not find sufficient evidence to lead me to conclude that the rates here under attack are unjust or unreasonable, in violation of Section 13 of the Act, or unduly discriminatory, prejudicial or preferential in violation of Section 19 of the Act.

There now remains for consideration complainants' allegation that the discontinuance of the special depressed rates and charges granted by the defendants for municipal purposes, effective September 1, 1926, but not published in any regular tariff filed with the Railroad Commission of California, was in violation of the provisions of the State Constitution and of the Public Utilities Act. Defendants contend this action was taken under the authority conferred by Section 17 (a) Paragraph 4 of the Public Utilities Act, reading in part as follows:

> "Every common carrier subject to the provisions of this Act may transport free or at reduced rates persons or property for the United States, state, county or municipal governments or for charitable purposes or for patriotic purposes or to provide relief in cases of general epidemic, pestilence or other calamitous visitation * * * *."

The Interstate Commerce Commission has consistently held that the rates granted governmental agencies under the provisions of Section 22 of the Interstate Commerce Act, which corresponds to Section 17 (a) Paragraph 4 of our Public Utilities Act, do not have to be published and filed with the Commission, notwithstanding the mandate in Section 6 of the Federal Act, which is similar to Section 17 (a) Paragraph 1 of our Act in so far as the filing of schedules is concerned. (United States vs. A.& V. Ry. Co., 40 I.C.C. 406. I.C.C. Conference Rulings 33, 36, 208(e) and 452.) The Public Utilities Act, being modeled after the Interstate Commerce Act, should be similarly construed. (In Re Independent Sewer Pipe Co., 248 Fed. 547, 548.) In my opinion the Public Utilities Act Section 17 (a) clearly gives defendants the right to accord the governmental agencies reduced rates and to withhold them from other shippers.

The question naturally arises however whether under

the provisions of the State Constitution and the Public Utilities Act these rates could be lawfully applied without filing with the Commission, or be withdrawn after having been granted, without our authority.

Article XII, Section 20 of the Constitution provides:

> "No railroad or other transportation company shall raise any rate of charge for the transportation of freight or passengers or any charge connected therewith or incidental thereto under any circumstances whatsoever except upon a showing before the Railroad Commission provided for in this Constitution that such increase is justified * *."

A similar provision is contained in Section 63 of the Public Utilities Act.

While the prohibition in Article XII, Section 20 against increasing "any rate of charge" appears on its face to be broad and sweeping, I cannot subscribe to the view that it is intended to include the depressed rates established for the governmental agencies. I believe the precise meaning of the term "rate of charge" in Section 20 of Article XII, adopted October 10, 1911, may be determined from the language of the Railroad Commission Act approved February 10, 1911, referred to in Article XII, Section 22 of the Constitution, and which was before the Legislature at the time the constitutional amendments were considered. Section 14 of the Railroad Commission Act provided that the term rate of charges shall be deemed and held to mean and include all rates and charges for transportation. Section 15 of the same Act empowered the Commission to establish the "rates of charges", while Sections 16 and 17 provided that all "rates of charges" shall be published, filed, and be made matters of record with the Commission. Section 37 contained a general inhibition against giving free tickets, passes or free or reduced transportation rates, but provided therein a series of exceptions largely similar to those now contained in Section

17 of the Public Utilities Act, including a specific exception with respect to the "carriage free or at reduced rates of persons or property for the United States, state or municipal governments". While there was no express exemption from the ordinary requirements of the Act as to "rates of charges" granted the governmental agencies, it is of special significance to note that Section 39 of the Railroad Commission Act provided that every carrier shall "upon demand of the Commission furnish a list of all free passes and of free or reduced rates of transportation issued by such railroad or other transportation company * * *".

In view of these provisions in the Railroad Commission Act of 1911 adopted as part of the same scheme, which involved the submission to the electorate of Sections 20 and 22 of Article XII of the Constitution, it seems reasonable to conclude that the expression "rate of charge" contained in Section 20 means the regular normal tariff rate of charge for use of the general public. A reduced rate granted by carriers to the governmental agencies is not in itself a "rate of charge" as that expression is used in the Constitution and statutory provisions, but is a special grant specifically authorized by law, and under the terms of the law may be granted or withdrawn at any time and is not required to be filed with the Commission.

The rate increase complained of in these proceedings is of the character last above discussed, and under the law one that the carriers might grant at will and withdraw at their pleasure without invoking the permission of the Commission.

I recommend that the complaints be dismissed.

O R D E R

These cases having been 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 Cases 2302, 2313, 2314 and 2359 be and they are hereby dismissed.

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 15th day of October, 1928.

Leon O. Whitsell

C. Stanley

Wallace Ware

Thos. E. Lovett

W. J. Carr

Commissioners.