

Decision No. 21987.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SOUTHERN PACIFIC COMPANY, THE ATCHISON,)
TOPEKA AND SANTA FE RAILWAY COMPANY,)
LOS ANGELES & SALT LAKE RAILROAD COM-)
PANY and PACIFIC ELECTRIC RAILWAY COM-)
PANY, respectively, for order authoriz-)
ing certain restrictions in the appli-)
cation of proportional per car rates)
between Los Angeles and suburban points.)

ORIGINAL

Application No. 15813.

J. E. Lyons, A. L. Whittle, C. N. Bell and J. L. Fielding, for applicant Southern Pacific Company.
A. S. Halsted, J. P. Quigley and E. E. Bennett, for applicant Los Angeles & Salt Lake Railroad Company.
Frank Karr, C. W. Cornell and W. G. Knoche, for applicant Pacific Electric Railway Company.
E. W. Camp, Platt Kent, Berne Levy and C. K. Adams, for applicant The Atchison, Topeka and Santa Fe Railway Company.

Protestants:

L. H. Myers, B. E. Carmichael and F. W. Turcotte, for Glendale Chamber of Commerce.
C. C. Richards, B. H. Carmichael and F. W. Turcotte, for Burbank Chamber of Commerce.
Plyn C. Davis, B. E. Carmichael and F. W. Turcotte, for Alhambra Chamber of Commerce.
B. H. Carmichael and F. W. Turcotte, for Gordon, Harrison, Russell, Incorporated.
Worron Wert, B. E. Carmichael and F. W. Turcotte, for C. F. Braun & Company.
John J. McGinnis, for Gladding, McBean and Company.
E. J. Forman, for Globe Grain & Milling Company.
C. S. Connolly, for Albers Bros. Milling Company.
Geo. N. Stone, for McKeon Canning Company, Burbank.
R. R. Sense, for Union Supply Company, Burbank.

CARR, Commissioner:

O P I N I O N

This is a petition by the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company and Pacific Electric Railway Company filed under Section 63 of the Public Utilities Act seeking authority to amend individual tariffs governing proportional

per car rates applying between Los Angeles and its industrial sub-urban territory to clearly provide that the rates shall not be used in combination with one another.

The rates now in effect and those proposed are set forth in the following tabulation:

Carrier	Between	And	Present Rate:		Proposed Rate	
			Per Car	Proportional	Per Car	Per 100 lbs. Line Haul
SOUTHERN PACIFIC COMPANY	Los Angeles	Burbank	(1) \$10.00	(2)	\$10.00	(3) 4
		Sepulveda	(1) 10.00	(2)	10.00	(3) 4
	West Glen- dale	(1) 7.20	(2)	7.20	(3) 3½	
		Glendale	(1) 7.20	(2)	7.20	(3) 3½
		Industrial	(1) 4.50	(2)	4.50	(3) 3½
ALHAMBRA	(1) 7.20	(2)	7.20	(3) 3½		
	Los Angeles	Slauson	(1) 4.50	(2)	4.50	(3) 3½
Wildasin		(1) 4.50	(2)	4.50	(3) 3½	
LOS AN- GELES & SALT LAKE RAILROAD COMPANY	Los Angeles	Forest Lawn	(1) 4.50	(2)	4.50	(3) 3½
		Clifford	(1) 4.50	(2)	4.50	(3) 3½
		Spur	(1) 4.50	(2)	4.50	(3) 3½
		Dotson Spur	(1) 4.50	(2)	4.50	(3) 3½
PACIFIC ELECTRIC RAILWAY COMPANY	Los Angeles	Florence Ave	(1) 7.20	(2)	7.20	---
		West Alham- bra	(1) 7.20	(2)	7.20	(3) 3½
		Wingfoot	(1) 7.20	(2)	7.20	----

Note (1) Applies only as a proportional rate on shipments originating at or destined to points beyond Los Angeles via the publishing carriers or via foreign lines.

Note (2) Applies only when incidental to local or foreign line haul to or from Los Angeles. Does not apply in connection with other proportional per car rates. The charges provided in this item are in addition to the minimum charge of \$15.00 per car provided in Rule 13 of Current Western Classification.

Note (3) Freight regardless of classification, carloads, minimum \$15.00 per car.

(These notes are not the exact language of the individual applications but are illustrative of the situation.)

Protestants in the proceeding were the Glendale Chamber of Commerce, Burbank Chamber of Commerce, Alhambra Chamber

of Commerce, Gordon, Harrison, Russell, Incorporated, C. F. Braun & Company, Gladding, McBean & Company, Globe Grain & Milling Company, Albers Bros. Milling Company, McKeon Canning Company, and Union Supply Company.

Public hearings were held at Los Angeles August 6, 7 and 23, 1929, and briefs having been duly filed on December 16, the proceeding is now ready for an opinion and order.

There will be no changes in the volume of the proportional rates; the distinction between the present and the proposed application of the rates is as demonstrated by the language of Notes 1 and 2. Under the tariffs as now applied the total charge from one suburban station to another is the combination of the two proportional rates. A concrete illustration of the situation is found in a movement from Burbank to Alhambra, where now the proportional rate from Burbank to Los Angeles is \$10.00 and from Los Angeles to Alhambra \$7.20, a total of \$17.20. Under the proposed tariffs the charge would be the proportional rate Burbank to Los Angeles of \$10.00 plus a line haul charge Los Angeles to Alhambra of $3\frac{1}{2}$ cents per 100 pounds, subject to the line haul minimum of \$15.00, or a total minimum charge of \$25.00 as contrasted with \$17.20 by use of the present proportional rates.

Applicants contend the proportional rates were designed for through movements in connection with bona fide line haul services and were published to assist and encourage industries to locate in the Los Angeles suburban districts such as Burbank, Glendale, Alhambra, Slauson, Wingfoot, etc., which points are just outside of the Los Angeles switching limits as defined in the different tariffs. The rates, it is alleged, were never intended to apply between two industrial suburbs but were for use between main line points beyond the suburban territory in movements through Los Angeles to one of these suburban points. They

were first established in the year 1924 and until May 1926 were applied in accordance with the practice that a proportional rate is nothing more or less than the division of a through rate and could not be used in combination with another proportional rate. The change in the application of the tariffs was the result of an overcharge claim based on a technical interpretation of the literal language of the tariffs.

As shown by applicants' Exhibit No. 5, the distance between Los Angeles and the suburban points will vary, dependent upon the location of the industrial track within the Los Angeles switching limits from which the car moves. As illustrative, the distance via the Southern Pacific from Los Angeles River Station, the main freight depot, to Alhambra is 7.5 miles, while from an extreme point within the switching limits to Alhambra the distance is 14.8 miles, from Los Angeles River Depot to Burbank it is 9.7 miles, and from an extreme point 19.3 miles. The same is true as to the other suburban points. An average of the total of the long and short hauls between the six suburban points through Los Angeles would result in approximately 12 miles.

The charges within the Los Angeles switching limits of the Southern Pacific are from 34 cents a ton, minimum \$7.20, to 70 cents a ton, minimum \$15.00. These charges are the outgrowth of this Commission's Decision No. 8960, Application No. 6390 (19 C.R.C. 856). The latter charge is for a maximum distance of approximately 12 miles and for a 60,000 lb. carload would result in a charge of \$21.00, which charge is defeated by use of the combination of two proportional rates.

Protestants showed by their testimony that manufacturing plants had developed and new ones had been established during the past few years which made continual use of the proportional rates and that these would be injured if the charges were

materially increased. They presented no exhibits and in their comparison of rates relied entirely upon oral testimony. The exhibits of applicants set forth many commodity rates between community manufacturing points in both Northern and Southern California, but these rates are in the main for different hauls than here involved, and most of those in the northern part of the state were forced by water competition, therefore are not controlling in this situation.

The charges against strictly main line traffic are not disturbed by this adjustment, and where no specific commodity or class rates are published the proportional rates will continue to apply. The real gravamen of this application is the fact that the proportional rates as now employed not only practically set aside all local rates between Los Angeles and the suburban points but also if held as maximum would manifestly break down some of the switching charges within the Los Angeles switching limits, which latter charges were established by this Commission as just and reasonable (Application 6390, 19 C.R.C. 856, supra).

In an early decision, No. 573, Case No. 362, April 13, 1913 (2 C.R.C. 607-609), Commissioner Eshleman said:

"I am not at all in sympathy with the practice of carriers in putting tortured construction upon a tariff provision so that the same may yield them more revenue, and I certainly am no more in sympathy with the same practice when indulged in by shippers with a view to securing less rates. Tariffs should be clear and unambiguous, and when there is an ambiguity by reason of which a shipper has suffered, the carrier being responsible for the ambiguity should certainly be required to sustain the loss, but where, as here, the shipper shows no loss whatsoever and the construction sought is contrary to the plain intent of the tariff, I think such shipper should have no standing before this Commission."

In the instant proceeding it is clear the railroads never intended that these proportional rates should be applied

in connection with each other. On the other hand the carriers' delay in seeking their correction has been of such undue length as to destroy any particular equity in their position. Shippers have come to rely upon these rates, which should not be suddenly changed or changed in a way which would unduly disturb the business built up in part at least in reliance upon their continuance.

There has been a fairly constant movement of carload shipments of oil, clay and grains between these suburban points, also between Los Angeles and these suburban points. Under the present interpretation of the tariffs a carload of grain weighing 80,000 pounds moving from Wingfoot to Burbank would be assessed a charge of \$17.20, made up of the two proportional rates, \$7.20 Wingfoot to Los Angeles and \$10.00 Los Angeles to Burbank. By the proposed adjustment this charge would be raised to \$39.20, made up of the proportional rate \$7.20 Wingfoot to Los Angeles, plus a charge of 4 cents per 100 pounds Los Angeles to Burbank, or \$32.00, an increase of approximately 128 per cent. Shipments of oil now move from Los Angeles to Glendale on the combination of proportional rates, with a minimum of \$15.00. These under the carriers' proposal would be increased to \$37.00 for a car weighing 98,000 pounds, the charge being made up of 3½ cents Los Angeles to Glendale, plus \$2.70 the switching charge at Los Angeles, a total increase of approximately 147 per cent. The proposed charge on the oil would also be in violation of the State Constitution and Section 24(a) of the Public Utilities Act by reason of being slightly higher than the commodity rate plus the proposed rate from El Segundo through Los Angeles to Glendale, of \$36.60.

The burden of proof rests upon the carriers to justify the proposed increases in their tariffs. As to the commodi-

ties now being moved under the combination of proportional rates, they have not in my opinion justified the striking increases proposed by them.

While this Commission may have the authority in such a proceeding as this to establish appropriate and reasonable tariffs to remedy the present situation (which should be remedied) and at the same time to prevent such a large increase in charges as here proposed being imposed upon the shippers, I am of the opinion that the Commission should decline to enter upon this course. After a careful consideration of tonnage movements between the points and industries involved the carriers should be able to offer commodity rates, reasonable as to amount, which this Commission could authorize.

I recommend the following form of order:

O R D E R

This application 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 contained in the preceding opinion,

IT IS HEREBY ORDERED that the above entitled proceeding 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 7th day of January, 1930.

Thos D. Lott
C. L. Lamm
Ernest J. ...
Leon ...
M. J. ...
Commissioners.