JLA

Decision No. 22670.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, CENTRAL CALIFORNIA TRACTION COMPANY, LOS ANGELES & SALT LAKE RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, THE WESTERN PACIFIC RAILROAD COMPANY, PACIFIC ELECTRIC RAILWAY COMPANY, VISALIA ELECTRIC RAILROAD COMPANY, SACRAMENTO NORTHERN RAILWAY, NORTHWESTERN PACIFIC RAILROAD COMPANY and SAN DIEGO AND ARIZONA RAILWAY COMPANY, for relief under the long and short haul provision of Section 24(a) of the Public Utilities Act.

ORIGINAL

Application No. 16179.

E. E. Bennett, L. N. Bradshaw, G. E. Duffy, H. H. McElroy and R. E. Wedekind, for applicants.
Seth Mann, for San Francisco Chamber of Commerce, protestant.
E. G. Wilcox, for Oakland Chamber of Commerce, protestant.
G. H. Whitney, R. P. McCarty and E. J. Forman, for Globe Grain and Milling Company, protestant.
R. S. Sawyer, for Associated Jobbers and Manufacturers, protestant.
Robert Hutcherson and W. E. Murphey, for Associated Oil Company, protestant.
B. H. Carmichael, G. A. Olson, J. P. Quigley and F. W. Turcotte, for Carmichael Traffic Corporation and members of their Association, protestants.
J. A. McNair and B. W. Max, for the Texas Company.
E. W. Hollingsworth, for Pacific Coast Aggregates.
A. Larsson and E. L. Howland, for Larsson Traffic Service.
Carl R. Schulz and Max B. Schulz, for Outsen Brothers and Consolidated Milling Company.
R. P. McCarthy, for Phillips Milling Company and J. H. Baxter and Company.
H. H. Sanborn for Union Lumber Company, and H. E. Sanborn and N. E. Keller for Pacific Portland Cement Company.

BY THE COMMISSION:

O P I N I O N

This is an application filed by F. W. Gomph, as Agent for and on behalf of The Atchison, Topeka and Santa Fe Railway Company, Central California Traction Company, Los Angeles and

Salt Lake Railroad Company, Southern Pacific Company, The Western Pacific Railroad Company, Pacific Electric Railway Company, Visalia Electric Railroad Company, Sacramento Northern Railway, Northwestern Pacific Railroad Company and San Diego & Arizona Railway Company for authority to depart from the long and short haul provisions of Section 24(a) of the Public Utilities Act by continuing the practice of absorbing connecting line switching charges on competitive traffic without absorbing similar charges on non-competitive traffic.

Public hearings were held before Examiner Geary at Los Angeles on March 6, 1930 and at San Francisco on March 10, 1930, and the application having been submitted and briefs filed is now ready for an opinion and order.

For nearly 20 years applicants have been absorbing the connecting lines' switching charges on competitive traffic, while not absorbing these charges on non-competitive traffic. This practice was first established about 1911 following the decision of the Interstate Commerce Commission in Associated Jobbers of Los Angeles vs. Southern Pacific Company, 18 I.C.C. 310, requiring The Atchison, Topeka and Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company and Southern Pacific Company to perform the switching service from or to industry tracks when such service was incidental to a system line haul, but at the same time approving a charge of $2.50 per car (now $2.70 per car) when the switching service was incidental to a line haul by a foreign carrier. The decision of the Commission was upheld by the Supreme Court of the United States in Interstate Commerce Commission vs. Atchison, Topeka and Santa Fe Railway Company, 234 U.S. 294. Prior to the Associated Jobbers case the carriers exacted a switching charge of $2.50 per car in addition to the line haul rate on all

traffic originating at or destined to industry tracks, whether incidental to its system or to a foreign line haul. The decision created a competitive situation not theretofore existing, for if two or more lines served the same points of origin and destination a shipper whose industry was located on the rails of only one carrier, either at point of origin or destination, could avoid terminal switching charges by using that carrier exclusively for the line haul service. Thus the competing carrier or carriers in order to obtain the line haul from shippers not located on their rails were forced to absorb the switching charges of the carrier reaching the industry. At many of the intermediate points this competitive condition does not exist and as to these points no absorption of the switching charges is made. The absorption on traffic where the competition exists creates departures from the long and short haul provisions of the State Constitution and of Section 24(a) of the Act where the line haul rates from the point where the absorption is made, and from the intermediate point where it is not made, to a common destination, are the same or substantially the same.

The Interstate Commerce Commission by its Fourth Section Order No. 5 of March 20, 1911, granted a blanket authority to all interstate carriers to continue the practice or to establish rules for absorbing switching charges at competitive points without observing the long and short haul provision of Section 4 of the Interstate Commerce Act at the intermediate points. In the order granting the relief it was stated:

> "The practice of absorbing switching charges from competitive and not from non-competitive stations is a very general one, from which much benefit and little complaint results."

This Commission did not issue any similar order, and applicants are apparently in doubt as to whether or not the

specific authorizations granted since 1911 in the Case 214 series, 10 C.R.C. 354, 368, 387, 396, 403 or subsequent orders, are sufficiently broad to cover the long and short haul departures brought about by the absorption of the switching charges at the competitive points.

Applicants define competitive traffic in their individual terminal tariffs as:

> " * * * * Traffic which at time of shipment may be handled at equal rates (exclusive of switching charge) from same point of origin to same destination via other carriers one of which performs the switching service."

Non-competitive traffic is defined in the tariffs as:

> " * * * * Traffic other than that described as competitive traffic * * *. "

It is obvious that the purpose of these definitions is to equalize the total charge on shipments moving from and to competitive points. Carrier competition has long been recognized as a proper justification for maintaining charges between competitive points lower than from or to the intermediate non-competitive points provided there is a substantial difference in conditions existing at the more distant points justifying the lower charges.

Protestants apparently have no objection to the principle of absorbing switching charges at competitive points when actual conditions warrant, although they take the position that relief can only be given in special cases and after an investigation to determine in each and every instance whether the rates at the intermediate points are reasonable. They contend this is not a special case but is a request for a flexible blanket authority which will permit of departures from the long and short haul statutory requirements without specific authority in each situation.

Apparently protestants' latter contention rests upon a

misunderstanding of the precise issues raised by this proceeding. The application merely seeks authority to continue to absorb the switching charges at the competitive points and not to absorb at the intermediate points where the carrier competition does not exist. Obviously the only justification for the practice is the competition between the carriers, and if the same competition actually exists at the intermediate points there would be no justification for granting any relief from the long and short haul provisions of the statute and the Constitution.

The present tariff provisions in some instances authorize the absorption of the switching charges at the more distant points when actually the same competition from a practical standpoint exists at points intermediate which because of a strict interpretation of the tariff are classified as non-competitive. For example, crushed rock from an industry on the Southern Pacific at Livermore to an industry on the Western Pacific at San Francisco would be competitive, for the Western Pacific serves both Livermore and San Francisco at the same line haul rates as in effect by the Southern Pacific; but if the shipment originated at Eliot on the Southern Pacific, an intermediate point between Livermore and San Francisco, and was destined to a Western Pacific industry track at San Francisco, the switching charge would not be absorbed because there is no station by the name of Eliot on the Western Pacific, although the tracks of the two lines at Eliot are 120 feet apart. There are no track connections between these carriers at either Livermore or Eliot. As a practical matter Eliot is as much a competitive point as Livermore (Coast Rock and Gravel Co. vs. Southern Pacific Company et al., 28 C.R.C. 549). If the Western Pacific should elect to amend its tariffs by considering Eliot a station on its line, it would immediately become a

competitive point, even though no physical change in the existing operating facilities were made.

There was attached to the application an exhibit representative of the charges and rates applicants desire to maintain, and there was testimony of witnesses for applicants explanatory of typical situations throughout the state. As heretofore stated, the practice of absorbing switching charges has been in effect for almost 20 years. We believe the relief here sought is a special case, illustrative of the innumerable situations existing within the State of California, and that the application and record fully comply with the requirements of the long and short haul provision of Section 24(a) of the Public Utilities Act, for the purpose of determining whether or not applicants are justified in creating a discrimination not to exceed $2.70 per car against intermediate points by absorbing the switching charges at the more distant points to meet carrier competition.

After investigation and careful consideration of this record we are of the opinion and so find that applicants should be relieved from the long and short haul provisions of Section 24(a) of the Public Utilities Act, as requested in the application, for the purpose of meeting competition at the more distant points provided the same competition does not exist at the intermediate points, and to this extent the application will be granted.

O R D E R

F. W. Comph as Agent for and on behalf of The Atchison, Topeka and Santa Fe Railway Company, Central California Traction Company, Los Angeles and Salt Lake Railroad Company, Southern Pacific Company, The Western Pacific Railroad Company, Pacific Electric Railway Company, Visalia Electric Railroad Company,

Sacramento Northern Railway, Northwestern Pacific Railroad Company and San Diego & Arizona Railway Company, having applied to this Commission for an order granting relief from the provisions of Section 24(a) of the Public Utilities Act, and for authority to continue to absorb connecting lines' switching charges at competitive points while not absorbing connecting lines' switching charges at non-competitive points; hearings having been held and the Commission being fully apprised in the premises, 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 the application of F. W. Comph as Agent for and on behalf of The Atchison, Topeka and Santa Fe Railway Company, Central California Traction Company, Los Angeles and Salt Lake Railroad Company, Southern Pacific Company, The Western Pacific Railroad Company, Pacific Electric Railway Company, Visalia Electric Railroad Company, Sacramento Northern Railway, Northwestern Pacific Railroad Company and San Diego & Arizona Railway Company, be and it is hereby granted to the extent set forth in the opinion which precedes this order.

Dated at San Francisco, California, this 11th day of July, 1930.

C. C. Leary

Edwin O. Edgerton

Leon O. Whitsell

Thos. S. Lovett

Commissioners.