

Decision No. 23205.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Suspension by the Commission on its own motion of Item 48 of Supplement No. 6 to Northwestern Pacific Railroad Company Terminal Tariff No. 4-E, C.R.C. No. 343.

Case No. 2926.

In the Matter of the Suspension by the Commission on its own Motion of the following: Item 2198 of Supplement 20 to Atchison, Topeka and Santa Fe Railway Tariff 8117-M, C.R.C. 629; Item 26 (5th revised page 5) of Central California Traction Company's Tariff 15, C.R.C. 46; Item 96 (1st revised page 7-1) of Los Angeles & Salt Lake Railroad Company's Tariff 200-E, C.R.C. 289; Item 54 (7th revised page 6) of Pacific Electric Railway Company's Tariff 2-C, C.R.C. 294; Item 75 (4th revised page 4) of Sacramento Northern Railway Company's Tariff 3-C, C.R.C. 53; Item 72 (6th revised page 6) of Sacramento Northern Railway Company's Tariff 5-2, C.R.C. 24; Item 47 (10th revised page 4) of San Diego and Arizona Railway Company's Tariff 3-B, C.R.C. 69; Item 138 (8th revised page 14) of Southern Pacific Company's Terminal Tariff 230-J, C.R.C. 3183; Item 161 (10th revised page 9) of Western Pacific Railroad Company's Tariff 35-J, C.R.C. 245.

ORIGINAL

Case No. 2944.

- James E. Lyons, for respondents Southern Pacific Company and Northwestern Pacific Railroad Company.
 Berne Levy, for respondent The Atchison, Topeka and Santa Fe Railway Company.
 Frank Kerr and R. E. Wedekind, for respondent Pacific Electric Railway Company.
 E. E. Bennett, for respondent Los Angeles & Salt Lake Railroad Company.
 L. N. Bradshaw, for respondent The Western Pacific Railroad Company.
 Carl I. Schulz, for Consolidated Milling Company, Thompson Brothers and Poultry Producers of Central California.
 J. E. McCurdy, for Poultry Producers of Central California.
 C. S. Connolly, for protestant Albers Bros. Milling Company.
 E. W. Hollingsworth, R. T. Boyd and Bishop & Ehler, for Pacific Coast Aggregates, Incorporated.

BY THE COMMISSION:

O P I N I O N

Case 2926 is an investigation on the Commission's own motion to determine the lawfulness of Item 4B of Supplement No. 6 to Northwestern Pacific Railroad Company Terminal Tariff No. 4-H, C.R.C. 343. This item was published to become effective September 23, 1930, but the Commission by its suspension order of September 25, 1930, postponed the effective date thereof until January 25, 1931.

Subsequent to the publication of this item The Atchison, Topeka and Santa Fe Railway Company, Central California Traction Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Sacramento Northern Railway, San Diego & Arizona Railway Company, Southern Pacific Company and The Western Pacific Railroad Company published similar items in their terminal tariffs, to become effective on or about November 1, 1930. Upon complaint from interested shippers these items were suspended until February 14, 1931, by our order of October 21, 1930, in Case No. 2944.

A public hearing was held before Examiner Geary at San Francisco November 21, 1930, and the cases submitted. By stipulation both proceedings were heard upon a common record and will be disposed of in one decision.

The items under suspension were published in substantially the same form by all respondents. The item in the Southern Pacific Terminal Tariff is illustrative:

"Under provisions of this tariff, the Southern Pacific Company (Pacific Lines), absorbs the switching charges of connecting carriers on competitive traffic (See Item No. 10 Series), but does not absorb such charges on non-competitive traffic (see Item No. 20 Series). This creates departures from the terms of the Constitution and Section 24(a) of the Public Utilities Act which are permitted by Order of the Railroad Commission of the State of California in Decision No. 22670, dated July 11, 1930."

The cause for the protest against the above item is that it incorrectly purports to be published in compliance with our Decision No. 22670 in Application 16179. The Commission by Decision No. 22670 authorized respondents to depart from the long and short haul provisions of Section 24(a) of the Public Utilities Act where such departures were created by their practice of absorbing the connecting line's switching charge of \$2.70 per car at competitive points while not absorbing that charge at intermediate noncompetitive points, "provided the same competition does not exist at the intermediate points". The Commission however did not authorize all long and short haul departures which may be created by a literal interpretation of the terms "competitive traffic" in Item 10 and "noncompetitive traffic" in Item 20 of respondent's terminal tariff.

Respondents at the hearing stated that although in their opinion the item is in substantial compliance with Decision 22670, they are willing either to cancel the rule and carry reference to the Commission's decision on the title page in general terms, or to publish the following item in lieu of the one under suspension:

"Under provisions of this tariff the Southern Pacific Company (Pacific Lines) absorbs the switching charges of connecting carriers on competitive traffic (see Item No. 10-Series), but does not absorb such charges on noncompetitive traffic (see Item No. 20-Series). This creates departures from the terms of the constitution and Section 24(a) of the Public Utilities Act which are permitted to the extent indicated in and by the order of the Railroad Commission of the State of California in Decision No. 22670 dated July 11, 1930."

The difference between the proposed item and the one under suspension is the addition of the underscored words. Protestants stated that if such item were published they would withdraw their protest. The proposed item if substituted for the suspended item will remove the cause for suspension.

After consideration of all the facts of record we are of the opinion and so find that the present items under suspension are not in compliance with the Commission's Decision No. 22670 in Application 16179 and should be cancelled without prejudice to the publication of items substantially the same as the item shown above.

O R D E R

These proceedings 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 preceding opinion,

IT IS HEREBY ORDERED that respondent in Case No. 2926, Northwestern Pacific Railroad Company, be and it is hereby ordered to cancel on or before January 25, 1931, Item 48 of Supplement No. 6 to Northwestern Pacific Terminal Tariff 4-H, C.R.C. 343, without prejudice to the publication of an item reading as follows:

"Under provisions of this tariff the Northwestern Pacific Railroad Company absorbs the switching charges of connecting carriers on competitive traffic (see Item No. 10-Series), but does not absorb such charges on noncompetitive traffic (see Item No. 20-Series). This creates departures from the terms of the constitution and Section 24(a) of the Public Utilities Act which are permitted to the extent indicated in and by the order of the Railroad Commission of the State of California in Decision No. 22670 dated July 11, 1930, and 24(a)-2572 dated August 25, 1930."

IT IS HEREBY FURTHER ORDERED that respondents in Case No. 2944: The Atchison, Topeka and Santa Fe Railway Company, Central California Traction Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Sacramento Northern Railway, San Diego & Arizona Railway Company, Southern Pacific Company and The Western Pacific Railroad Company, be and they are hereby ordered to cancel on or before January 25, 1931, the

following: Item 2198 of Supplement 20 to Atchison, Topeka and Santa Fe Railway Tariff 8117-M, C.R.C. 629; Item 26 (5th revised page 5) of Central California Traction Company's Tariff 15, C.R.C. 46; Item 96 (1st revised page 7-1) of Los Angeles & Salt Lake Railroad Company's Tariff 200-E, C.R.C. 289; Item 54 (7th revised page 6) of Pacific Electric Railway Company's Tariff 2-G, C.R.C. 294; Item 75 (4th revised page 4) of Sacramento Northern Railway's Tariff 3-C, C.R.C. 53; Item 72 (6th revised page 6) of Sacramento Northern Railway's Tariff 5-E, C.R.C. 24; Item 47 (10th revised page 4) of San Diego & Arizona Railway Company's Tariff 3-B, C.R.C. 69; Item 138 (8th revised page 14) of Southern Pacific Company's Terminal Tariff 230-J, C.R.C. 3185; and Item 161 (10th revised page 9) of The Western Pacific Railroad Company's Tariff 35-J, C.R.C. 245, without prejudice to the publication of an item reading substantially as follows:

"Under provisions of this tariff the (name of carrier) absorbs the switching charges of connecting carriers on competitive traffic (see Item No. 10-Series), but does not absorb such charges on noncompetitive traffic (see Item No. 20-Series). This creates departures from the terms of the constitution and Section 24(a) of the Public Utilities Act which are permitted to the extent indicated in and by the order of the Railroad Commission of the State of California in Decision No. 22670 dated July 11, 1930."

IT IS HEREBY FURTHER ORDERED that our orders of suspension in the above entitled proceedings be and they are hereby vacated and set aside as of January 25, 1931, and these proceedings be and they are hereby discontinued.

Dated at San Francisco, California, this 23rd day of

December, 1930.

Q. Deaver
Wm. J. Hill
Leon Whiskey
Wm. J. Hill
Wm. J. Hill
Commissioners.