

ORIGINAL

Decision No. 24382

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of Increase )  
In Freight Rates and Charges ) Application No. 17536  
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Alameda Belt Line Railroad,  
Amador Central Railroad,  
Arcata & Mad River Railroad,  
Atchison, Topeka and Santa Fe Railway Co.,  
Bay Point and Clayton Railroad,  
Bucksport & Elk River Railroad,  
Camino, Placerville & Lake Tahoe Railroad,  
Central Railroad,  
California Western Railway & Navigation Co.,  
Central California Traction Company,  
Delta Finance Company, Ltd.,  
Diamond & Caldor Railway,  
Fresno Traction Company,  
Harbor Terminal Railroad,  
Holton Inter-Urban Railway,  
Howard Terminal Railway,  
Humboldt Northern Railway,  
Indian Valley Railroad,  
Key System, Ltd.,  
Los Angeles & Salt Lake Railroad,  
Los Angeles Junction Railway,  
McCloud River Railroad,  
Minarets & Western Ry.,  
Modesto & Empire Traction Co.,  
Nevada County Narrow Gauge Railroad,  
Northwestern Pacific Railroad,  
Outer Harbor Terminal Railway,  
Pacific Coast Railway,  
Pacific Electric Railway,  
Peninsular Railway,  
Petaluma & Santa Rosa Railroad,  
Quincy Railroad,  
San Diego Electric Railway,  
San Francisco, Napa & Calistoga Ry.,  
San Joaquin and Eastern Railway,  
Sacramento Northern Railway,  
San Diego and Arizona Railway,  
Santa Maria Valley Railroad,  
Sierra Railway of California,  
Southern Pacific Company,

Stockton, Terminal and Eastern Ry.,  
Sunset Railway Company,  
South San Francisco Belt Railroad,  
Tidewater Southern Railway,  
Tonopah & Tidewater Railroad,  
Trona Railway,  
Ventura County Railway,  
Visalia Electric Railroad,  
Western Pacific Railroad,  
Yosemite Valley Railroad,  
Yreka Railroad Co.,  
East Bay Street Railway,  
California Shasta & Eastern Railroad.

BY THE COMMISSION:

O P I N I O N

On June 17, 1931, carriers by railroad and by water throughout the country, subject to the jurisdiction of the Interstate Commerce Commission, filed with that commission an application seeking authority to make a general increase of fifteen per cent in their all-rail and rail-water interstate and international freight rates and charges. (Ex Parte No. 103 In the Matter of Increases in Freight Rates and Charges) Shortly thereafter, and as a part of the carrier program, applications were filed with the state regulatory commissions throughout the country seeking authority to increase intrastate rates of the steam carriers operating in the respective states. Such an application was filed

with this Commission on July 15, 1931. (Application No. 17536  
In the Matter of Increases in Freight Rates and Charges)

The Interstate Commerce Commission promptly invited the various state regulatory commissions to participate in the consideration of the application under the co-operative plan contemplated under Section 13(3) of the Interstate Commerce Act. Most of the state commissions accepted the invitation and selected from their number eight representatives, two from the Western group and two from the Mountain Pacific group. Commissioner Carr of this Commission was one of the representatives thus chosen by the states. These commissioners sat with the Interstate Commerce Commission at the hearings and during the oral argument and participated in the deliberations of the Interstate Commerce Commission preceding its decision of October 16, 1931.

The Interstate Commerce Commission conducted extensive hearings throughout the country, sessions being held at Washington, D.C., Portland, Me., Atlanta, Ga., Dallas, Tex., Kansas City, Mo., Portland, Oreg., San Francisco, Calif., Salt Lake City, Utah, and Chicago, Ill. The carriers urged that their application be treated as a revenue proceeding and not as a rate proceeding and limited their testimony to the revenue issue. No evidence as to the reasonableness of particular rates was presented by the carriers. By its decision of October 16, 1931, (178 I.C.C. 539) modified and supplemented by its decision of December 5, 1931, (179 I.C.C. 215) the Interstate Commerce Commission denied the application

of the carriers for a fifteen per cent increase and authorized in lieu thereof certain small increases on existing charges. The increases authorized were limited to a period ending March 31, 1933, and their continuation thereafter made dependent upon conditions then existing.

It was estimated that the increases authorized "will produce between one hundred million and one hundred twenty five million dollars increased revenue on the basis of present traffic if applied both to state and interstate. This should cover deficiencies in interest on fixed interest obligations and a substantial balance left over". The commission further stated in its decision of October 16, 1931: "We do not find that we are justified on this record to attempt, by a rate increase, to protect the margin of one and one-half times fixed charges set by the New York law. To provide so far as practicable that actual interest charges be met is justified." Certainly no effort was made to fix rates designed to yield a fair return to the carriers. This was obviously impossible under existing economic conditions and was so recognized by the carriers. The avowed object of the commission in the issuance of its order was to temporarily assist the carriers in the maintenance of their credit and to thus avert receiverships, which otherwise appeared to be inevitable. As a condition to the commission's order of October 16, 1931, the carriers were required to pool the sums derived from the application of the rate increases authorized for the purpose of assisting the weaker roads, which otherwise would default in their interest charges. The carriers were directed to evolve a plan for effecting these results. The Commission, however, in its supplemental order of December 5, 1931, modified its former order and relieved the carriers

from the necessity of complying with the pooling plan therein described. In this regard the supplemental decision stated:

"For the reasons above set forth, and because we desire to act promptly in this proceeding, in accordance with the duties imposed and the authority conferred upon us by the interstate commerce act, and avoid delays which will be injurious to the general public, including the carriers, we hereby modify our original report to the extent of relieving the carriers from the necessity of complying with the pooling plan therein described. This will leave them free to apply in the premises their own loaning plan, but, since use of the latter plan will not be pooling, within the meaning of that term as used in section 5(1) of the interstate commerce act, and because loans by and between common carriers, as such, have not been included within the jurisdiction conferred upon us by Congress, we neither approve nor disapprove either the loaning plan or the agency the carriers say they expect and intend to use in making that plan effective. However, we rely on them to apply the funds to be derived from the authorized increases in rates in aid of financially weak railroads in accordance with the purposes expressed in our original report and in the instant application pursuant thereto and the arguments thereon presented."

Pursuant to the above statement, the carriers have evolved and put into effect their own plan providing for a pooling of the increases to be used in the financial assistance of the weaker lines. The plan is outlined at length in said order. For the purposes of this report, it is sufficient to note that the plan calls for the formation of a corporation to be known as The Railroad Credit Corporation, to be organized under the laws of Delaware, for the purpose of collecting, receiving, and administering the fund derived from the rate increases authorized. The participants to the plan are obliged to turn over to the corporation, within specified times, the gross revenue received from the rate increases, subject to a right of refund for any tax payments because of such receipt. The corporation is to use the fund "to prevent, so far as practicable, defaults by railroad companies in their fixed charges" and to this end loans will be made to the weaker roads. No loan is to be made to a carrier

"which is able to meet its fixed charges from its earnings, other income or other resources," or which, "with the aid of the loan from the corporation, would still be unable to meet its fixed charges or to avoid a default", or which has not complied with its obligations relative to payments to the fund. In determining the amount of the deficiencies in the earning of an applicant and the necessity for making it a loan, "the amount actually expended for maintenance (but not the amount charged to operating expenses on account of depreciation and retirements) in the period from July 1, 1930 to June 30, 1931, shall be used as the maximum of its maintenance charges, unless in the discretion of the corporation a different period should in a special case be justified". Interest is to be charged "at the then current rediscount rate of the Federal Reserve Bank in the New York District", such rate to be adjusted quarterly. The loan is to fall due at such time as may be agreed upon, not exceeding two years, but may be renewed for an additional period of not exceeding two years, at the discretion of the corporation. In making loans the corporation shall take as security the best available collateral, including, if required by the corporation, the pledge of the amounts due or to become due an applicant on distribution of the fund to the participating carriers. The corporation is given discretion, however, "in the case of any important public interest", to relax these security requirements. The corporation is required under the plan to make monthly reports to the Interstate Commerce Commission of its receipts, loans and disbursements, together with a summary of its current financial condition.

The increases authorized by the Interstate Commerce Commission were made effective on January 4, 1932.

To make fully effective the relief granted by the Interstate Commerce Commission, certain rail carriers operating in California filed with this Commission, on January 4, 1932, a supplemental petition in Application 17536 asking that authority be granted for the increasing of intrastate rates to the same extent as authorized by the orders of the Interstate Commerce Commission above mentioned. In their supplemental petition the carriers allege that such increases in intrastate rates are necessary in order to prevent and avoid undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate commerce. As exhibits to the said supplemental petition the carriers have filed with this Commission the two decisions of the Interstate Commerce Commission in Ex Parte 103, above referred to, copy of the contract by and between the carriers participating in the plan known as the "Marshalling and Distributing Plan of 1931" with each other and with The Railroad Credit Corporation, summary of direct testimony and exhibits submitted on behalf of the carriers by Julius H. Parmlee, Director Bureau of Railroad Economics, dated July 15, 1931, copy of master tariff of emergency charges filed with the Interstate Commerce Commission, effective January 4, 1932, and copies of three supplemental orders of the Interstate Commerce Commission issued in Ex Parte 103, dated December 24, 1931. These supplemental orders grant to the carriers fourth section relief, waive certain tariff rules and reconcile certain outstanding commission orders with the new rates authorized. In their petition to this Commission the carriers also request general relief from the Commission's rules relative to the publication of tariffs and

from the provisions of Section 24(a) of the Public Utilities Act to protect any departures incidental to the establishment of the proposed increases and further that the Commission modify all outstanding orders made effective or not, authorizing or prescribing rates and charges to the extent necessary to permit the proposed increases to be applied.

In connection with their supplemental petition the carriers tender in support thereof the record before the Interstate Commerce Commission, copy of the transcript of which has already been furnished to this Commission, and ask that consideration be given to the individual, annual and monthly reports of operations of the several railroads subject to the jurisdiction of this Commission.

It appears that no useful purpose could be accomplished by holding hearings on this supplemental petition of the carriers in view of their distressed financial condition. On the other hand, considerable delay would be occasioned by such procedure, which would tend to postpone the benefits expected to flow from the orders of the Interstate Commerce Commission.

In view of the decisions of the Interstate Commerce Commission in the premises and the record made in the course of the proceedings, this Commission is of the opinion that the requested relief should be granted without delay. It should be emphasized that the carriers submit their supplemental petition as a revenue proceeding and not as a rate proceeding and this Commission so regards it. We are not called upon to pass upon the reasonableness of any individual rates and do not do so. From a revenue standpoint, however, we find that the schedules of increases proposed, as heretofore authorized by the Interstate Commerce Commission, are justified.



The carriers will be authorized to file and make effective upon ~~ten~~ day's notice, the proposed schedule of rates, subject to certain conditions. It will be necessary that our order provide that all outstanding unexpired orders of the Commission, whether or not effective upon the date of this order, authorizing or prescribing rates and charges which have or have not been published at the date of this order, and all outstanding suspension orders, be modified to the extent necessary to permit the increases herein authorized to be applied to the rates and charges authorized or prescribed in or maintained or held by virtue of such outstanding orders. It will also be necessary to grant general relief from the provisions of Section 24(a) of the Public Utilities Act, and thus authorize departures incidental to the establishment of the increases herein authorized.

It will be understood that any shipper or group of shippers may properly challenge the reasonableness or lawfulness of any individual increases herein authorized by complaint and in the usual manner, should such increases be regarded as unreasonable or in any other manner unlawful. The carriers before accepting the benefits of this order, and before filing the rates authorized herein will be required to agree that they will never urge before this Commission, in any reparation proceeding under Section 71 of the Public Utilities Act, or in any other proceeding, that the opinion and order herein has found that any individual rate authorized is reasonable.

The increases herein authorized, like the increases authorized by the Interstate Commerce Commission, will be for a period limited to March 31, 1933, and their continuation thereafter will be dependent upon conditions then existing.

O R D E R

Application having been made to the Railroad Commission of the State of California by the steam carriers hereinabove named for an order authorizing the increasing of intrastate freight rates in harmony with the increases authorized by the Interstate Commerce Commission in its Docket Ex Parte 103, decided October 16, 1931 (178 I. C.C. 539), as modified and supplemented by its decision of December 5, 1931 (179 I. C. C. 215), all of which is set forth in the amended petition in the above matter (Application 17536), and the Commission being fully advised in the premises, hereby finds as a fact that the amended petition should be granted. Basing our order on this finding of fact and on the further findings contained in the opinion which precedes this order;

IT IS HEREBY ORDERED that the application should be and the same is hereby granted and that the applicants above named are hereby authorized to establish increased rates in harmony with the increases authorized by the Interstate Commerce Commission in its Docket Ex Parte 103, decided October 16, 1931, as modified and supplemented by its decision of December 5, 1931, the said rates to be established within thirty days from the date of this order, and only for a period ending March 31, 1933, unless their continuation thereafter be ordered by this Commission.

IT IS HEREBY FURTHER ORDERED that the carriers affected by this order are hereby authorized to publish rates and charges in accordance with this order, which may be in violation of Section 21, Article XII of the California Constitution and of Section 24(a) of the Public Utilities Act.

IT IS HEREBY FURTHER ORDERED that the rates authorized

herein may be published on ten day's notice in a blanket supplement to all tariffs. Such supplement may be similar in character or the same as authorized by the Interstate Commerce Commission. The said carriers and their duly authorized agents in the publication of the proposed tariffs of emergency charges are further authorized to do so without regard to the terms of Rules 2(d), 4(i), 10(a), 10(e), 10(g), and 12(a) of Tariff Circular No. 2 of this Commission, and as expiring of March 31, 1933, unless sooner cancelled or extended.

IT IS HEREBY FURTHER ORDERED that all outstanding unexpired orders of this Commission whether or not effective upon the date of this order authorizing or prescribing rates and charges which have or have not been published at the date of this order, and all outstanding suspension orders, be, and they are hereby, modified to the extent necessary to permit the increases herein authorized to be applied to the rates and charges authorized or prescribed or maintained or held by virtue of said outstanding orders; but that in all other respects said orders shall remain in full force and effect.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the express condition that no carrier to this proceeding will ever urge before this Commission, in any proceeding under Section 71 of the Public Utilities Act, or in any other proceeding, that the opinion or order herein constitutes a finding of fact of reasonableness of any particular rate; and the filing of rates pursuant to the authority herein granted will be construed as consent by the respective carriers

to this condition.

Dated at San Francisco, California, this 11<sup>th</sup>  
day of January 1932.

C. C. Seaver  
Leon Culbertson  
M. A. Cunniff  
M. B. Lewis  
James G. Stewart  
Commissioners