

Decision No. 24914.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

**ORIGINAL**

In the Matter of the Application of )  
 PACIFIC ELECTRIC RAILWAY COMPANY, a )  
 corporation, to increase certain )  
 rates under Section 63 of the Public )  
 Utilities Act. )

Application No. 17373.

R. E. Wedekind, for applicant.

F. W. Turcotte and E. H. Carmichael, for Long Beach  
 Chamber of Commerce, Stewart Curtis Packers, Inc.,  
 and Pan-Pacific Oil Company, Incorporated.

Charles A. Bland, James R. Collins and C. E. Barry,  
 for Board of Harbor Commissioners of Long Beach.

T. T. C. Gregory, for Pacific Dock and Terminal Company.

Albert P. Green, for the J. H. Baxter Company of Long  
 Beach.

Harry Naeve, for the Patten & Davies Lumber Company.

BY THE COMMISSION:

O P I N I O N

This is an application by the Pacific Electric Railway Company under Section 63 of the Public Utilities Act for authority to cancel from its Terminal Tariff 2-G, C.R.C. 294, Item 712-B, the rate of \$3.60 per car for switching carload freight at Long Beach between Municipal Wharf at Slips 4 and 5, Channel No. 3, and industry tracks or wharves within switching limits applicable on freight transported on the high seas to or from points beyond the Port of Long Beach and received from or

delivered to ocean carriers at the Port of Long Beach. The applicable rate after cancellation will be 34 cents per ton or 2000 pounds minimum charge \$7.20 per car published in Item 600-A of the same tariff.

A public hearing was held before Examiner Geary at Long Beach and the application submitted.

The rate proposed to be cancelled was first established on September 19, 1911, at \$2.50 per car. Subsequently this rate was increased, first on December 9, 1918 to \$3.00 and again on August 26, 1926, to \$4.00, and on July 1, 1922 was reduced to the present charge of \$3.60 per car. Effective February 20, 1926 this rate was cancelled under authority of this Commission No. 63-5412 of November 14, 1925 upon representation that it was a so-called dead rate, no traffic having moved under the rate for a period of more than one year, but was reinstated effective April 5, 1926 following protests from interested parties and has remained in effect since that time.

In support of the proposed increase applicant contends that cancellation of the \$3.60 rate will have the effect of equalizing the charges at Long Beach with the charges at Los Angeles Harbor, San Diego, San Francisco and other stations on its line and will also have the effect of making the same charge apply at Long Beach at municipal wharves or at industry tracks as now applies at Long Beach between wharves other than municipal wharves and/or industry tracks within the switching limits.

It appears that on October 2, 1911 the Los Angeles Dock and Terminal Company deeded to the Pacific Electric Railway Company certain parcels of land at Long Beach in return for which the Pacific Electric Railway Company was to switch cars between the land of the terminal company and points within a

radius of one (1) mile at a rate of \$2.50 per car. The Pacific Dock and Terminal Company and others claiming to be grantees of lands of the Los Angeles Dock and Terminal Company protest the proposed increase in the switching rate on the ground that it is in violation of the terms of the deed mentioned and also of a contract alleged to have been entered into between the parties containing like provision but which was not offered in evidence in this application. Counsel for applicant objected to the deed being received in evidence on the ground that the interpretation of the agreement or deed is without the jurisdiction of this Commission and rests solely with the courts and on the further ground that any right which the Los Angeles Dock and Terminal Company or its successors may have had is barred by the statute of limitations.

By exhibit applicant shows the standard minimum intra-terminal switching charges applicable on the major rail carriers' principal stations in California generally to be 34 cents per ton, minimum charge \$7.20 per car, or the same as proposed to be established at Long Beach. Protestants on the other hand introduced a series of exhibits showing charges lower than the claimed standard for various selected classes of switching service at different points in California. They direct particular attention to the charges assessed by belt lines, examples of which are, the charge exacted by the State Belt Railroad in San Francisco for switching loaded freight cars between any two points on the State Belt Railroad, the charge of the Los Angeles Junction Railway Company in Los Angeles for switching freight carloads from industries to interchange tracks with connecting lines when destined to industries within Los Angeles, and other like charges. Applicant however points out that in the case of

the State Belt a car rental charge is assessed in addition to the charge for switching. It is noted that the movement of freight under a charge of \$3.60 per car by the Los Angeles Junction Railway Company applies only when the connecting line furnishes the equipment to the Los Angeles Junction Railway, which it appears is usually the case. The majority of the items reproduced by protestants are applicable only in cases where there has been a previous rail haul and where equipment used is not furnished by the delivering line. There are, however, some few exceptions. The Harbor Belt Railroad serving Los Angeles Harbor publishes a charge of \$3.60 per car for movement of freight, carload, between wharves within switching limits of East San Pedro zone and the tracks in the open storage lots of the Crescent Wharf and Warehouse Company; a like charge is published between the Belt Line interchange tracks with Outer Harbor Terminal Railway Company and industry tracks or wharves within switching limits of San Pedro zone, and also a \$3.60 per car charge within the switching limits of the Outer Harbor Railway. By Application No. 17826, filed December 1, 1931, the Harbor Belt Railroad sought authority to cancel the East San Pedro and San Pedro charge of \$3.60 and to permit the charge of 34 cents, minimum of \$7.20, to apply. These changes were denied by an order issued today upon a finding that as to the particular East San Pedro service competition between shippers justified a deviation from the standard charge and a continuation of the \$3.60 per car rate, and as to the San Pedro charge it was authorized to be cancelled contingent upon publication of a through rate.

Statement submitted in evidence by the Harbor Department of the City of Long Beach shows that for the twelve months' period November 1, 1930 to October 31, 1931, 132 inbound and

1131 outbound cars were handled to and from the Municipal Docks. Witness for one of the industries located in the Harbor area testified that during 1930 350 cars of box shock were handled from the Municipal Docks to its plant under the \$3.60 rate, all of which originated in the State of Washington. It is contended by protestants that while the strictly intrastate movement under the \$3.60 rate has been comparatively light during the past few years, that with the additional steamship service offered as the harbor develops, a greater use of this rate is anticipated.

As heretofore stated, the rate had its inception September 19, 1911, when first published at \$2.50. It became \$3.60 by force of the war-time adjustments, and effective January 28, 1932, subsequent to the filing of this application, became \$3.96, the last change being the result of an emergency increase of 10% granted to all railroads in the United States.

The rate sought to be cancelled applies only in connection with freight to or from ocean carriers and to a certain extent must create consequential tonnage to the Pacific Electric Railway Company. The standard charge at Long Beach for movements between depot, industry and wharf tracks within switching limits is 34 cents, minimum \$7.20, and the charge of \$3.60 per car (now \$3.96) sought to be cancelled is a deviation from this charge. However there are other deviations at Long Beach: Item 610 of \$3.60 from interchange tracks to industry or wharf tracks when originating within switching limits or connecting lines at same station, and a charge of \$2.70, Item No. 710, when freight originates at or is destined to points beyond Long Beach via other lines.

No testimony was presented to show the costs of performing the switching service at Long Beach, where the

maximum distance of the haul is approximately 1 3/4 miles.

We have often recognized the principle that a rate long maintained such as here involved is evidence that it is fairly reasonable, and our conclusions have always placed the burden upon applicants or showing that the proposed increased rate would be just and reasonable.

On this record we must find that applicant has failed to sustain that burden. The application will be dismissed.

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 and the conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that this application be and it is hereby dismissed.

Dated at San Francisco, California, this 27<sup>th</sup> day of June, 1932.

C. Seamy  
Leon Wherry

M. A. Cunn

W. B. Cunn

Fred G. Stewart  
Commissioners.