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Decision No. 25100.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of F. W. COMPH, Agent for and on behalf of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY et al., for relief under the Long and Short Haul Provision of Section 24(a) of the Public Utilities Act.	Application No. 16179. (First and second supplemental requests for changes in original Opinion and Order.)

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. McCarthy and E. J. Forman, for Globe Grain and Milling Company, protestant.
R. S. Sawyer, for Associated Jobbers and Manufacturers, protestant.
Robert Hutcherson and W. H. 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, Incorporated.
A. Larsson and H. 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. H. Sanborn and N. E. Keller for Pacific Portland Cement Company.

BY THE COMMISSION:

OPINION ON FIRST AND SECOND SUPPLEMENTAL APPLICATIONS

The Commission on July 11, 1930, by its first Decision, No. 22670, in this application (35 C.R.C. 46) authorized

the petitioning carriers, 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, to depart from the long and short haul provisions of the State Constitution and 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 at the intermediate points. A petition for rehearing was filed by the Larsson Traffic Service on behalf of protestants and was denied August 8, 1930, in Decision No. 22777. By the First Supplemental Application and as amended Agent F. W. Gomph prays that all reference to the situation at Eliot be stricken from the opinion, and that every intermediate station intended to be excepted from the order be definitely named. By the Second Supplemental Application long and short haul relief similar to that granted to the ten trunk lines, common carrier railroads in the original proceeding, is sought on behalf of the common carriers named on second added page "I" of Consolidated Freight Classification No. 6, C.R.C. No. 465. The list embraces practically all railroads and steamship or boat lines within the State of California. These common carriers, participating as they do in local and through transportation, must also have proper authorization to contravene the State Constitution and the Public Utilities Act.

A public hearing having been held at San Francisco before Examiner Geary and the proceedings having been duly submitted, they are now ready for an opinion and order.

The testimony submitted in support of and in opposition

to the supplemental applications was not materially different from that considered in our decision of July 11, 1930. In our former opinion and order we authorized the ten applicants to continue the violations, and among other things made the following finding:

> "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 provisions 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."

A review of our previous actions in long and short haul violation proceedings clearly shows that since October 16, 1911, this Commission has authorized the relief where sufficient justification has been presented (Case 214-A, 10 C.R.C. 354 and related cases).

Upon this enlarged record we are of the opinion and find that the circumstances and conditions controlling the absorption of switching charges at competitive points which do not exist at non-competitive points justify the granting of these supplemental applications, and the authorization given in the original order will be extended to the additional carriers.

We will now discuss that portion of our former opinion dealing with and illustrating the Eliot situation to which exceptions have been taken. It is fundamental that railroads have the prerogative when the adjustment is devoid of unlawful discrimina-

tion to absorb switching charges on traffic from competitive points and at the same time decline to absorb similar charges from non-competitive intermediate stations where the same influences do not control. This record shows that the main track arrangements and the absence of any station facilities by the Western Pacific at Eliot place that community in the rank of a non-competitive point as defined in the carrier's tariffs and therefore the station on the Southern Pacific is not entitled to the absorption allowance.

The language in the decision objected to is merely illustrative of a general situation and could be applied to a great many communities other than Eliot. It may be that the force of present-day truck competition where cross-country hauling is possible will make it necessary for rail carriers to change their future absorption policies, but there is nothing in this record to sanction an order by this Commission requiring the adjustment to be made.

The criticism as to the Eliot discussion has merit and our decision and order entered herein on July 11, 1930, will be amended, eliminating the objectionable paragraph.

O R D E R

F. W. Gomph as Agent for and on behalf of the certain common carriers named in Added Page "I" of applicant's Tariff C.R.C. No. 465 (Consolidated Freight Classification No. 6), 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 applicants herein be and they are hereby authorized to depart from the long and short haul provisions of Section 24(a) of the Public Utilities Act where such departures are created by the absorption of connecting line switching charges on competitive traffic as defined in applicants' tariffs, while not absorbing switching charges on non-competitive traffic as defined in carriers' tariffs.

IT IS HEREBY FURTHER ORDERED that the opinion heretofore entered in this proceeding on July 11, 1930, be and it is hereby amended by striking therefrom the following paragraph:

> "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."

IT IS HEREBY FURTHER ORDERED that the aforesaid order

of July 11, 1930, as hereinabove amended, shall continue in full force and effect.

Dated at San Francisco, California, this 29th day of August, 1932.

On Leave
Leon O. Whitsell
Will A. Carr
Wm. M. Bijou
Fred E. Woolwine
Commissioners