

ORIGINALDecision No. 25143.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension by the
 Commission on its own motion of Item No.
 175 appearing in PACIFIC MOTOR TRANSPORT
 COMPANY Local Express Tariff 1-C, C.R.C.
 No. 6, naming rates on Commodities, Gen-
 eral Specials, between Los Angeles and
 points in the Imperial Valley.

Case No. 3233.

C. W. Cornell and A. Burton Mason, for Pacific
 Motor Transport Company.

Reginald L. Vaughan, for Motor Freight Terminal
 Company.

H. J. Bischoff, for Motor Service Express.

Edward Stern, for Railway Express Agency, Incor-
 porated, interested party.

WEIRSELL, Commissioner:

O P I N I O N

This is a proceeding instituted by the Commission on its own motion to determine the propriety of a rate of 45 cents published in Item 175 of Pacific Motor Transport Company Local Express Tariff No. 1-C, C.R.C. No. 6, to apply on "Commodities, General Specials", transported between Los Angeles and Niland, Calipatria, Westmoreland, Brawley, Imperial, El Centro, Holtville, Calexico and intermediate points. The rate was proposed to become effective April 24, 1932, but was suspended upon protest of competing common carriers alleging that it was unreasonable, non-compensatory and otherwise unlawful.

Public hearings were held at Los Angeles May 10, 11, 26 and 27 and July 6 and 7, 1932, followed by oral argument August 6 before the Commission en banc, on which latter date the matter was submitted.

The rate was protested by the Motor Freight Terminal Company, which likewise operates between Los Angeles and the Imperial Valley points heretofore enumerated and by the Motor Service Express operating between Los Angeles and Coachella Valley points. The Coachella Valley is intermediate to Los Angeles and the Imperial Valley.

Throughout this decision rates are stated in cents per 100 pounds. A list of the items included in the description "Commodities, General Specials" is contained on pages 4-A to 4-H inclusive of the tariff. It includes substantially all articles of commerce moving between the points involved.

In March 1931 respondents published a rate of 55 cents applying on substantially the same commodities and between the same points as the 45-cent rate here involved. As in the instant proceeding the reduction was protested and the rate suspended pending an investigation. Before a decision had been rendered in the matter the suspended rate was withdrawn. The 45-cent rate was thereupon published.

The 45-cent rate includes a pickup and delivery service. At the time it was established the tariff provided that an allowance of $2\frac{1}{2}$ cents would be made if shipments were delivered to, picked up at, or delivered to and picked up at respondents' depots. The tariff was subsequently amended to provide for an allowance of 5 cents if shipments were delivered to, and a like allowance if picked up at, the depot.

In order to expedite its service respondent Pacific

Motor Transport Company in March 1932 substituted for the freight cars theretofore operated three baggage cars which it transports on passenger trains. This enables it to make first morning delivery and thus to compete with the other carriers operating in this territory.

Respondents publish class rates of \$1.13, 96, 79 and 68 cents (first, second, third and fourth classes respectively) between Los Angeles and Holtville and Calexico. Lower rates are maintained at the intermediate points. These rates are governed by Monroe's Freight Classification C.R.C. No. 7, or the current Western Classification. Monroe's Classification lists over 10,000 articles of commerce and includes those on which the suspended rate applies. Respondents' class rates, as well as a large number of specific commodity rates, will be entirely nullified if the rate here under suspension is permitted to go into effect. Thus a single rate having no regard for the volume of the movement or the characteristics of the commodity shipped, not only would break down the rate structure now in effect between the points directly affected but also between points beyond Los Angeles and the Imperial Valley.

The class rates of the Southern Pacific Company between Los Angeles and the Imperial Valley points (except in instances where the Pacific Motor Transport Company's rates apply as maxima) have been in effect since 1923. They are based upon the scale of rates prescribed by the Interstate Commerce Commission for application between Arizona and California in Docket 14999, Arizona Corporation Commission vs. Arizona Eastern Railroad, 113 I.C.C. 52, and were published as a compromise adjustment following our decision in Board of Supervisors of Imperial County vs. Southern Pacific Co., 22 C.R.C. 93. In San Pedro Chamber of Commerce

vs. A.T. & S.F. Ry., 34 C.R.C. 341, we prescribed the Docket 14999 class rates for application between Los Angeles Harbor and points east of Los Angeles. Thus there is a strong presumption of reasonableness attached to the present class rates of the Southern Pacific Company between Los Angeles and the Imperial Valley. If then the Southern Pacific depot-to-depot rates are reasonable, it must obviously follow that the proposed rates of the Transport Company, so materially lower than the Southern Pacific rates for the same or a greater service, are less than reasonable.

Respondents made no effort to show that shipments moving under the suspended rate would bear their full share of the cost of the service but contended that the rate would secure added traffic not now moving over their lines and was fully justified if it bore slightly more than the full amount of the added cost. They based their case largely on Exhibit No. 2, which is a compilation showing the difference in cost between transporting the present tonnage in freight and in baggage cars and extending these figures for varying tonnages which it is hoped might be developed. The fallacy of this theory is well illustrated by protestants' Exhibit No. 21, wherein the procedure has been reversed by going from the more expensive to the less expensive service and showing that under this method an amount in excess of the total cost might be saved.

Respondent's District Freight Agent at El Centro testified that he has personally interviewed between 400 and 500 shippers and receivers of freight located throughout the Imperial Valley, and that it was his conclusion based on these interviews that respondents had lost a substantial amount of tonnage because of a rate disadvantage. He found that shipments were moved by unregulated carriers at rates ranging from 15 to 85 cents. He

further concluded that the proposed rate, coupled with an improved service, would secure a substantial amount of tonnage. This was corroborated by respondents' City Freight Agent at Los Angeles.

From the testimony of shipper witnesses called both by respondents and by protestants it appears that the proposed rate will not attract an appreciable volume of shipments moving in substantial quantities but that it would be used for hauling small lots or when other means of transportation were not readily available. Several of them shipping high grade commodities testified that they would use the rate, but upon further examination admitted that they would likewise ship via respondents' lines if a substantially higher rate were established.

Protestants likewise canvassed a large number of shippers and receivers of freight, including many of those interviewed by respondents. To a large extent their testimony was contradictory to that of respondents' witnesses. It seems clear from this record however that the proposed rate is too high to attract a large amount of traffic moving in substantial quantities; that it is lower than necessary to move certain high grade commodities, and that it will secure little traffic that is not now moving via respondents' lines or via the lines of protestants. To what extent respondents' revenue would be reduced by the application of the proposed rate to the traffic it now hauls the record does not show.

Respondents have the inherent right to inaugurate rates to meet competition over which they have no control so long as the rates established are not so low as to burden other traffic or to threaten the extinction of legitimate competition. The record is not convincing however that the proposed rates would not be a burden on other traffic nor that they would be successful in meeting the competition of the unregulated carriers, which now handle approximately 90% of the tonnage from and to the points involved at rates materially lower than the proposed rate. On the other hand it

is strongly contended that they would impair not only the service of the protestants but would threaten the financial existence of the Motor Freight Terminal Company.

Respondents probably have knowledge of the precise methods of operation employed by the unregulated carriers, the general description of which, as shown in the record, raises a grave doubt as to their legal status. If they are in fact common carriers operating between fixed termini and over a regular route without having obtained certificates of public convenience and necessity, respondents should lay the matter before the Commission rather than attempt to divert the traffic by establishing subnormal rates which will disrupt long established rate structures. The conclusion is unescapable that if respondents were successful in augmenting their tonnage, the bulk thereof would be taken from protestants, provided of course that they did not elect to meet the reduced rate.

In my opinion respondents have failed to justify the proposed rate. The Commission should require its cancellation. I recommend the following form of order:

O R D E R

This case 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 respondents Pacific Motor Transport Company, Southern Pacific Company, Pacific Electric Railway Company and Holton Inter-Urban Railway Company, be and they are hereby ordered and directed to cancel on or before September 5, 1932, on not less than one day's notice to the Commission and to the public Item 175 of Pacific Motor Transport Company

Local Express Tariff 1-C, C.R.C. No. 6.

For all other purposes the effective date of this order shall be twenty (20) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day
September
of ~~1932~~, 1932.

Al Seaver
Leon Whalley

Fred G. Stewart
Commissioners.

I dissent.

There are involved in this case the Southern Pacific and Pacific Motor Transport, which are really one, two certificated truck companies and a multitude of unregulated truck operators some of whom may be legally operating as contract carriers but the majority of whom are in all probability operating illegally.

The railroad company and the certificated truck companies are compelled to maintain their service, their schedules and their rates whether they have nothing, little or much to carry. The unregulated carriers come and go as they please, carry what they please and change their rates as they please. Under this set-up it has come about that the unregulated carriers are transporting 90% of the tonnage at rates, of course, much less than the superannuated rates of the railroad company which had their origin in 1923.

The respondent has improved its service to the point where it is probably more convenient and desirable than that of the competing unregulated trucks. It now desires to make rates which in its judgment will gain back some of the tonnage which it has lost to them.

The main opinion questions this judgment and takes the position that the rates are not low enough to gain back the lost business and in the same breath declares that they must be less than reasonable because they are materially lower than rates established in 1923.

From the evidence in this case it cannot be said that the proposed rates would be a burden on other traffic.

We have here a highly competitive condition. The companies under the jurisdiction of this Commission have lost practically all of their business. What they have left is hardly

worth fighting for. The respondent by giving improved service and greatly reducing its rates, hopes to get back some of its lost business. Certainly this is all to the public's advantage.

The Commission should, in such a case as this, extend to the regulated carriers all the freedom of action which the law permits. Even then the respondent will be at a tremendous disadvantage as a regulated carrier in an unregulated field. It is better that it should suffer in using its own judgment than that it should be strangled by the imposing of orders by this Commission which would deny to it the right to meet existing competition.

W. B. Harris

COMMISSIONER

I, also, dissent from the order suspending permanently the proposed 45-cent rate for Los Angeles-Imperial Valley traffic.

Striking changes taking place in the field of transportation make former methods of transportation, rate levels and rate forms largely obsolete and out of harmony with present-day conditions. Ninety per cent of the business between Los Angeles and Imperial Valley has been taken over by unregulated trucks. The rail carrier and its subsidiary have improved their service and now propose (a) to reduce substantially their rate level and (b) to change radically their form of rate, in an effort to regain some part of this business.

This they should be permitted to do.

If the proposed rate is not low enough to attract the business, presumably the management will reduce it further or abandon the effort. If, by lowered rates, the business is secured in any considerable volume, other traffic will not be burdened by such reduced rates.

As to the form of rate proposed breaking down the railroad's rate structure, the answer is that this structure is crumbling under the stress of present-day competition, and public authority should not prevent management from recognizing actuality and turning to a type of rate calculated to draw the traffic now moving in startlingly large volume by other means of transportation.


Commissioner.