

Decision No. 1206

In the matter of the application of the ATCHISON, TOPEKA & SANTA FE RAILWAY, Coast Lines, and the MODESTO & EMPIRE TRACTION COMPANY, for authority to increase the rates for the transportation of Live Stock, in carloads, between Modesto and San Francisco, Oakland and Stockton via the lines of the applicants.

Application No. 91

- APPEARANCES -

P. P. Hastings, for Atchison, Topeka & Santa Fe Railway, Coast Lines, and Modesto & Empire Traction Company:

C. D. Squires, for Southern Pacific Company:

R. A. Cahlon, for Wm. Taaffe & Company:

LOVELAND, Commissioner:

O P I N I O N.

This is an application, under Section 63 of the Public Utilities Act, for an order granting authority to increase the joint rates charged and maintained for the transportation of live stock, carloads, between Modesto and San Francisco, Oakland and Stockton via the lines of the Modesto & Empire Traction Company, and the Atchison, Topeka & Santa Fe Railway, Coast Lines. The present rates on this traffic are class rates and the applicants desire to establish specific commodity rates thereon, higher than such class rates.

The joint rates maintained between points on the lines of the Modesto & Empire Traction Company and points on the line of the Atchison, Topeka & Santa Fe Railway, Coast Lines, were established in compliance with an order of this Commission in Case No. 235, Modesto & Empire Traction Company vs Atchison, Topeka & Santa Fe Railway Company, and the applicants allege that in complying with the order of the Commission in publishing the rates found to be just and reasonable by it, they had inadvertently failed to publish specific rates on live stock, in carloads, and thereby remove the application of the class rates on this traffic, which would have been permissible, for the reason

that this Commission in Case No. 225, E. J. McCullough vs Southern Pacific Company, held that the specific publication of commodity rates on live stock, in carloads, removed the application of the class rates thereon regardless of the alternate provisions of Rule 7-A of the Commission's Tariff Circular, for the reason that the provisions of the Exception Sheet, governing this traffic, providing Class "B" rating on live stock when commodity rates were not otherwise provided, had the effect of making the commodity rates, when published, the only rates on live stock, and that therefore there could be no alternate application of class or commodity rates on this traffic.

The applicants also allege that the fact that the local live stock rates of the Southern Pacific Company from Modesto to San Francisco, Oakland and Stockton, and the local live stock rates of the Atchison, Topeka & Santa Fe Railway, Coast Lines, from Empire to San Francisco, Oakland and Stockton are higher than the joint rates on live stock from Modesto to San Francisco, Oakland and Stockton, via Empire, indicates conclusively that it was through inadvertence that joint rates as high, at least, as the local rates of the Southern Pacific Company from Modesto and the Atchison, Topeka & Santa Fe Railway, Coast Lines, from Empire to San Francisco, Oakland and Stockton were not established. The present rates, the applicants allege, bring about a violation of Long and Short Haul provision of the Constitution and the Public Utilities Act, in that a lower charge is made for the transportation of live stock from Modesto, through Empire, to San Francisco, Oakland and Stockton, than is made for the transportation of live stock, in carloads, from Empire to the same points of destination, which was not contemplated or desired.

While the statements of the applicants appear to be correct, in the main, the fact should not be overlooked that the Commission in Case 235, Modesto & Empire Traction Company vs the Atchison, Topeka & Santa Fe Railway, in providing a basis for joint carload rates between points on the Modesto & Empire Traction Company and the Atchison, Topeka & Santa Fe Railway,

Coast Lines, limited such rates to a sum equal to 75% of the local rates of the Atchison, Topeka & Santa Fe Railway, Coast Lines, from Empire to the point involved, plus the local rate of the Modesto & Empire Traction Company, and while this basis, if employed, to make the rates on live stock from Modesto to San Francisco, Oakland and Stockton would have brought about higher rates than the present rates applying on such traffic, it would not have resulted in rates equal to the local rates of the Southern Pacific Company on this traffic from Modesto or the local rates of the Atchison, Topeka & Santa Fe Railway, Coast Lines, on this traffic from Empire to San Francisco, Oakland and Stockton. However, the rates on live stock from Modesto to San Francisco, Oakland and Stockton, via Empire, were not specially before the Commission in Case No. 235, Modesto & Empire Traction Company vs Atchison, Topeka & Santa Fe Railway, Coast Lines, the principal traffic under consideration being merchandise and such other traffic, as generally moves under class rates, and from the fact that the effect of the order would have been to reduce the local rates of the Atchison, Topeka & Santa Fe Railway, Coast Lines, on live stock, in carloads, from Empire to San Francisco, Oakland and Stockton, which were not involved in the proceeding, I conclude that the order was not meant to apply to live stock.

The applicants, as a further justification for the increase in rates, contend that inasmuch as the Atchison, Topeka & Santa Fe Railway, Coast Lines, is required to furnish all the empty equipment for joint shipments from Modesto, which is transported empty from Empire to Modesto for loading with the out-bound joint shipments, and being a two-line movement, that the service is more expensive than in the case of the local haul from Empire to San Francisco, Oakland and Stockton and that applicants are entitled to a rate at least as great as the local rate from Empire to San Francisco, Oakland and Stockton, which has not been found to be unreasonable, to which some merit must be attached.

Although notice of the hearing of this application was given wide distribution and sent directly to the shippers of live stock in the territory involved, no protests were received as to the proposed increases and but one shipper of live stock was represented at the hearing, from which I conclude that there is no substantial objection to the change proposed by the applicants.

In view of all of these facts I am of the opinion that the application of the carrier should be granted on the showing that it was through inadvertence that special commodity rates were not published on live stock between Modesto and San Francisco, Oakland and Stockton at the time the other <sup>joint</sup> rates were published, and in consideration of the facts that the Commission did not have specially before it the rates on live stock when it entered its order in Case No. 235, Modesto & Empire Traction Company vs the Atchison, Topeka & Santa Fe Railway, Coast Lines, and that the local rates of the Southern Pacific Company on live stock from Modesto and the local rates of the Atchison, Topeka & Santa Fe Railway, Coast Lines, from Empire to San Francisco, Oakland and Stockton are in excess of the present joint rates maintained by the applicants; the final determination of the question of the reasonableness of these charges to be reserved until such a time as the rates are questioned by interested parties, or the Commission on its own motion institutes an investigation thereinto.

I therefore submit the following form of order.

#### O R D E R

Application having been made by the Atchison, Topeka & Santa Fe Railway, Coast Lines, and the Modesto & Empire Traction Company for authority, under the provisions of Section 63 of the Public Utilities Act, to increase the joint rates on live stock, carloads, between Modesto and San Francisco, Oakland and Stockton, applying via said lines and a hearing thereon having been held and it appearing that the application should be granted

for the reasons in opinion hereinbefore stated;

IT IS THEREFORE ORDERED that the Atchison, Topeka & Santa Fe Railway, Coast Lines, and the Modesto & Empire Traction Company, be and they are hereby authorized to increase the present rates for the transportation of live stock in cars 30-foot in length and establish the following rates:

<u>BETWEEN</u> <u>MODESTO</u> <u>AND</u>	<u>Horses</u> <u>Mules</u> <u>Barros</u>	<u>Cattle</u>	<u>Sheep</u> <u>Hogs</u> <u>Goats</u>
----- RATES PER 30-FOOT CAR -----			
San Francisco	\$28.50	\$28.50	\$23.50
Oakland	\$25.00	\$25.00	\$21.00
Stockton	\$12.00	\$12.00	\$10.00

AND IT IS FURTHER ORDERED that said rates be made effective twenty days after filing tariffs containing same.

The Commission does not hereby approve the rates established under the authority of this order, reserving its decision as to the reasonableness of the rates for future determination.

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 16th day of January, 1914.

John W. Buchanan  
W. D. Leland  
Mar. Thelen  
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Commissioners.