

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA

ORIGINAL

Decision No. 1997

In the matter of the application of)
THE PACIFIC CAR DEMURRAGE BUREAU to)
make certain changes in Order No. 2)
of the Railroad Commission of the) Application
State of California prescribing uni-) No. 907
form rules for demurrage and recipro-)
cal demurrage for the broad-gauge rail-)
roads under its jurisdiction.)

In the matter of prescribing uniform)
rules for demurrage for standard-gauge)
railroads subject to the jurisdiction) Case No. 554
of the Railroad Commission of the)
State of California.)

E. E. Mote for Pacific Car Demurrage Bureau.
George D. Squires and Henley C. Booth for
Southern Pacific Company.
E. W. Camp for Atchison, Topeka & Santa Fe Railway.
A. P. Matthew for Western Pacific Railway.
Wm. R. Wheeler and Seth Mann for the Traffic Bureau
of the San Francisco Chamber of Commerce.
Chas. Clifford for Oakland Chamber of Commerce.
H. E. Woolner for Los Angeles Grain Exchange.
J. A. Keller for Cement, Tolenas & Tidewater Railroad.

LOVELAND, Commissioner.

O P I N I O N

This proceeding is to inquire into the efficiency of the demurrage rules prescribed by this Commission for standard-gauge railroads, subject to its jurisdiction, in its General Order No. 2, of March 28, 1911, and which became effective on May 1, 1911, and has since remained in effect substantially as originally promulgated. The proceeding arose in the following manner:

On October 16, 1913, E. E. Mote, Manager of the Pacific Car Demurrage Bureau, on behalf of the carriers that are members of that bureau, filed with this Commission an application reciting that the operation of the rules for the months since their adoption had developed some defects and injustices in their requirements and prayed that certain changes be made in Rule 12 with a view to eliminating the requirements or regulations which had proved burdensome

and unfair to the carrier and of no particular benefit to the shippers. Thereafter, the Commission instituted on its own motion Case No. 554 for the purpose of broadening the proceeding so as to permit the consideration of the efficiency of each and every rule of the demurrage order instead of only one or two rules and enable such a revision of any or all rules as might appear necessary from the evidence, complaints having been filed by shippers from time to time since the adoption of the order that certain provisions thereof cast an undue burden upon them. These matters were heard at the same time and at the hearing each rule was taken up and separately discussed in connection with any proposed changes therein and evidence thereon submitted, and in this opinion the rules will each be considered in their order and in connection with the evidence relating thereto.

**RULE I. DAYS NOT COUNTED IN COMPUTING FREE TIME
AND DEMURRAGE.**

In computing the time which is allowed carriers for furnishing cars and shippers for loading and unloading the same, no account will be taken of Sundays and the following holidays:

1. The first day of January.
2. The twelfth day of February.
3. The twenty-second day of February.
4. The thirtieth day of May.
5. The fourth day of July.
6. Labor Day.
7. The ninth day of September.
8. The twelfth day of October.
9. General Election Day.
10. General Primary Election Day.
11. Thanksgiving Day.
12. The twenty-fifth day of December.

When a holiday falls upon a Sunday, the following Monday is a holiday.

It is proposed to change this rule so as to exclude any Legal Holiday, not therein specifically enumerated, in computing the free time allowed carriers for furnishing cars and shippers for loading same, the intention being to provide a more flexible rule and one that would automatically exclude any Legal Holiday established by proclamation or act of the Legislature. To that end it is suggested that instead of specifically designating each day to be exempted in computing free time that a rule generally

exempting all Legal Holidays, "National, State and Municipal" be adopted. It is my opinion, however, that such a rule as is proposed would be prolific of more difficulties than now or may hereafter arise because of the definiteness and inflexibility of the present rule. Disputes would no doubt constantly occur as to the proper interpretation of these terms and as to what days are properly included, while, on the other hand, the list of holidays in the rule embraces all the regular legal holidays observed in this State and any doubt as to the exemption of any or all cannot exist; moreover, but one case has come to the attention of the Commission wherein an injustice resulted from the operation of the present rule. That case arose from the fact that there happened a succession of three holidays, the intermediate one of which was established by a special proclamation of the Governor and consequently was not specifically exempted by the present rule from the computation of free time. In that case the demurrage charges collected for the special holiday were ordered refunded for the reason that the carrier's office was not open for business on that day and manifestly it would be unjust to assess demurrage when the consignee can not secure delivery because of the carrier's own act or omission. Under the rules as they stand at present, the carrier could waive collection of demurrage in such cases.

On the whole, I believe the operation of this rule has been generally satisfactory and I am of the opinion that no change therein should be made to meet a condition that may not again arise, or, at least, is very unlikely to frequently occur.

RULE 2. FREE TIME TO LOAD AND FURNISH BILLING.

(a) Forty-eight hours' free time, computed from the first 7 a.m. after cars are placed or held upon the order of shippers, will be allowed to complete the proper loading of all commodities and to furnish forwarding directions, except that twenty-four hours will be allowed on oil tank cars.

(b) When empty cars placed or tendered for loading on orders are not used, the party ordering the same will be subject to demurrage charges, from the ~~same~~ time of placement or tender until released, together with a charge for the empty

haul of \$5.00 per car when moved from another station, or of \$2.50 per car when switched from a point within the yard limits.

It is proposed to change this rule so that on such empty cars as are placed for loading or are held upon the order of the shipper after 1:00 P.M., the free time will not begin to run until 1:00 P.M. of the day following. The effect of such a change would be to give additional free time in which to load shipments in many cases and, in my opinion, can be justified only on the ground that the free time allowed under the present rule is insufficient to meet the needs of the shipping public. This has not been shown and, in fact, the proponent of this change testified that it was quite an unusual thing for demurrage to accrue on cars placed for loading. Informal complaint has, however been made to the Commission that because of the increased size of the cars the free time allowed under the present rule is insufficient to meet the needs of shippers in many cases and it has been urged that where a car is loaded to its maximum capacity and in excess of the minimum weight required for the commodity shipped, that additional free time should be allowed. Undoubtedly 48 hours is not sufficient time in which to load all carload shipments, but in many cases it is more than ample and I believe it may be considered a liberal average of the time required to load carload shipments, under ordinary circumstances. It has been considered as a fair allowance of time in which to load shipments practically throughout the United States and I am of the opinion that more conclusive proof should be required than has been offered that such a period is generally insufficient before the Commission should alter the present rule in this regard.

RULE 3. FREE TIME TO UNLOAD.

- (a) Forty-eight hours' free time, computed from the first 7 a.m. after cars are placed and notification of arrival is given to consignee, will be allowed for unloading all commodities except oil from tank cars, for which twenty-four hours' free time will be allowed.
- (b) Whenever it shall appear to the satisfaction of the Commission that the failure of a railroad to furnish a car or cars for loading within the time fixed by these rules, or the failure of the shipper or consignee to load or unload the same was due to causes beyond the control of such carrier, shipper or consignee, no payment shall be required to be made on account of such delay.

Several amendments to this rule are proposed.

It is suggested to add thereto a provision that when the same car is both unloaded and reloaded each transaction shall be considered as separate and distinct from the other. The practice under the rule as it stands is to allow the maximum free time, - ninety six hours, - in those cases where the same car is unloaded and reloaded by the same party, it being impracticable generally in such cases to determine when the last part of the load is removed from the car and the first installment of the next load put into the car. Again, the unloading and loading is frequently simultaneous, hence if independent check of the two operations were kept, it might result in certain cases that much less time than 96 hours free time would be allowed in which to unload and load cars, as is the practice under the present rule. It is my opinion that the proposed change should not be made.

It is also proposed to add to this rule a provision that carriers must give notice in writing to consignee when unable to place cars for unloading on account of disability of the consignee or the crowded condition of the switch, and in such an event demurrage shall not begin to run until 7 A.M. following the day of such notice. The proponent of this change states that, its purpose is to compel carriers to render adequate switching service but it does not appear in the record how such an amendment would bring about this result. Undoubtedly the requirement of notification of the carrier's inability to make the placement of the car or cars is for the purpose of establishing a record of the attempt to do so and of its inability on account of the switch or spur being occupied by cars being loaded or unloaded but it is not plain nor can I conceive why the carrier should be required to notify the consignee of a condition of which he should have knowledge if he is reasonably familiar with the conduct of his own business, if original notification of the arrival of the shipment is given, unless perhaps the carrier through its own fault delays placing the car. In my opinion, if this change were made it would lead to increased

detention of cars for the reason that the second notice or notice of what is usually termed constructive placement could not in many cases be given until the day following the notice of arrival and subsequent to the 7 A.M. thereafter, as much of the switching is done just prior to that time and in such cases the consignee would receive additional free time of 24 hours. I do not believe that it is the intention of the proponents of this amendment to advocate any such rule whereby they would profit by their own negligence or by conditions for which the carrier would in no way be to blame. It appears plain that the consignee should not have more free time to unload cars, the placement of which he has hindered or the failure of placement of which is not chargeable to the carriers than cars the prompt placement of which has not been so obstructed. If, however, notification of arrival is not given and it is the custom to give notification by delivery of the cars upon private or industrial tracks, then notification should be given of readiness to deliver when tracks are occupied, as provided in Rule relating to notification.

A third proposition is to amend this rule by a provision that when cars loaded with Hay or Grain are held for "recognized and efficient inspection" and, likewise, "when cars are held for the surrender of the original bill of lading" and notice is not given by the carrier before 12 o'clock noon twenty-four hours free time from 7 A.M. of the following day will be allowed to give disposition of the car. These changes are advocated primarily in the interest of Brokers or Commission Merchants. Shipments to such consignees are usually made on so-called "order" bills of lading transmitted by shipper to the bank of the consignee attached to shipper's draft for the value of the consignment. It is the custom of this business to have inspection of these consignments made, samples taken therefrom, the purchaser's acceptance of the consignment secured and the bill of lading obtained from the bank before directions are given to the carrier for the disposition or

placement of the loaded car. This requires some time and it is alleged that on account of the difficulty frequently experienced in locating in the carriers' terminals or yards, the cars containing such shipments of Hay and Grain that 48 hours is insufficient in which to perform the necessary details before a sale of the lading of the car can be consummated, disposition of the car given the carrier and the car unloaded. The proponents of this change gave no specific instances where demurrage had accrued on such shipments, but it may well be that in many cases 48 hours would not suffice to perform the details of such a transaction. On the other hand, it is not contended that 48 hours is insufficient to unload such shipments under ordinary conditions. In fact, the proponent of the change admits that cars containing grain are usually unloaded in much shorter time and it appears that the disability under which such users of railroad equipment labor is due largely to their method of doing business and not something for which the carrier is responsible.

Demurrage rules should be formed so as to meet the reasonable transportation needs of shippers but, manifestly, no rule should be adopted which, in its operation, may likely result in imposing a burden upon one class of shippers or upon the carriers merely for the purpose of lessening the cost of conducting the business of another class of shippers when the only necessity advanced for the rule is the peculiar method of conducting the business of the latter, and is unconnected with the transportation of the articles. The carriers' cars are vehicles of transportation and it should not be expected that they be used as warehouses or places of business. Such a practice would be unfair to rights of other shippers as well as unduly burdensome to the transportation business. Under reciprocal demurrage this practice might place upon the carriers the double burden of furnishing facilities for conducting a particular kind of business for one set of shippers, and the payment of reciprocal demurrage to other shippers because of inability to furnish such

cars to other shippers. If the practice were extended to apply in all cases where inspection was necessary and where shipments were made on "Order notify" bills of lading, serious congestion at terminals might result. And, finally, if additional time were permitted in cases of "Order notify" shipments, what transportation reasons are there why it should not also be allowed on straight shipments? In view of these facts, I am not disposed to recommend the adoption of the proposed amendment. It should be impressed upon the carriers, however, that it is incumbent upon them to place cars for "inspection" in reasonably convenient locations and from their records be able to locate cars without such delay as the proponents of this change allege has existed in the past.

A further change is proposed in this rule whereby five days free time shall be allowed for unloading carload shipments on ocean-going vessels and for government inspection and custom entry, but as a similar suggestion has been made as a separate proposition, it will be considered in discussing that proposition. It is also suggested in connection with this rule that on cars placed for unloading after 1 P.M. that the free time in which to unload shall not commence to run until 1 P.M. of the following day. This is correlative to the proposition for amending Rule 2, relating to the free time to load cars, and, as stated in considering that proposed change, its justification must essentially rest upon the inadequacy of the time allowed for unloading under the present rule. It was not shown at the hearing, nor has it otherwise come to the notice of this Commission, that 48 hours after placement of the car and notification of arrival is generally insufficient to unload carload shipments. Hence, there appears no reason for amending the rule as suggested. It is also suggested that the term "actual placement" be defined to mean placement of cars "in an accessible position for unloading or at a point previously designated by the consignee" for the reason that the carriers frequently compute free time from the 7 A.M. following notification, although actual placement of a car or cars

in a place at which unloading could be effected is not made until subsequent to that time. Such a construction of this rule is clearly contrary to its plain reading. The free time should be computed from the first 7:00 A.M. following actual placement of car for unloading, unless such placement is impossible because of some act or omission on the part of the shipper or consignee. It was not shown at the hearing that it is the practice of the carriers to apply this rule in such a manner as to work a hardship upon shippers and in the absence of such evidence I am not disposed to recommend that the rule be amended by including a definition of the term "actual placement" which itself is likely to engender disputes and misunderstandings as to its proper interpretation and which, as far as I am at present informed, are now generally absent.

RULE 4. CARS STOPPED IN TRANSIT.

When cars are stopped in transit upon request of shippers or consignees for any purpose, twenty-four hours' free time, computed from arrival at point of stoppage, will be allowed.

It is proposed that this rule be amended so that the free time allowed thereunder shall be computed from 7:00 A.M. following notification that the car has been stopped in transit given to the party ordering its stoppage. As the reading ^{of} the present rule will indicate the free time is computed from the time of the arrival of the car at the point of stoppage and notification of stoppage is not required.

It is urged that the same practice should obtain as to cars stopped in transit as in the case of cars diverted or reshipped after arrival at the original billed destination. Rule 6 relating to the free time allowed for disposition in such cases provides that the free time shall be computed from 7:00 A.M. following notice of arrival at destination and if there are no differences in the condition surrounding the services the requirements should be the same.

The carriers contend that a more expensive service is rendered in the stoppage of cars in transit than in a diversion or reconsignment as those terms are used in Rule 6, for the reason that the telegraphic communications necessary to effect the former

service are more numerous and because of the necessary switching of the car out of the train in which it is being transported and subsequent switching into another train for movement to the destination finally determined upon, for which no charge is imposed in the case of cars stopped in transit, whereas a charge is made in connection with the service of diversion or reconsignment of many commodities. These contentions were uncontroverted and it appears reasonable to conclude that the circumstances justify a more limited period of free time in which to give disposition of cars stopped in transit than in the case of cars reconsigned or diverted after reaching original billed destination and particularly in the absence of any showing that the present rule has in practice worked a hardship upon shippers generally.

**RULE 5. CARS FOR LOADING OR UNLOADING ON TRACKS
OF INDUSTRIAL PLANTS.**

When cars are placed on interchange tracks of industrial plants which perform their own switching service, the regular free time for loading or unloading will be allowed, computed from the first 7 A.M. after delivery upon such industrial interchange tracks.

It was originally proposed to substitute for this rule a rule whereby additional free time would be allowed for switching on all cars delivered for loading or unloading to industrial or other small railroads not interchanging cars on the established per diem basis with the larger carriers, but the proposed amendment was withdrawn hence it is ^{un}necessary to give further consideration thereto..

RULE 6. CHANGE IN DESTINATION.

Twenty-four hours' free time computed from the first 7 A.M. after notice of arrival at the billed destination will be allowed when cars are diverted or reshipped to another destination.

It is proposed to amend this rule so that the free time allowed when cars are reshipped from the original billed destinations will equal the free time which would be allowed were the cars actually unloaded and reloaded, whenever the through rate from the point of origin to the final destination equals the combination of the local

✓ rates upon the original destination. The effect of such a rule would be to allow 96 hours free time to reship cars unless the rate from the original shipping point to final destination were less than the aggregate of the local rates to and from the original destination.

Another proposition is to modify the rule so that,--
"Free time at destination shall be 48 hours computed from the first 7:00 A.M. after notification of arrival at original destination", when the through rate from original point of shipment to the final destination equals or exceeds the combination of the locals to and from the point of original destination. As will be noted this proposition is identical with the preceding one except that 48 hours free time is proposed instead of 96 hours free time.

The proponents of this modification, in its justification, urge that inasmuch as the consignee would have 48 hours in which to unload the car at the first destination and another 48 hours in which to reload that or another car, and as the same rate would be assessed on the second movement as though the shipment had originated at the original billed destination, therefore the first consignee is entitled to at least 48 hours if not 96 hours free time, although the operation of ^{un}loading and reloading is not actually performed.

(M) I am of the opinion that this conclusion proceeds from an erroneous conception of the reason for this rule. The purpose of the rule is to permit consignees or shippers sufficient time in which to furnish the carrier reconsignment or diversion orders and if 24 hours is sufficient in which to do this, manifestly a greater time should not be allowed regardless of the free time allowed for loading and unloading. The rules, as to the free time for loading and unloading, are made to meet the reasonable needs of shippers for performing that service and for any delay over that period a proper penalty may be assessed, for the reason that carriers and other shippers to that extent are unreasonably deprived of the use of that equipment, and it does not follow that a similar period should be allow-

ed to perform another service that may not reasonably require that time.

No good reason was shown why cars awaiting rebilling instructions should be entitled to more free time than a car initially loaded at the same point and similarly awaiting billing instructions, nor was it shown that 24 hours is insufficient in which to furnish carriers reconsignment or diversion orders.

It was also proposed in this connection that an explanatory note be carried in connection with this rule, reading as follows:

NOTE:- A reconsignment is a privilege permitted by tariff under which the original consignee has the right of diversion. In event of the presence of such a privilege in the tariff twenty-four hours' free time is allowed for the exercise of that privilege by the consignee. A reshipment under this rule is the making of a new contract of shipment by which, under a new rate, the consignee forwards the same car to another destination.

However, no evidence was introduced to show the necessity of this proposed change. I am of the opinion that no change should be made in the present rule.

RULE 7. CARS HELD FOR PAYMENT OF FREIGHT OR OTHER CHARGES.

Cars destined to the sidings of connections within the switching limits of the point of delivery held by the initial line for the payment of charges, will be allowed twenty-four hours' free time, computed from the first 7 A.M. after notification of arrival.

No change is proposed in this rule.

RULE 8. CARS REFUSED BY CONNECTIONS.

When cars are refused by a connecting line because of the inability of consignee to receive and unload the same, the local agent of the carrier desiring to make delivery to connecting line will immediately notify the consignee of the cars so held, after which free time will begin to run the same as though such car or cars had been placed for unloading.

It is proposed to amend this rule by providing therein that notification to consignee shall be in writing when cars are

refused by a connecting line because of the inability of consignee to receive and unload same. No good reason appears for requiring carriers to give notification in writing in such cases and it is my opinion the notification in this case should be no different from that generally which is hereafter provided for in a rule relating to notification. The change proposed should not be made.

RULE 9. WEATHER.

Whenever the weather during the period of free time is so severe or inclement that it is impossible or impracticable to secure means of loading or unloading freight, or when from the nature of the goods to be loaded or unloaded such conditions of the weather would cause serious injury or damage, the time of the continuance of such weather shall be added to the free time allowed the shipper or consignee for loading or unloading; provided, that on the request of the carrier the Commission will determine whether or not, under all the conditions, such exception should be allowed.

It is proposed to modify this rule to provide that whenever the inclemency of the weather renders it impossible to load or unload freight, that the time of the continuance of such weather shall be added to the free time for loading and unloading. It will be noted that under the present rule the inclemency of the weather must occur during the period of the free time, otherwise no additional free time is allowed.

The proponents urge that if unloading or loading of the car is made impossible by reason of weather conditions, even though two days or 48 hours of fair time preceded in which the unloading or loading might have been performed, that the free time should be extended over the period of time such conditions continue. The carrier's position is that in allowing a sufficiently reasonable time in which to load or unload its obligation is terminated and that for any detention thereafter the shipper is responsible.

After a full consideration I am persuaded that where

through a shipper's or consignee's own fault a car is not loaded or unloaded during the period of free time and thereafter he is prevented from so doing by weather conditions, that such shipper or consignee is properly chargeable with such detention. The carrier in affording 48 hours free time in which to load or unload car-load shipments has presumably afforded sufficient time in which to perform that service and if the weather prevents the service being performed during that period it should extend the period sufficiently to permit of a reasonable time in which to load and unload. In addition to this, the carrier should not be expected to waive the running of demurrage when weather conditions prevent the loading or unloading of cars after the expiration of the free time during which period fair weather has prevailed, of which the shipper or consignee failed to take advantage. I am of the opinion that no change should be made in this rule.

RULE 10. RATE OF DEMURRAGE.

Demurrage and reciprocal demurrage accruing under these rules will be charged at the rate of \$5.00 per car per day or fraction of a day.

The payment by any railroad company of demurrage provided in these rules shall in no way invalidate or offset any claim any shipper or consignee may have for damages occasioned by delay or negligence on the part of such railroad company, nor shall anything herein contained be held to lessen the duties of any common carrier in the shipment of live stock or other perishable property.

No change is proposed in this rule.

RULE 11. BUNCHING.

(a) CARS FOR LOADING. When, by reason of delay or irregularity of the carrier in filling orders, cars are bunched and placed for loading in accumulated numbers in excess of daily orders, the shipper shall be allowed such free time for loading as he would have been entitled to had the cars been placed for loading as ordered.

(b) CARS FOR UNLOADING. When, as a direct result of the act or neglect of carrier, cars destined for one consignee at one point, and transported via the same route, are bunched in transit and delivered in accumulated numbers in excess of daily shipments, claim shall be presented to the carrier's agent before the expiration of the free time, and the consignee shall be allowed such free time as he would have been entitled to had the cars been delivered in accordance with the daily rate of shipment.

It is proposed to change Section "B" of this rule to provide that when cars are bunched "at the originating point and in transit or at destination" and delivered in accumulated numbers, the consignee shall be allowed such free time as he would have been entitled to had the cars been delivered in accordance with the daily rate of shipment.

The present rule, as will be noted, provides that when cars are "bunched in transit" and delivered in accumulated numbers, "claim shall be presented to the carrier's agent before the expiration of the free time" and the consignee shall be allowed such free time as he would have been entitled to had cars been regularly delivered. The proponents claim that cars are bunched at originating points and that the rule should provide for extension of the free time in such cases, also that it is not always possible to present claim for additional free time to the carrier's agent before the expiration of such free period. It is my opinion that the present wording of the rule covers bunching by the carrier at originating point as well as at destination and that the term "in transit" is broad enough to include bunching by the carrier at any time, from the time it receives the shipment until it delivers it to the consignee at destination. Moreover this provision relates only to the delivery of cars to consignees and if through the carriers' fault cars were delivered for unloading in accumulated numbers the rule would operate to extend the free time regardless of where the bunching occurred. The provision contained in the present rule that "claim shall be presented to the carrier's agent before the expiration of the free time", which it is suggested be eliminated and to which proposition the carriers do not object, does not stop a shipper or consignee from filing a claim for refund of demurrage charges subsequent to the period of free time if he finds that demurrage has accrued because of bunching by the carrier, but merely places in the discretion of the delivery carrier's agent the matter of extending the period of free time when the consignee can show that through the carrier's own fault demurrage is likely to accrue on shipments.

waiting to be unloaded. The proposition to eliminate this provision seems reasonable and upon examination there appears no conclusive reasons why if through the carrier's fault cars are bunched that the free time for unloading should not be extended by the carrier's agent whether the consignee makes application for the extension during the period of free time or during the period of demurrage time. I therefore recommend that this provision in this rule be eliminated.

RULE 12. RECIPROCAL DEMURRAGE.

(a) NOTIFICATION. When a shipper desires cars he shall give notice to the carrier on whose line his consignment originates, setting out the date on which he desires to have cars placed for loading, the number of cars, the character of freight and its destination. When cars are required at agency stations, such notice shall be in writing. To facilitate the making of such application, every railroad shall provide and keep at every agency station blanks for that purpose. When cars are desired for non-agency stations, any notice to any agent of the company required to furnish the cars shall be sufficient which gives the agent of the carrier actual notice covering the matters required to be set out in writing for agency stations.

(b) TIME ALLOWED TO FURNISH CARS. A shipper may order cars for placing at any time within fifteen (15) days from the time of the order, and the carrier shall be required to place the cars on the date required by the shipper, except that on orders of three cars or less the carrier shall be allowed forty-eight (48) hours to place such cars for loading after the first 7 a.m. following the receipt of the order; seventy two (72) hours for any number of cars more than three and less than six; ninety-six (96) hours for any number of cars more than five and less than eight; one hundred and twenty (120) hours for any number of cars more than seven and less than eleven; and for each three additional cars in excess of ten, twenty-four (24) hours' additional time. Each of such periods of time shall begin to run at the first 7 a.m. following the receipt of the order.

(c) RECIPROCAL DEMURRAGE BOND. Any carrier that fails to place cars under the provisions of this rule, shall pay to the shipper \$3.00 per day for the number of cars in the shipper's order not so placed, until such time as such shipper's order shall be filled, unless released at the shipper's request; provided, however, that any shipper who desires to take advantage of this rule must file with the carrier from whom he desires to order his cars a good and sufficient bond in the sum of twenty (20) dollars, if he desires to order but one car, and fifteen (15) dollars for each additional car. This bond shall be security for the payment on behalf of the shipper to the carrier for the use of any car or cars ordered by such shipper which shall be set out by the carrier and not used by the shipper, at the rate of \$3.00 per day, computed from the time the car is set out. Each carrier shall furnish, on request of any shipper, and shall keep at all of its agency stations, blank forms of bonds,

for the purpose herein set out, which forms shall be submitted to this Commission and shall bear the mark of its approval. When any shipper who does not have on file with such carrier a bond as provided herein, shall order a car or cars, it shall be the duty of the agent of such carrier receiving such order to notify such shipper of the provisions of this rule, and only after such notification and the failure of the shipper to file such bond, shall the carrier be exempted from the payment to the shipper for failure to furnish cars as herein provided.

(d) ADDITIONAL SECURITY. It is the intent of this rule that the carrier be protected against irresponsible shippers, and when a bond is once filed by a shipper under the provisions of this rule, such bond shall satisfy the requirements of this rule until the carrier shall have been forced to resort to it for payment for cars ordered and not used, in which event the shipper shall be required to furnish a new bond, as herein provided; except that if at any time the carrier questions the sufficiency of such bond, the Commission, after considering the facts, may require the furnishing of additional security on the part of the shipper.

It is proposed to make several changes in this rule.

The Pacific Car Demurrage Bureau, the petitioner in Application No. 907, proposes that the rule be modified so that,-

1st: All orders for cars shall be in writing.

2nd: That such orders in addition to specifying the character of the freight and its destination also specify the routing.

3rd: That when cars are required at an agency station the notice shall be given to the Agent at such station and if required at a non-agency station notice shall be given to the next Agent on either side of such non-agency station,

4th: That Section "C" of this rule be so amended that carriers may not hereafter be required to notify every shipper, who does not have on file a reciprocal demurrage bond, when applying for cars, of the provision of the reciprocal demurrage rule to relieve it from liability for reciprocal demurrage.

The Pacific Car Demurrage Bureau in justification of the changes proposed by it, contends that where shippers desire to avail themselves of the reciprocal feature of the demurrage rules, the order for cars should be in writing and should be filed with the Agent at the loading point, or in case no Agent is maintained at the loading point, then with the next agency on either side for the purpose of

obtaining a definite record of the transaction and because the agents at those points are in a better position to keep a record of the transaction, particularly of the time of the filing of the order and the placement of the cars and thereby avoid errors and disputes as to liability for demurrage and written notice is required when cars are ordered for loading at agency stations and there is no reason for the distinction between agency and non-agency stations in the matter of ordering cars and that it is just as essential that definite record be had in writing of the transaction at a non-agency station as at an agency station. Likewise, this petitioner contends that it is unreasonable to permit shippers to order cars for loading at non-agency stations from any Agent of the carrier, however remote from the point of loading. No claim is made by the petitioner that it is likewise unreasonable to permit shippers to order cars for loading at agency stations from any Agent of the carrier, although petitioner contends that orders for cars for loading at agency stations should be filed with the agent at the loading point. The petitioner urges that the difference in conditions surrounding agency and non-agency stations will be fully recognized by limiting the placing of orders for cars at non-agency stations with the agency on either side thereof and that if orders for cars are permitted to be placed at points remote from the loading point, that the carrier will be subject to considerable expense and confusion by the duplication of orders and otherwise. On the other hand, it is contended that carrier's agents are frequently able to fill orders for cars for loading thereat or at adjacent non-agency stations from the empty car supply on hand at such stations and if shippers are required to order from those agents that the business of the carrier can be conducted more orderly and expeditiously.

A counter-proposition submitted by the Los Angeles Grain Exchange proposes to amend the rule so that orders for cars for loading at either agency or non-agency stations may be placed with any agent of the carrier from whom the cars are desired, regardless of the proximity of such agent to the loading point and that "he shall transmit

such notice immediately by telegram to the Car Distributing Superintendent of the Division on which the station belongs". It is also proposed by this Exchange that Section 3 of this rule be modified so that a shipper who desires to take advantage of the reciprocal demurrage rule may file the special bond as is now required under the rule, or the general indemnity bond which is given by shippers, to whom the carrier extends credit, as security for the payment of freight charges and which it is proposed be amended so as also to include a guarantee of payment of reciprocal demurrage.

The Oakland Chamber of Commerce proposes that this Rule be modified so that orders for cars shall be in writing and that in addition to other things the order shall specify the routing via which the loaded car is to move. To this extent the change proposed by it is practically the same as that advocated by the Pacific Car Demurrage Bureau. In addition, however, this petitioner proposes that the rule also provide that orders for cars shall be accepted by any Agent of the carrier from whom cars are desired, regardless of the proximity of such Agent to the loading point. This is similar to the change proposed by the Los Angeles Grain Exchange. It also proposes that the rule, instead of prescribing the amount of the bond to be filed in each case as a security for payment by the shipper of reciprocal demurrage on cars ordered and not used, provide that the amount of the bonds shall be determined by the amount of business transacted by shippers.

No material objection was offered to the proposed amendment that all orders for cars shall be in writing, which is understood to include orders by telegraph and that such orders shall specify among other things the character of freight, its destination and routing, and I am of the opinion that in this regard the rule should be amended. The proposition that cars for loading shall be ordered from the Agent at the point of loading or in case there is no Agent at that point from the next Agent on either side, does not meet with similar approval as is evidenced by the counter-proposal of the Los Angeles Grain Exchange and the Oakland Chamber of Commerce and others at the

hearing. Considerable testimony was offered by witnesses for the carriers as to the present method of filling orders for empty cars, but I am not convinced that it is impracticable or unreasonable to permit shippers who intend availing themselves of the reciprocal demurrage rule to order cars from any agent of the carrier. This is done in case the shipper does not intend taking advantage of the reciprocal demurrage feature and in my opinion should also be permitted in case he elects to do so. It is my opinion that it is entirely practicable for the carrier to transmit the order for the car or cars to the Agent at or near the loading point and who has the record of the placement of the cars thereby ordered and that no great additional expense will be placed upon carriers by such a practice. Moreover, in actual practice, most orders for cars will undoubtedly be placed with the Agents at the point of loading or the agency station next to the point of loading and in only comparatively few cases will cars be ordered by parties at other than the point of loading. If the ordering of cars under the reciprocal demurrage rule is restricted as proposed, it would, in my opinion, largely impair its usefulness.

In support of the proposition of this petitioner to amend Section "C" of this rule by eliminating the requirement of notification of the reciprocal demurrage provision thereof, it is urged that the provision is no longer necessary for the protection of shippers and has been the cause of considerable hardship and inconvenience to the carriers. It is shown that a wide distribution of the demurrage tariff has been made throughout the State and that the shipping public has been fully informed of its rights under this rule and further that shippers have requested in many cases that they be not annoyed by continued notification of the provision of the reciprocal demurrage rule when ordering cars. No objection to the elimination of this provision has been made to the Commission and, in fact, representatives of shippers at the hearing stated that they had no objection to its cancellation. In view of these facts, I see no reason for continuing this provision in the reciprocal

demurrage rule. However, carriers should be required to give wide distribution to the new issue of demurrage rules and in addition thereto place in two conspicuous places in each freight depot a large placard calling attention of shippers to the provisions of the reciprocal demurrage rule.

There appears, in the record, no good reason for including in this rule a provision, as suggested, that all orders for cars shall be transmitted immediately to the "Car Distributing Superintendent". The record shows that in most cases cars are furnished from the supply on hand at the loading point and in other cases orders are transmitted to the Freight Train Conductor who has the necessary authority to furnish same from empties picked up by his train.

The proposition to change the general indemnity bond to secure the payment of reciprocal demurrage by the shipper as well as freight charges and the proposition that the amount of the reciprocal demurrage bond shall be determined by the amount of the business transacted by the shippers in my opinion is not justified by the evidence. The present demurrage bond cannot be said to be burdensome in either its requirements as to the amount thereof or as to the sureties required - individual sureties being permitted. On the other hand, the general indemnity bond covers interstate and intrastate traffic and in most cases individual sureties are not accepted. Furthermore, there is no legal obligation upon carriers to accept a bond for the payment of freight charges, it being purely discretionary with the carrier whether or not it extends credit to shippers.

RULE 13. CARS DELAYED BY CONNECTION.

Any railroad which shall receive from a connecting railroad company one or more cars of freight consigned to any point on or beyond its line shall, within twenty-four hours after such cars are offered to it or are placed on its transfer or other tracks, forward said car or cars over its railroad toward destination, unless such delay is caused by circumstances over which such carrier has no control; and for every delay of twenty-four hours, or fraction

thereof, on the part of said railroad company in forwarding said car or cars, beyond said allowed period of twenty-four hours, said railroad company shall forfeit to the consignee of such car for such delay the sum of \$3.00 per day for each and every car so received and not forwarded upon its line within the time above allowed.

No change is proposed in this rule.

RULE 14. REPORTS TO COMMISSION BY RAILROADS

(a) Each railroad subject to the jurisdiction of this Commission shall make a statement monthly to the Commission of the payments made and received by such railroad company for demurrage and reciprocal demurrage paid and collected under these rules. When payments are made by transportation companies under the reciprocal demurrage provisions of this order the report shall set forth in each instance the name and address of the shipper or shippers to whom payments are made, the circumstances giving rise to the liability, the reasons for the delay in furnishing the equipment ordered, the amount of the payment made and the date thereof.

(b) Each railroad agent shall keep and preserve a daily record of applications for cars received at his station, both for loading at such station and at non-agency stations ordered from such station, showing such applications in consecutive order and the date on which received, which record shall always be open to the inspection of the Commission, its officers and employees, and to courts of competent jurisdiction during business hours.

No change is proposed in this rule.

RULE 15. DISPUTES.

Whenever any disputes arise between shippers, consignees and carriers concerning the interpretation of these rules or concerning any claim arising hereunder, the same shall be submitted to the Commission for adjustment.

No change is proposed in this rule.

RULE 16. PUBLICATION.

These rules shall be immediately printed by the transportation companies, or their authorized agents, filed with the Commission and distributed to the agents of such transportation companies, and shall constitute their car demurrage tariff.

No change is proposed in this rule.

PROPOSED NEW RULES

SWITCHING RULE

The Los Angeles Grain Exchange proposes a new rule relating to switching service to be incorporated in the demurrage rules prescribed by the Commission to read as follows:-

"Where a special charge is made for switching to and from industrial spurs in addition to the regular tariff rates, carriers shall be obliged to give one service each morning and one in the afternoon of each day, excepting holidays, as per Rule 1, provided cars are being held by said carrier for placement on any such spur, or at the request of consignee or shipper, and if switchings are not given as above stated consignee or consignor shall not be subject to demurrage charge for that day, which said service has been failed to be performed, or for demurrage resulting from the accumulation of cars on account of not performing this service."

The difficulty of prescribing any practicable, hard and fast rule fair to both the carriers and shippers to govern the switching service of carriers becomes apparent, upon slight examination of the facts surrounding this service. Cars containing state and interstate cars are indiscriminately handled in this service - city ordinances in many cases prohibit the switching of cars upon certain streets during certain periods of the day, thereby limiting the time in which this service can be performed and the carriers in performing this service have to be governed to a large extent by the convenience and safety of its patrons engaged in loading and unloading cars on spur tracks. Furthermore, under the present rules if through the failure of carriers to switch spur tracks, loaded cars are held in carrier's yards demurrage is not properly charged.

If the switching service of the carrier is inadequate that matter should be brought to the attention of this Commission in a separate proceeding and this Commission will investigate the particular matter and issue such order as the facts warrant.

I recommend that no change be made in this rule.

AVERAGE RULE

The Los Angeles Grain Exchange proposes that a so-called "average rule" be prescribed by the Commission, as follows:

When a shipper or receiver enters into the following agreement the charge for detention to cars provided for by Rule 7, on all cars held for loading and unloading by such shipper or receiver, shall be computed on the basis of average time of detention to all such cars released during each calendar month, such average detention to be computed as follows:

(a) A credit of one day will be allowed for each car released within the first twenty-four hours of free time. A debit of one day will be charged for each twenty-four hours or fraction thereof that a car is detained beyond the free time.

In no case shall more than five days' credit be applied in cancellation of debits accruing on any car, making a maximum of seven days that any car may be held free; this to include Sundays and Holidays.

(b) At the end of the calendar month the total number of days credited will be deducted from the total number of days debited and \$ _____ per day charged for the remainder. If the credits equal or exceed the debits, no charge will be made for the detention of the cars, and no payment will be made to shippers or receivers on account of such excess of credits, nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month.

(c) A shipper or receiver who elects to take advantage of this average agreement shall not be entitled to cancellation or refund of demurrage charges under Rule 9 or Rules 4 and 6 if more than one stoppage in transit or one diversion has been made.

(d) A shipper or receiver who elects to take advantage of this average agreement may be required to give sufficient security by bond to the carrier for the payment of balances against him at the end of each month.

It is urged by the proponents of this rule, that, inasmuch as there is no statute or regulation operative in this State requiring carriers to transport loaded cars a certain minimum distance each day, cars are often bunched in transit and delivered in accumulated numbers to consignees, and because of the inability of the consignees to release such accumulated numbers of cars demurrage charges accrue, from which there is no relief under the present demurrage rules, and that car detention has increased under the present demurrage rate of \$3.00, resulting in an increase in the aggregate amount collected therefor, and that a "debit and credit" rule should be adopted to offset these conditions.

It is also pointed out by the proponents of this rule that

a similar rule has been adopted by the National Association of Railway Commissioners as another reason why it should be adopted in California.

On the other hand, the carriers contend that, while the rule was adopted by the National Association of Railway Commissioners, its operation has proven its ineffectiveness towards lessening car detention. In fact, it is alleged that its practical operation has the tendency to bring about the opposite result, that is, to increase car detention. Further, its opponents contend that the rule is discriminatory in favor of large shippers, and that it holds out a reward to consignees for doing that which they are already obligated to do - to promptly release equipment. The opponents of the rule also contend that the adoption of an average rule to apply on California intrastate traffic would subject the lines operating in this State to material and burdensome expense, for the reason that it would be necessary to keep a separate and individual demurrage account with each signer of an average agreement if such a rule were adopted, and further that as such a rule does not obtain in connection with interstate traffic its application to California intrastate traffic would engender endless confusion and dissatisfaction.

Finally, it is urged by the opponents of the rule that the Public Utilities Act authorizing this Commission to establish rules for demurrage contemplates that such rules shall be reciprocal and, therefore, if credits are allowed consignees for releasing equipment promptly, credits should likewise be allowed carriers for promptly furnishing equipment, which makes such a rule impracticable in this State.

While it is true that there is no regulation in the State of California requiring that cars be transported a certain distance each day, it is nevertheless true that, when loaded cars transported by the same route are bunched in transit and delivered in accumulated numbers in excess of daily shipments, the consignee is protected

from the accrual of demurrage thereon under the so-called bunching rule, and there appears to be no necessity to further protect consignees in such cases. Further, it was not shown that demurrage had actually accrued in the past by reason of the carriers' failure to expeditiously transport carload shipments, or because cars were bunched in transit and delivered in accumulated numbers.

The exhibit introduced by the proponents of the rule to show that car detention, as well as the amount of demurrage collected, during the period of nine months ending with January, 1914, exceeded that for a period of ten months ending with February, 1912, fails in its purpose for the reason that the statement for the nine months ending January, 1914, includes cars held over-time in the States of Arizona, New Mexico and California, in which States there were varying rates of demurrage, while for the period ending February, 1912, the detention is shown for the State of California alone in which a \$3.00 demurrage rate was operative and because the comparison is for periods of different duration. However, the records of the Commission indicate that there was a decided increase in car detention and the amount of demurrage collected during a period of ten months ending with February, 1913, as compared with a similar period ending with February, 1912, although the \$3.00 demurrage rate was in effect during the entire time.

The evidence submitted by the Pacific Car Demurrage Bureau in this case shows a similar increase in car detention and the amount of demurrage collected.

Exhibit F-3 filed by the Pacific Car Demurrage Bureau shows that during the year of 1913 the cars held over time were 2.07% of the total cars reported as against 1.92% for the year of 1912, and that \$112,840.00 demurrage was collected for car detention in the year 1912, while \$131,253.00 demurrage was collected for car detention in 1913. In explanation of this increase the Pacific Car Demurrage Bureau states "that the increase is accounted for by detention by contractors of cars of material for the construction of

roads under the supervision of the State Highway Commission; by contractors using material for the construction of several large power plants and by an oil refinery at Bakersfield without storage capacity of its own and which therefore prefers to use tank cars for that purpose, even at \$5.00 per day. The net collections were approximately the same in 1913 as in the previous year considering the increase in cars reported. However, this may be, it does not follow that car detention would decrease if the average rule were established in California. The only evidence on this point which is before the Commission in this proceeding seems to indicate that the result would be otherwise. Reports of the working of the average rule in other States were filed by the Manager of the Pacific Car Demurrage Bureau which seem to indicate that in the majority of the States, at least, where this rule is effective, it has not tended to decrease car detention.

Exhibit No. 1 of the Pacific Car Demurrage Bureau shows that during the months of November and December, 1913, and January, 1914, but 5.6% of the cars handled under the "straight rule" were held over time, while 16.8% of the cars handled under the average plan were held over time in the States of Illinois, Iowa, Missouri, Minnesota, Kansas, Nebraska, North Dakota, South Dakota, Montana and Colorado. While the evidence on this point is not entirely satisfactory, it is sufficient to support the presumption that present conditions in California in respect to car detention would not be improved by the establishment of the so-called average rule.

The report of the National Association of Railway Commissioners for the year 1909, relating to the average rule, seems to indicate that it was adopted in contemplation of the needs of large shippers, and particularly by those who received large numbers of cars of raw material daily. While the rule is available to all receivers or shippers of carload freight, in practice it would, in the nature of things, be taken advantage of only by the large shippers, and the rule appears to sanction a departure from a car unit basis to a

train-load basis to determine the respective rights of carriers and shippers in the use of railway equipment.

In view of these considerations and of the fact that a substantial expense would be imposed upon the carriers were the average rule established in this State, I am not disposed upon the record to recommend that the rule proposed be adopted.

The Public Utilities Act makes it necessary for this Commission to establish reciprocal demurrage rules and to be reciprocal within the meaning of the Act the ^{average} demurrage rule would have to allow the carrier credits for furnishing cars before the expiration of 48 hours just as the consignee thereunder would be allowed credits if cars were released before the expiration of 48 hours. Such a rule would work hardships on many shippers. To illustrate this point it is only necessary to refer to the fact that many shippers of carload freight, particularly in the country district, seldom, if ever, receive a carload of freight. If such a rule were adopted by which both the carrier and shipper would receive the benefit of furnishing, loading or unloading equipment in less than 48 hours, a road would be continually collecting penalties for furnishing equipment in less than 48 hours from the shipper in the outlying districts and at the same time only consignees receiving a great many cars of freight would receive any substantial benefit. In other words, the benefits accruing to the Railroads would always be derived from one set of shippers who would seldom, if ever, receive any return benefits because of the fact that they seldom receive carload shipments.

NOTIFICATION RULE

Los Angeles Grain Exchange proposes that a rule relating to the manner of notification be included in the rules prescribed by the Commission reading as follows:

"Notice from either the consignee or consignor, or from the railroad to consignee or consignor, shall be made in the following manner, and no other notice shall constitute a legal notice otherwise made; each carrier shall notify consignee or con-

signor, by telephone when possible, providing the name of the consignee or consignor is in the telephone directory, or consignee or consignor has filed a telephone number with carrier, said carrier making a record at the time of such notification of the party's name receiving or giving notification by telephone and the time of day said message is received or given. Such notification shall be sufficient, provided the carrier confirms said notification by a letter to consignee's or consignor's address, or address furnished by consignee or consignor, or as shown by the city directory, and provided the envelope bears a postmark prior to 5 P.M. the same day the telephone notice has been given. Said notice shall be given by letter and not by postal, the envelope to bear a two cent stamp and to bear the return address of said carrier. If said notice shall be returned to carrier for any reason, said carrier shall hold same on file, stamping the time of the receipt of its return on said envelope, and the same to be held until all demurrage is settled. If any mistake has been made in the address through the carrier's fault, and the full street address was not shown thereon, where it was available out of the city directory, or as filed by the consignee, said notice will not be considered sufficient, and consignee or consignor shall not be liable for demurrage accruing thereunder. If there is no telephone number on file, or said number of consignee is not in the directory, the mailing of the notice in the manner above stated shall be sufficient, and time shall commence from 7 a.m. the following morning after the date of postmark, provided the postmark on said envelope reads before 5 p.m., except where the tariff provides for additional time. Carrier shall be required to mail a like notice to consignee or consignor when cars are placed at non-agency stations, said notice being mailed from the nearest station to the non-agency station. In this instance the railroad will be only required to give said notice when consignee files an address to be notified with the nearest agent to the non-agency station. Where a railroad is requested in writing by consignee or consignor to notify them on arrival of a car at any station other than the city in which consignee's place of business is, then it shall devolve upon the railroad, at consignee's request, to telegraph the railroad company's agent at city in which the consignee has his place of business or resides, and he shall give notice according to the above rule. The manner in which consignor shall give notice to the railroad company to place or give disposition of empty or loaded cars, shall be given in like manner, by telephone if so desired; but the same must be followed immediately by written notice mailed before 5 p.m., in an envelope bearing the return address of the sender and bearing the correct address of the railroad company to the proper department, or to the proper agent. If for any reason said notice is returned to the consignee or consignor by the post office, consignee or consignor must be responsible for the demurrage charges unless a good and sufficient reason shall be shown on the

envelope thereof. The railroad shall stamp each notice received from consignor or consignee with the time it was received, the same shall be kept on file until all charges are paid, also retain envelope in which received. If railroad does not receive written notice and consignee or consignor cannot show envelope returned through no fault of the consignee or consignor, then consignor or consignee is responsible for demurrage accruing as a result. Where envelopes do not bear the time before 5 p.m. when mailed by the railroad, consignee shall have an additional twenty-four hours, and the same applies to the carrier as to the placing of empties or disposition of cars, provided the consignor or consignee has not mailed notice within the proper time.

It is the general practice of carriers to give to consignees telephone notice of arrival of cars at destination, where the party to be notified has a telephone, and thereafter to confirm same by postal notice, and the record does not indicate that this method has proven generally unsatisfactory or that its insufficiency warrants the Commission requiring that the written advice following the telephonic notice shall be enclosed in an envelope with return directions printed on its face and bear a 2¢ postage stamp. Such a requirement would entail large additional expenditures which the Commission, in my opinion, would not be warranted in imposing upon the carriers from the evidence before it. On the other hand, the carriers' practice of sending postal notice with defective and incomplete address thereon should be discontinued, and if in any case demurrage accrues as a result of such error or omission of the carrier, for as such it should be considered, such demurrage should be refunded.

In addition to this manner of notification carriers and shippers have by common arrangement adopted various other methods of notification, in some cases entirely dispensing with the notification in writing and in the absence of evidence to the contrary these customs must be considered satisfactory and I am of the opinion should not be disturbed by requiring that notification in every case shall be in writing.

When notification is incumbent upon either carriers or shippers as a condition precedent to the running of demurrage, the giving or failure to give such notice as a basis of a claim is a matter of proof and it is assumed that carriers and shippers both, in the orderly conduct of their business, have already adopted or will adopt such a system for dating and filing received or returned notices as will facilitate the making of such proof, without the Commission's incorporating such detail in a hard and fast rule. Likewise, I am not disposed to recommend that the carriers be required by a rule to give telegraphic notice to a consignor or consignee of the arrival of car or cars at any station other than at the station at which consignee conducts his business, as is suggested by the proponents of this rule. Such a requirement would impose an additional and expensive burden upon the carrier, which I do not think the Commission would be justified in imposing, from the evidence in this proceeding.

The proposition to extend the free time in cases where the notification of the arrival or placement of cars is not mailed prior to 5 P.M. is practically the same proposition as was submitted in connection with the amendments proposed to Rule 3 and has heretofore been discussed and for that reason it is not necessary here to give it further consideration. I am of the opinion, however, that some rule relating to the manner in which notification shall be given should be incorporated in the code of demurrage rules and I recommend that a rule relating to notification be therein provided to read as follows:

(a) "Consignee shall be notified by carrier's agent, in writing, or as otherwise agreed to by carrier and consignee, within twenty-four hours after arrival of cars and billing at destination, such notice to contain point of shipment, car

initials and numbers, and the contents, and if transferred in transit, the initials and number of the original car. In case car is not placed on public delivery track within twenty-four hours after notice of arrival has been sent, a notice of placement shall be given to consignee.

(b) Delivery of cars upon private or industrial interchange tracks, or written notice to consignee of readiness to so deliver, will constitute notification thereof to consignee. "

CREDIT RULE

Oakland Chamber of Commerce proposes that a rule be incorporated in the order of the Commission, prescribing demurrage rules whereunder shippers and consignees shall receive credit for the release of equipment during the first twenty-four hours of free time. The rule suggested reads as follows:

"(a) When a car is loaded within the first twenty-four hours of free time (free time described in Rule 2) and forwarding directions are furnished carrier's agent, an allowance of one dollar and fifty cents (\$1.50) will be made and deducted from the transportation charges applicable from point of shipment to destination.

(b) When a car is unloaded within the first twenty-four hours of free time (free time described in Rule 3) and notice to this effect is given carrier's agent, an allowance of one dollar and fifty cents (\$1.50) will be made and deducted from the transportation charges applicable from point of shipment to destination. In the event of same shipment being loaded and unloaded within the first twenty-four hours of free time, a total allowance of \$3.00 will be made and deducted from transportation charges.

NOTE: This rule is not applicable to all tank cars, neither is it applicable in the case of where the freight rate from point of shipment to destination is less than 50 cents per ton."

This proposition seems to be based upon an erroneous conception of the principle of demurrage. The forty-eight hours free time is accorded shippers and consignees for the purpose of loading and unloading cars for the reason that it is considered sufficient

generally to meet their needs and not because a shipper or consignee ipso facto acquires an interest to that extent therein, compensation for which is included in the rate of transportation. If the shipper or consignee can release equipment within the first day of free time it is incumbent upon him to do so and for doing that which he is obligated to do should not expect compensation from the carriers. Again, under the provisions of the Public Utilities Act the Commission is required to make the charges for demurrage uniform and reciprocal so that the same penalty shall be paid by both shipper or consignee and railroad corporation for an equal number of cars for each day for which demurrage is charged and thereunder such a rule as is here proposed would be impracticable. I am of the opinion that the proposed rule is unsound in theory and would prove impracticable in its operation and would serve but to add additional confusion and burden to an already involved matter. I therefore recommend that the proposed rule should not be adopted.

FREE TIME ON SHIPMENTS RECEIVED OR
DELIVERED OCEAN CARRIERS

It was also proposed by the Cement, Tolenas and Tidewater Railway that a rule be incorporated in the order of the Commission to read as follows:-

"Five days' free time, computed from the first 7 A.M. after arrival at port of exit, will be allowed on cars containing freight for ocean movement when originating beyond the switching limits of the port of exit and destined to coastwise points in California. (See note)

NOTE:- The term "destined" as herein used applies only to shipments covered by through bills of lading or when the final destination is shown on the way bill or bill of lading.

Five days' free time, computed from the first 7 A.M. after notification of arrival, will be allowed on cars containing freight for ocean movement and originating beyond the switching limits of the port of exit, when billed locally to such port of exit, provided written order to

change the destination to coastwise points be received by holding agent within twenty-four hours, computed from the 7 A.M. of the day after notification of arrival.

If such written order be not received within such twenty-four hours the free time will be forty-eight hours, computed from the first 7 A.M. after notification of arrival.

NOTE: The term "coastwise" as herein used, includes all points on the coast of California.

Cars containing freight for ocean movement loaded within the switching limits of the port of exit will be allowed forty-eight hours' free time to unload, computed from the first 7 A.M. after loading is completed and switching order is furnished by the shipper, and no notice to either the consignee or water carrier will be required.

If delivery to water carrier be made by a line other than that on which the car is loaded, the free time to unload will be forty-eight hours, computed from the first 7 A.M. after received by such delivering line, and no notice to either the consignee or water carrier will be required."

This rule is similar to that now carried in the demurrage tariff applying on interstate traffic and although not carried in the demurrage tariff applying on California intrastate traffic it has been applied thereto as the carriers, insofar as demurrage has been concerned, have treated all traffic moving to or from California ports by ocean carriers as interstate and therefore have applied the interstate demurrage rules. There was no objection to the incorporation of this rule in the demurrage code and I recommend that such a rule be incorporated in the Commission's order, as authority for the carriers' practice of allowing greater time for unloading cars containing freight for ocean transportation.

I recommend the following order:

O R D E R.

Application having been filed by E. E. Mote, Manager of the Pacific Car Demurrage Bureau, for authority to change certain rules for demurrage and reciprocal demurrage heretofore prescribed by this Commission and a proceeding having been instituted by the Commission in the matter of prescribing revised uniform rules for

demurrage for standard gauge railroads subject to its jurisdiction and a hearing having been held and a full investigation of the matters and things involved having been had and being fully advised in the premises;

IT IS HEREBY ORDERED that this Commission adopt the following General Order, to be known as General Order No. 41, and to be effective on and after January 1, 1915.

GENERAL ORDER NO. 41
(Cancels General Order No. 2.)

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the matter of uniform rules for demurrage for standard gauge railroads subject to the jurisdiction of the Railroad Commission of California.

RULE 1. DAYS NOT COUNTED IN COMPUTING FREE TIME AND DEMURRAGE.

In computing the time which is allowed carriers for furnishing cars and shippers for loading and unloading the same, no account will be taken of Sundays and the following holidays.

1. The first day of January.
2. The twelfth day of February.
3. The twenty-second day of February.
4. The thirtieth day of May.
5. The fourth day of July.
6. Labor Day.
7. The ninth day of September.
8. The twelfth day of October.
9. General Election Day.
10. General Primary Election Day.
11. Thanksgiving Day.
12. The twenty-fifth day of December.

When a holiday falls upon a Sunday, the following Monday is a holiday.

RULE 2. FREE TIME TO LOAD AND FURNISH BILLING.

(a) Forty-eight hours' free time, computed from the first 7 A.M. after cars are placed or held upon the order of shippers, will be allowed to complete the proper loading of all commodities and to furnish forwarding directions, except that twenty-four hours will be allowed on oil tank cars.

(b) When empty cars placed or tendered for loading on orders are not used, the party ordering the same will be subject to demurrage charges, from the time of placement or tender until released, together with a charge for the empty haul of \$5.00 per car when moved from another station, or of \$2.50 per car when switched from a point within the yard limits.

RULE 3. FREE TIME TO UNLOAD.

(a) Forty-eight hours' free time, computed from the first 7 A.M. after cars are placed and notification of arrival is given to consignee, will be allowed for

unloading all commodities except oil from tank cars, for which twenty-four hours' free time will be allowed.

Five days' free time, computed from the first 7 A.M. after arrival at port of exit, will be allowed on cars containing freight for ocean movement when originating beyond the switching limits of the port of exit and destined to coastwise points in California. (See note)

NOTE:- The term "destined" as herein used, applies only to shipments covered by through bills of lading or when the final destination is shown on the way-bill or bill of lading.

Five days' free time, computed from the first 7 A.M. after notification of arrival, will be allowed on cars containing freight for ocean movement and originating beyond the switching limits of the port of exit, when billed locally to such port of exit, provided written order to change the destination to coastwise points be received by holding agent within twenty-four hours, computed from the 7 A.M. of the day after notification of arrival.

If such written order be not received within such twenty-four hours the free time will be forty-eight hours, computed from the first 7 A.M. after notification of arrival.

NOTE:- The term "coastwise points", as herein used, includes all points on the coast of California.

Cars containing freight for ocean movement loaded within the switching limits of the port of exit will be allowed forty-eight hours' free time to unload, computed from the first 7 A.M. after loading is completed and switching order is furnished by the shipper, and no notice to either the consignee or water carrier will be required.

If delivery to water carrier be made by a line other than that on which the car is loaded, the free time to unload will be forty-eight hours, computed from the first 7 A.M. after received by such delivering line, and no notice to either the consignee or water carrier will be required.

(b) Whenever it shall appear to the satisfaction of the Commission that the failure of a railroad to furnish a car or cars for loading within the time fixed by these rules, or the failure of the shipper or consignee to load or unload the same was due to causes beyond the control of such carrier, shipper or consignee, no payment shall be required to be made on account of such delay.

RULE 4. CARS STOPPED IN TRANSIT.

When cars are stopped in transit upon request of shippers or consignees for any purpose, twenty-four hours' free time, computed from arrival at point of stoppage, will be allowed.

RULE 5. CARS FOR LOADING OR UNLOADING ON TRACKS OF INDUSTRIAL PLANTS.

When cars are placed on interchange tracks of industrial plants which perform their own switching service, the regular free time for loading or unloading will be allowed, computed from the first 7 A.M. after delivery upon such industrial interchange tracks.

RULE 6. CHANGE IN DESTINATION.

Twenty-four hours' free time computed from the first 7 A.M. after notice of arrival at the billed destination will be allowed when cars are diverted or reshipped to another destination.

RULE 7. CARS HELD FOR PAYMENT OF FREIGHT OR OTHER CHARGES.

Cars destined to the sidings of connections within the switching limits of the point of delivery held by the initial line for the payment of charges will be allowed twenty-four hours' free time, computed from the first 7 A.M. after notification of arrival.

RULE 8. NOTIFICATION.

(a) Consignee shall be notified by carrier's agent in writing or as otherwise agreed to by carrier and consignee, within twenty-four hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and if transferred in transit, the initials and number of the original car. In case car is not placed on public-delivery track within twenty-four hours after notice of arrival has been sent, a notice of placement shall be given to consignee.

(b) Delivery of cars upon private or industrial interchange tracks, or written notice to consignee of readiness to so deliver, will constitute notification thereof to consignee.

RULE 9. CARS REFUSED BY CONNECTIONS.

When cars are refused by a connecting line because of the inability of consignee to receive and unload the same, the local agent of the carrier desiring to make delivery to connecting line will immediately notify the consignee of the cars so held, after which free time will begin to run the same as though such car or cars had been placed for unloading.

RULE 10. WEATHER.

Whenever the weather during the period of free time is so severe or inclement that it is impossible or impracticable to secure means of loading or unloading freight, or when from the nature of the goods to be loaded or unloaded such conditions of the weather would cause serious injury or damage, the time of the continuance of such weather shall be added to the free time allowed the shipper or consignee for loading or unloading; provided, that on the request of the carrier the Commission will determine whether or not, under all the conditions, such exception should be allowed.

RULE 11. RATE OF DEMURRAGE.

Demurrage and reciprocal demurrage accruing under these rules will be charged at the rate of \$3.00 per car per day or fraction of a day.

The payment by any railroad company of demurrage provided in these rules shall in no way invalidate or offset any claim any shipper or consignee may have for damages occasioned by delay or negligence on the part of such railroad company, nor shall anything herein contained be held to lessen the duties of any common carrier in the shipment of live stock or other perishable property.

RULE 12. BUNCEING.

(a) CARS FOR LOADING. When, by reason of delay or irregularity of the carrier in filling orders, cars are bunched and placed for loading in accumulated numbers in excess of daily orders, the shipper shall be allowed such free time for loading as he would have been entitled to had the cars been placed for loading as ordered.

(b) CARS FOR UNLOADING. When as a direct result of the act or neglect of carrier, cars destined for one consignee at one point, and transported via the same route, are bunched in transit and delivered in accumulated numbers in excess of daily shipments, the consignee shall be allowed such free time as he would have been entitled to had the cars been delivered in accordance with the daily rate of shipment.

RULE 13. RECIPROCAL DEMURRAGE.

(a) NOTIFICATION. When a shipper desires cars he shall give written notice to the carrier on whose line his consignment originates, setting out the date on which he desires to have cars placed for loading, the number of cars, the character of freight, its destination and routing. To facilitate the making of such application, every railroad shall provide and keep at every agency station blanks for that purpose.

(b) TIME ALLOWED TO FURNISH CARS. A shipper may order cars for placing at any time within fifteen (15) days from the time of the order, and the carrier shall be required to place the cars on the date required by the shipper, except that on orders of three cars or less the carrier shall be allowed forty-eight (48) hours to place such cars for loading after the first 7 A.M. following the receipt of the order; seventy-two (72) hours for any number of cars more than three and less than six; ninety-six (96) hours for any number of cars more than five and less than eight; one hundred and twenty (120) hours for any number of cars more than seven and less than eleven; and for each three additional cars in excess of ten, twenty-four (24) hours' additional time. Each of such periods of time shall begin to run at the first 7 A.M. following the receipt of the order.

(c) RECIPROCAL DEMURRAGE BOND. Any carrier that fails to place cars under the provisions of this rule, shall pay

to the shipper \$3.00 per day for the number of cars in the shipper's order not so placed, until such time as such shipper's order shall be filled, unless released at the shipper's request; provided, however, that any shipper who desires to take advantage of this rule must file with the carrier from whom he desires to order cars a good and sufficient bond in the sum of twenty (20) dollars, if he desires to order but one car, and fifteen (15) dollars for each additional car. This bond shall be security for the payment on behalf of the shipper to the carrier for the use of any car or cars ordered by such shipper which shall be set out by the carrier and not used by the shipper, at the rate of \$3.00 per day, computed from the time the car is set out. Each carrier shall furnish, on request of any shipper, and shall keep at all of its agency stations, blank forms of bonds, as prescribed in the appendix to this Order, for the purposes herein set out.

(d) ADDITIONAL SECURITY. It is the intent of this rule that the carrier be protected against irresponsible shippers, and when a bond is once filed by a shipper under the provisions of this rule, such bond shall satisfy the requirements of this rule until the carrier shall have been forced to resort to it for payment for cars ordered and not used, in which event the shipper shall be required to furnish a new bond, as herein provided; except that if at any time the carrier questions the sufficiency of such bond, the Commission, after considering the facts, may require the furnishing of additional security on the part of the shipper.

RULE 14. CARS DELAYED BY CONNECTION.

Any railroad which shall receive from a connecting railroad company one or more cars of freight consigned to any point on or beyond its line shall, within twenty-four hours after such cars are offered to it or are placed on its transfer or other tracks, forward said car or cars over its railroad toward destination, unless such delay is caused by circumstances over which such carrier has no control; and for every delay of twenty-four hours or fraction thereof, on the part of said railroad company in forwarding said car or cars, beyond said allowed period of twenty-four hours, said railroad company shall forfeit to the consignee of such car for such delay the sum of \$3.00 per day for each and every car so received and not forwarded upon its line within the time above allowed.

RULE 15. REPORTS TO COMMISSION BY RAILROADS.

(a) Each railroad subject to the jurisdiction of this Commission shall make a report monthly to the Commission of the payments made and received by such railroad company for demurrage and reciprocal demurrage paid and collected under these rules in the form prescribed in the appendix to this order. When payments are made by transportation companies under the reciprocal demurrage provisions of this order the report shall set forth in each instance the name and address of the shipper or shippers to whom payments are made, the circumstances giving rise to the liability, the reasons for the delay in furnishing the equipment ordered, the amount of the payment made and the date thereof.

✓ 5 (b) Each railroad agent shall keep and preserve a daily record of application for cars received at his station, both for loading at such station and at non-agency stations ordered from such station, showing such applications in consecutive order and the date on which received, which record shall always be open to the inspection of the Commission, its officers and employees, and to courts of competent jurisdiction during business hours.

RULE 16. DISPUTES.

Whenever any disputes arise between shippers, consignees and carriers concerning the interpretation of these rules or concerning any claim arising hereunder, the same shall be submitted to the Commission for adjustment.

RULE 17. PUBLICATION.

These rules shall be immediately printed by the transportation companies, or their authorized agents, filed with the Commission and distributed to the agents of such transportation companies, and shall constitute their car demurrage tariff.

APPENDIX

FORM OF INDEMNITY BOND.

(To be furnished by shippers under Uniform Rules for Demurrage and Reciprocal Demurrage prescribed by the Railroad Commission of the State of California.)

KNOW ALL MEN BY THESE PRESENTS: That whereas

_____ of _____
County of _____, State of California, hereinafter designated as the "Shipper", desires hereafter to order from time to time from _____, a corporation,

(insert name of railway company)

hereinafter designated as the "Railway Company", a car or cars for loading freight for transportation within the State of California under the Uniform Rules for demurrage and reciprocal demurrage prescribed for standard gauge railroads by the Railroad Commission of the State of California;

NOW, THEREFORE, said shipper, as principal, and _____

and _____, as sureties, do hereby jointly and severally agree that in case, during the life of this bond, said Shipper shall order from the Railway Company a car or cars for loading freight and shall not use the same, they will pay to the Railway Company, upon demand, the demurrage charges prescribed by said rules for failure to use the car or cars so ordered, at the rate of three (3) dollars per car for each day or fraction of a day of detention, not exceeding, in case of an order for a single car, the sum of twenty (20) dollars, and, in case of an order for more than one ~~car~~, the sum of twenty (20) dollars plus fifteen (15) dollars for each car ordered in excess of one, together with charges for necessary empty-car haul and all damages, expenses and costs which the Railway Company may incur or in any wise be put to in the premises.

The term of this bond shall be _____ from date hereof. It is mutually understood and agreed and made a condition hereof that

the respective rights and obligations of the said principal and sureties herein and the said Railway Company, with respect to the matters herein contained shall be governed by the provisions of the Uniform Rules for Demurrage and Reciprocal Demurrage prescribed for standard gauge railroads by the Railroad Commission of the State of California, and it is further understood and agreed that any and all such amendments, alterations and additions shall not operate to discharge or diminish the obligation of the sureties of this bond.

This obligation shall inure to the benefit of the Railway Company, its successors and assigns, and shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, said principal and sureties have caused these presents to be duly executed this _____ day of _____ 19____.

(Principal)

(Sureties)

FORM OF REPORT FOR DEMURRAGE AND RECIPROCAL DEMURRAGE PAID AND COLLECTED.

(a) Report of demurrage collected for month of _____ 19____.

(Name of Carrier.)

Cars Reported		Cars Held Over Time		Demurrage		
Total	No.	Per Cent	Amount Charged	Amount Collected	Relief	Uncollected
-----	-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----	-----

(b) Report of demurrage paid for month of _____ 19____.

(Name of carrier.)

To whom paid	Date	Amount	Car Ordered	Car Placed	Reason for Delay in furnishing cars
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----
-----	-----	-----	-----	-----	-----

IT IS FURTHER ORDERED that carriers shall publish and furnish a copy of these rules to all regular shippers of freight over their respective lines and to other shippers upon request, and shall post in two conspicuous places in each freight depot a notice informing shippers of the provisions of the reciprocal demurrage rules.

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 12th day of December, 1914.

W. Howard

W. Gordon

Edwin E. Edgerton

Commissioners.