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Decision No._____

Decision No. 3159

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the matter of the application of Southern Pacific Company for authority to cancel Reference Note Circled 2 in connection with Items Nos. 970-A, 972-B, 974-B and 975-B of its Local, Joint and Proportional Freight Tariff No. 730, CRC No.1632, applying on packing-house products in refrigerator cars from South San Francisco to Santa Cruz, Sacramento, Fresno, San Francisco, Oakland and San Jose.

Application No. 1878.

Geo. D. Squires, for Southern Pacific Co., applicant.
Sanborn & Roehl, for Western Meat Company, protestant.

LOVELAND, Commissioner.

O P I N I O N

The Southern Pacific Company in this application is seeking authority under Section 63 of the Public Utilities Act to cancel Note circled 2, published in connection with Items Nos. 970-A, 972-B, 974-B and 975-B, of its Local, Joint and Proportional Freight Tariff No. 730, CRC No. 1632, applying on Packing House products in refrigerator cars from South San Francisco to Santa Cruz, Sacramento, Fresno, San Francisco, Oakland and San Jose.

Note circled 2, prior to March 15, 1915, read as follows:

> "Will apply on shipments under ice in refrigerator cars, but does not include cost of refrigeration."

Effective March 15, 1915, same was corrected to read:

> "Will apply on shipments under ice in refrigerator cars, but does not include cost of refrigeration,- exception to Rule 13."

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Rule 13 reads:

> "Rates named in this tariff do not include charge for refrigeration of freight. Refrigeration being a special service separate and distinct from transportation, the charge made for refrigeration is in addition to the transportation rates named herein. See Southern Pacific Co's Local and Joint Refrigeration Tariff No. 810, CRC No.1874, supplements thereto and reissues thereof, for refrigeration charges on shipments handled via lines of this company."

The cancelation of Note No.2 from Tariff 730, CRC No. 1632, would result in a charge of from $5 to $10 per car being imposed for the refrigeration service in conformity with the rates set forth in Section 2, page 7, of Local and Joint Refrigeration Tariff 810, CRC No. 1874, as follows:

To	Present Rate Per Car Minimum 20,000 Pounds	Proposed Rate Per Car Minimum 20,000 Pounds	Percentage of Increase
San Francisco	$5.00	$10.00	100%
Oakland	10.00	15.00	50
San Jose	10.00	15.00	50
Santa Cruz	25.00	35.00	40
Sacramento	36.00	41.00	15
Fresno	76.00	86.00	14

Applicant contends that it is entitled to this additional revenue to cover the cost of transporting the weight of ice in the bunkers, the cost of repairs to bunkers, and the supervision expense connected with shipments moving under refrigeration. It also desires to place the packing house traffic on a uniform basis and remove discrimination in charges.

The testimony of a witness for applicant developed the fact that carriers until a very recent date reserved the exclusive privilege of performing the refrigeration service, and that prior to March 15, 1915, no optional arrangements were in effect in California, the standard refrigeration rates being assessed against all consignments forwarded in cars with iced bunkers, except those forwarded by the protestant in this case.

Effective March 15, 1915, as per section 2, page 7, of Refrigeration Tariff 810, CRC 1874, a schedule of reduced rates was established for use of refrigerator cars under ice whereby shippers were permitted to perform the initial icing.

Applicant's Tariff 16, Y., CRC No.84, effective January 1, 1906, in Item No. 1036, page 52, provides for fresh meats, carloads, from South San Francisco to Sacramento. This item carries the following note:

> "Rate applies on shipments in refrigerator cars under ice; does not cover cost of ice."

The commodity rates here involved were subsequently established and all carry foot notes to the same effect. The evidence tends to show that this situation was brought about by the fact that the Southern Pacific Company has no facilities at South San Francisco for the icing of cars, and it appears that the Western Meat Company, protestant in this proceeding, was given the privilege of performing necessary initial icing of all cars loaded with packing house products moving out of its plant located at that point. This arrangement was apparently in the interest of economy, to avoid the loading of the ice into bunkers at San Francisco, moving the cars under ice to South San Francisco and maintaining at the point of loading an emergency ice supply to replenish the bunkers prior to their departure under load.

It would, therefore, appear that when the rates under discussion were established due consideration was given to all of the circumstances and conditions, and that the rates at the time were published/deemed to be sufficiently high to include the cost of transporting the ice, bunker damages and supervision expense. The additional charges now proposed are not to cover any new service but constitute an increase in the present transportation charges.

Protestant's witness testified that at all times since the establishment of its industry at South San Francisco, the icing of cars has been performed by its employes and that the

cost of transporting the ice in the bunkers was included in the freight rates, also that had the proposed tariff changes been in effect during the years 1914 and 1915, the increased charges would have amounted to $6,885 for the first year and $7,655 for the second. It is claimed that the method of icing the cars used in this traffic precludes any damage to bunkers, the ice first being put through a crushing machine, conveyed through a spout and with a mixture of salt gradually fed into the bunkers. This method is entirely different from that employed in icing cars for fruits or vegetables, where the ice is dropped into the bunkers in blocks weighing from 100 to 150 pounds each, thereby causing more or less damage to the equipment.

Much discussion was indulged in at the hearing and in the briefs of the attorneys as to the correct interpretation of Section 2 of the Refrigeration Tariff. Note No.1 to this section reads:

> "Any car requiring re-icing in transit will be accepted under above rates, only when shipper ices car to full capacity at point of origin. Any car requiring re-icing in transit, NOT iced to capacity by shipper at point of origin will be subject to charges shown under Section 1 of this tariff."

Attorneys for protestant contended that because of this foot note charges provided in Section 2 could not be applied to a consignment initially iced to capacity by shipper which did not require re-icing in transit. The section in its entirety refers to, "All carload shipments *****, when cars are initially iced by shipper", and the note is simply explanatory. If a car were iced to full capacity by shipper and required re-icing in transit Section 2 would certainly apply; it would also apply if car were not fully iced by shipper provided no re-icing was required in transit. Section 1 of the tariff would apply to cars requiring re-icing in transit which had not been iced to capacity by the shipper.

I would suggest applicant reframe this note and thus

prevent any possible differences of opinion as to its meaning.

The existing rates from South San Francisco clearly include the refrigeration service when the initial icing is performed by shipper. In other words, at the time these rates were made effective, carrier was fully advised that while it would not have to furnish the ice and put it in the cars it would have to haul the ice in refrigerator cars as incidental to the movements. This situation has existed since the time the industry was established in South San Francisco. The allegation made by the carrier that the charge made on shipments of fresh meat from South San Francisco constitutes a discrimination as against charges on like commodities from other points, in my judgment, has not been sustained for the reason that the rates from other points to destinations are presumably reasonable for the service rendered, and that such rates were established with the understanding that the refrigeration service would be additional thereto whether the icing was performed by the carrier or the shipper.

These cases differentiate from the situation at South San Francisco in that the carrier has never had and has not now facilities for refrigeration at the latter point and since the establishment of the industry at that point the industry, having facilities for refrigeration, has performed that service and received a rate from the carriers based upon that fact.

In view of these facts, the applicant has failed, in my judgment, to prove the rate unremunerative and has, therefore, not sustained the burden of proving the propriety of the proposed increase and the application will therefore be denied without prejudice.

I submit herewith the following form of order:

O R D E R

The Southern Pacific Company having applied under Section 63 of the Public Utilities Act for authority to cancel note circled 2, published in connection with Items Nos. 970-A, 972-B, 974-B and 975-B, in its Local, Joint and Proportional Freight Tariff No. 730, CRC No. 1632, applying to packing house products in refrigerator cars from South San Francisco to points shown in the opinion which precedes this order, and a public hearing having been held, and the Commission being fully apprised in the premises,-

IT IS HEREBY ORDERED that the application be denied, without prejudice.

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 14th day of March, 1916.

Max Thelen

H. Rowland

Alex Gordon

Edwin O. Edgerton

Commissioners.