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Decision No._____ ORIGINAL

Decision No. 4106

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

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SAN FRANCISCO CHAMBER OF COMMERCE, Complainant,	)	
vs.	)	Case No. 485.
SOUTHERN PACIFIC COMPANY and McCLOUD RIVER RAILROAD COMPANY, Defendants.	)	
McCORMICK-SAELTZER COMPANY, et al, Complainants,	)	
vs.	)	Case No. 580.
SOUTHERN PACIFIC COMPANY and McCLOUD RIVER RAILROAD COMPANY, Defendants.	)	
In the Matter of the Commission's investigation into class rates of SOUTHERN PACIFIC COMPANY, between all points San Francisco-San Jose and points north thereof to and including the Oregon State Line.	)	Case No. 686.

BY THE COMMISSION.

OPINION ON PETITION FOR REHEARING.

This is an application of the Southern Pacific Company for a rehearing in the above entitled cases.

The Commission's Decision No. 3847, rendered November 4, 1916, prescribed a schedule of class rates which it had determined were just and reasonable and ordered such rates established, to become effective on or before sixty days from the date of the order. On December 30, 1916, the effective date of the order was extended to and including February 4, 1917.

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Seven reasons are urged by the petitioner as to why a rehearing should be granted:

Petitioner first refers to the influence or effect which the California intrastate rates may have upon interstate rates and earnings and draws the conclusion that, because in some instances a combination of the proposed California rates and the interstate rates will break down through interstate rates, the order of this Commission interferes with interstate traffic and is, therefore, in violation of Section 8, paragraph 3 of Article I of the Constitution of the United States. The Commission in fixing the rates in these cases had in mind, and gave consideration solely to just and reasonable rates for intrastate traffic. If just and reasonable rates for intrastate traffic have been fixed, and we think they have, we believe we are not limited and restricted by reason of the fact that in some instances interstate rates are indirectly affected.

Reference is made to the fact that the interstate class rates from Portland, Oregon, to Northern California points have been called into question by the Portland Transportation and Traffic Association. This action, however, is dated October 26, 1916, and was filed with the Interstate Commerce Commission October 31, 1916, and, therefore, was not influenced by our decision of November 4, 1916.

As a second reason why a rehearing should be granted, petitioner asserts that the Commission's order went beyond the authority given by the Constitution of the State and by the Public Utilities Act in undertaking to establish absolute maximum rates. Article XII, Section 22, of the State Constitution, empowers the Commission -

"To establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies."

Nothing is said in the Constitution with reference to reasonable rates or maximum rates, although the first is inferred.

Section 32 (a) of the Public Utilities Act recites, in part:

"The commission shall determine the just, reasonable or sufficiant rates * * * to be hereafter observed and in force and shall fix the same by order as hereafter provided."

Notwithstanding petitioner's statement to the contrary, the decision and order did not establish absolute maximum rates, but did establish a scale of just, reasonable and sufficient rates for the distances indicated. Rates lower than those in the scale set forth in the decision were voluntarily established by defendant and are alleged by it to be less than normal, due to actual water and other competition.

It is urged by petitioner that no changes should be made south of Red Bluff, it being claimed that the rates in this territory were depressed to meet water competition, and petitioner in substance contends that none of the rates should be reduced because the classes are spread to meet this competition. With this position we cannot agree; where any of the rates are higher than normal they should be reduced. Even the fact that a first-class rate is depressed between certain points to meet water competition does not justify a spread of rates for the lower classes which is higher than normal rates for such classes between points of equal distance where no water competition exists.

The proposed mileage scale, while making some reductions at points on the west side of the Sacramento Valley where the

water compelled rates are not in effect, makes no reductions at all in the first-class rates between San Francisco and points on the east side of the Valley south of Tehama where the water competition exists, and from Tehama to Red Bluff there are only three reductions in first-class, viz., at Gerber from 62 to 60 and at Rawson and Red Bluff from 64 to 62 cents per hundred pounds. The present first-class rate of 64 cents between San Francisco and Red Bluff was reduced by defendant December 6, 1913, from 69 cents, and this change was apparently made without giving consideration to the water competition which is now so strongly urged.

The testimony in the cases at bar is conclusive to the effect that the operating conditions in the Sacramento Valley as far north as Red Bluff are no different from those in the San Joaquin Valley as far south as Bakersfield: therefore, no good reasons exist for establishing any rates higher in the one territory than in the other.

Since in this case this Commission does not give consideration to rates forced down by competitive conditions, such rates of the defendant lower than those set forth in the proposed mileage class scale were not disturbed. The rates in the mileage schedule will compare favorably with rates established by this Commission in other parts of California where the circumstances and conditions are similar.

As a third reason, petitioner alleges that the order is beyond the issues framed, and that the prescribed class rates will have the effect of causing reductions in commodity rates.

We do not consider this point well taken, for, while it is true that the Commission in Case No. 686 called into

question only the class rates, it must necessarily follow that commodity rates, when higher than reasonable class rates, are excessive and that class rates will prevail, in conformity with this Commission's Rule 8 of Tariff Circular No. 2, effective August 1, 1912.

A fourth reason given for a rehearing is based on the allegation that the decision and order are predicated upon a mistake of law and that no evidence was introduced relating to the inherent unreasonableness of the rates, but only with reference to their relative reasonableness.

Petitioner makes reference to colloquy, at the original hearing July 29, 1914, in Cases 480 and 585, between Commissioner Eshleman and Mr. Bradley of Sacramento, and reaches the conclusion that the Commissioner was of the opinion that the cases only called into question the relative reasonableness of the rates and not their reasonableness per se. This conclusion is refuted by an analysis of the entire discussion and particularly by Commissioner Eshleman's remarks, found on page 72 of the transcript, viz:

> "The Commission, in the San Joaquin Valley case, early in their history went on record as to the point that the relationship of rates would not be considered at all independent of a relationship which grew up in fixing reasonable rates, in every event: and if you will recall the case, that was one of the points that counsel brought forward; and there was a great amount of controversy in that case and we took that position, and we haven't receded from that position and I don't propose to do so now. If by fixing reasonable rates from San Francisco there is an unjust discrimination against you it must be because of the fact that you don't have reasonable rates from Sacramento and not because the relationship has been disturbed. And that is the position we have taken, and there is only one of two courses open to you: Either wait to see what is done with the Sacramento rate and San Francisco rate, and after that is done, if it reduces the rates, then pay your present rates until you can make complaint before the Commission and get them reduced; or at this time ask for reasonable rates to be put in from Sacramento north, because the carriers must at

least, and in justice to them also, have an opportunity to have their rates contested, and the rates from Sacramento north have not been put in issue."

Case No. 686, instituted by the Commission September 29, 1914, called all rates, main line and branches, into question, thus enlarging the complaints in the other two cases, which complained only of certain rates. This being true, defendant was put upon guard to defend its rate structure and was not taken unawares, but had every opportunity to justify the different rates contained in its schedules.

The Commission, after a thorough and prolonged investigation and a careful study of the many exhibits, not only found defendant's rates relatively unreasonable, but unreasonable per se.

As a fifth reason for requesting a rehearing, it is alleged that the rates prescribed are so low as to be confiscatory and, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States. We think this contention is without merit, and that the rates prescribed in the order are fair, just and reasonable.

Petitioner further alleges that the base rate of six cents per hundred pounds, first class, for distances five miles and under, is unreasonably low and will not produce a profit upon its investment.

In connection with Case No. 686, the Commission introduced a large number of exhibits making rate comparisons. The low rates set forth in the exhibits have been in effect for a great number of years, were voluntarily established by defendant, and have been continually maintained. These rates are not confined to the valleys; they also apply in mountainous territory.

The following tabulation illustrates the situation:

Miles	Between	And	1	2	3	4	5	A	B	C	D	E
3.9	Marysville	-Berg	5	5	5	4	4	4	3	2½	2½	2½
7.1	Chico	-Nord	6	5	5	4	4	4	3	2½	2½	2½
12.7	Marysville	-Wheatland	6	5	5	4	4	4	3	2½	2½	2½
4.1	Arbuckle	-Genevra	5	5	5	5	4	4	4	4	3½	3½
3.	Sacramento	-Elvas	6	6	6	5	4	4	4	4	3½	3½
6.3	Roseville	-Whitney	6	6	6	5	4	4	4	4	3½	3½
4.2	Elmira	-Vacaville	5	5	5	5	4	4	4	4	3½	3½
4.7	Redding	-Girvan	5	5	5	4	4	4	3	2½	2½	2½
2.8	Redding	-Middle Creek	5	5	5	4	4	4	3	2½	2½	2½
4.4	Hornbrook	-Zuleka	5	5	5	5	4	4	4	4	3½	3½
2.4	Sisson	-Upton	5	5	5	5	4	4	4	4	3½	3½
0.8	Brighton	-Ramona	5	5	5	5	4	4	4	3½	3	2½
6.4	Niles	-Sunol	5	5	5	5	4	4	4	4	3½	3½

A six cent base rate was formally established by this Commission March 28, 1912 in Case No. 116, commonly known as the San Joaquin Valley rate case and the rates established in that decision were not contested.

We were not influenced, as petitioner's application would imply, by the immediate effect such just and reasonable rates would have upon defendant's total gross revenue, but based our conclusions, as heretofore stated, upon a consideration of all the evidence and exhibits. The Commission is convinced that it has fixed just and reasonable rates and that such rates bear a proper relationship to the service rendered, also that they are comparable with those in effect between other points in California similarly situated, established by the Commission and not contested or voluntarily put in by carriers.

The petitioner's sixth contention is that the decision and order are contrary to the evidence. We have gone carefully through the records and made a study of the transcripts, and it is clearly apparent that the decision and order are not at variance with the evidence.

As a seventh reason for asking a rehearing, petitioner asserts that the decision and order are in violation of the Constitution of the State of California and the Public Utilities Act, inasmuch as the Commission did not indulge the presumption that the rates complained of were reasonable until proven to be unreasonable or discriminatory and that there was no proper evidence before the Commission to warrant the findings.

Case No. 686 was instituted September 29, 1914, upon the Commission's own motion and it would seem that our position was clearly set forth in the order, which read, in part, as follows:

> "And it is further ordered that the Secretary of this Commission be and he is hereby directed to serve upon the Southern Pacific Company a certified copy of this order* * * to show cause why this Commission should not establish just and reasonable class rates to be charged by the Southern Pacific Company * * * if it shall appear that the existing class rates or any thereof are excessive, unjust, unreasonable or discriminatory."

Certainly this petitioner was given every opportunity to prove the reasonableness of its rates and this Commission only reached the conclusion that the rates were unreasonable after a most exhaustive study of all the testimony and exhibits introduced at the many hearings in the three cases.

Petitioner contends constructive mileage should have been allowed on the following lines:

Knights Landing	Branch -	Woodland	to Marysville
Howard	Branch -	Peart	to Howard
Oroville	Branch -	Marysville	to Oroville
Stirling City	Branch -	Chico	to Stirling City
Colusa-Hamilton	Branch -	Harrington	to Glenn and under construction from Glenn to Hamilton.

The Commission is of the opinion that the line from Woodland to Oroville, referred to by petitioner as Knights Landing

and Oroville Branches, should be considered main line and, therefore, the mileage should not be equated.

The Howard Branch, extending from Peart to Howard, is but 1.7 miles long and equated mileage for this insignificant distance would have no effect on the rates. The Stirling City and Colusa-Hamilton Branches were not involved in these proceedings. The former, at the time these cases were heard, was an independent carrier, operating under the name of the Butte County Railroad, while the latter lines were under construction and are still being operated by the construction department.

The rates established in the order heretofore made in these proceedings are based on actual short line mileage. Southern Pacific Company's Distance Table No.420-B,C.R.C.No.1857, shows mileage as from San Francisco (Ferry Building), but defendant, in computing the freight rates, should apply actual short line mileage from freight depot San Francisco (4th and King Sts.). This distance, according to testimony, is 7.04 miles from San Francisco (4th and King Sts.) to Oakland (5th and Kirkham Sts.) and 6.34 miles to West Oakland.

We have given careful consideration to each of defendant's reasons, as set forth in the petition for a rehearing, and have also considered the offer of defendant to produce further testimony, but find nothing referred to which was not given full consideration prior to the rendering of Decision No. 3847 on November 4, 1916. The petition for a rehearing should be denied.

O R D E R.

The SOUTHERN PACIFIC COMPANY having filed a petition for a rehearing in the above entitled proceedings and consideration having been given thereto, and no good reason appearing why such petition should be granted,

IT IS HEREBY ORDERED that said petition for rehearing be and the same is hereby denied.

IT IS HEREBY FURTHER ORDERED that the following distances and rates be added to and made a part of Schedule No. 1 of the original order:

Over 500 miles, not over 510 miles-	99	84	69	62	57	57	40	30	25	20
" 510 " " " 520 "	100	85	70	63	58	58	40	30	25	20
520 " " " 530 "	101	86	71	63	58	58	40	30	25	20
530 " " " 540 "	102	87	71	64	59	59	41	31	26	20
540 " " " 550 "	103	88	72	64	59	59	41	31	26	21

IT IS HEREBY FURTHER ORDERED that the effective date of the order heretofore entered in the above entitled proceedings on November 4, 1916, be and the same is hereby extended to and including March 4, 1917.

Dated at San Francisco, California, this 15th day of February, 1917.

Max Thelen

H. D. Loveland

Alex Gordon

Edwin O. Edgerton

Frank R. Devlin

Commissioners.