

Decision No. \_\_\_\_\_

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE  
STATE OF CALIFORNIA.

In the Matter of the Application )  
of the SOUTHERN PACIFIC COMPANY )  
for authority to cancel Reference )  
Note Circled 2 in connection with )  
Item 970-A, 972-B, 974-B and 975-B, )  
of Local Joint and Proportional )  
Freight Tariff No. 730, C.R.C. No. )  
1632, applying on Packinghouse )  
Products in Refrigerator Cars from )  
San Francisco, South San Francisco, )  
and intermediate points to Santa )  
Cruz, Sacramento, Fresno, San )  
Francisco, Oakland, San Jose and )  
intermediate points. )

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George D. Squires, for Applicant

Arthur B. Roehl, of Sanborn &  
Roehl, for Western Meat  
Company, Protestant.

L. A. Bailey, for C. Swanston &  
Son, Intervener.

BY THE COMMISSION.

OPINION

This is an application by the Southern Pacific  
Company for an order authorizing the cancellation of  
Reference Note Circled 2, in connection with Item 970-A,  
972-B, 974-B and 975-B of Local, Joint and Proportional  
Freight Tariff No. 730, C.R.C. No. 1632.

A public hearing was held in San Francisco January 25, 1917 before Examiner Bancroft, at the close of which the application was submitted upon briefs to be filed by applicant and by protestant. These briefs having been filed, the matter is now ready for decision.

The Western Meat Company, shippers of fresh meat and other packing house products, from South San Francisco, appeared as protestant, while C. Swanston & Son, shippers of the same commodity, from Sacramento, were permitted to intervene. All parties stipulated that applicant's petition in Application No. 1878, decided March 14, 1916, (Vol. 9, Opinions and Orders of the Railroad Commission of California, Page 334), and the testimony in relation thereto, together with the records and exhibits in Case No. 997, C. Swanston & Son vs. Southern Pacific Company, (Decision No. 4123, dated February 21, 1917), might be received in evidence in the present proceeding.

The purpose of this proceeding is substantially the same as that of Application No. 1878 (supra), in which applicant sought permission under Section 63 of the Public Utilities Act to cancel 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, C.R.C. No. 1632, applying on packinghouse products in refrigerator cars from South San Francisco to San Francisco, Santa Cruz, Sacramento, Fresno, Oakland and San Jose. This note reads:

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

The former application was apparently made upon the theory that the rates from South San Francisco created unreasonable discrimination as against shippers located at Sacramento and other points. The conditions under which shipments of packinghouse products move from South San Francisco are set forth in the opinion in Application No. 1878 (supra), which opinion should be read in connection with this opinion.

When the matter was originally before the Commission it was stated, in both applicant's and protestant's briefs that the cancellation of Note No. 2 would result in a charge for refrigeration service, in addition to the regular freight rate, of \$5.00 per car on shipments from South San Francisco to San Francisco, Oakland, San Jose and Sacramento, and of \$10.00 per car on shipments to Santa Cruz and Fresno. The Commission, in rendering its decision, followed the pleadings and dismissed application No. 1878 without prejudice.

Subsequent to the filing of the present application, the case of Swanston & Son vs. Southern Pacific Company, No. 997 (supra), was heard and decided. In that case, complainant, a wholesale butcher, who had been shipping meat in carload lots in refrigerator cars under ice, from Sacramento and Swanston to San Francisco, Oakland and Stockton, alleged that since March 15, 1915, the shipments had been subject to an additional charge of \$5.00 per car for refrigeration service, although no icing or inspection in transit had been requested. Relief was

sought from the imposition of the additional charge in the future and for reparation of the amounts collected thereunder since March 15, 1915.

The Commission, after an extended hearing and the consideration of briefs filed by the respective parties, held that this additional charge of \$5.00 per car was not only discriminatory and in violation of Section 17 of the Public Utilities Act, but also that where shipments such as those in question move in cars pre-iced by shippers, with instructions not to re-ice en route, no refrigeration is performed by the carrier for which it is entitled to make an additional charge; that, therefore, the charges in Refrigeration Tariff are not applicable, but instead, such traffic is subject to Section 3 of Rule 29 of Current Western Classification No. 54, C.R.C. No. 143, which provides that no charge will be made for transportation of the ice in bunkers of cars.

The circumstances under which the shipments of packinghouse products move from South San Francisco are substantially the same as those under which the consignments move from Swanston; in each case the cars are fully pre-iced by the shipper and are transported to their respective destinations without further attention, the bills of lading carrying a notation to the effect that the cars are fully iced by shipper and require no re-icing in transit.

In its closing brief in the present proceeding applicant suggests, among other matters, that although it was held in the Swanston case (Supra) that Rule 29 of the Western Classification governs Southern Pacific Tariff No. 711, this Rule might not apply to the shipments between

South San Francisco and San Francisco under Tariff No. 730, inasmuch as such shipments move under a commodity rate of 2½¢ per 100 lbs., while the Swanston shipments move under a third class rate. The third class rate from South San Francisco to San Francisco is 6¢ per 100 lbs.

This contention cannot be sustained, for Local, Joint and Proportional Freight Tariff No. 730, C.R.C. 1632 (Commodity Rates), is governed, as per its title page, by the rules of Western Classification and of the Exception Sheet exactly as is Local Freight Tariff No. 711, C.R.C. 1515 (Class Rates).

In the Swanston case (supra) it was held that under application of Rule 29, current Western Classification, the rates in carrier's Refrigeration Tariff are not applicable to shipments of this nature and it was there announced that:

"Defendant should so amend its Refrigeration Tariff 810 as to make it perfectly clear that the refrigeration rates named therein are not applicable to shipments pre-iced by shippers and not re-iced in transit, moving under Rule 29 of the Western Classification."

In view of this decision, it is clear, as above suggested, that no increase would be brought about by the proposed change, and with this understanding, we are of the opinion that the application should be granted.

#### O R D E R

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 of its Local,

Joint and Proportional Freight Tariff No. 730 (C.R.C. No. 1632), applicable to packinghouse products from South San Francisco to San Francisco, Oakland, San Jose, Santa Cruz, Sacramento and Fresno, and a public hearing having been held and the Commission being fully apprised in the premises, and basing its order upon the findings of fact set forth in the foregoing opinion,

IT IS HEREBY ORDERED that the application be granted.

Dated at San Francisco, California, this 7th-  
day of April, 1917.

Max Theiler

H. J. ...

Edwin O. Edgerton

Frank R. ...

Commissioners.