Decision No. 478

BEFORE THE RAILROAD COMMISSION
OF THE STATE OF CALIFORNIA.

In the Matter of the Application of CENTRAL PACIFIC RAILWAY COMPANY, SOUTHERN PACIFIC RAILROAD COMPANY and SOUTHERN PACIFIC COMPANY for authorization to make a lease of a certain railroad; to make a sale of a certain railroad; to make a contract for the joint use and possession of a certain railroad; to make a contract for running and trackage rights over a certain railroad; and to make a contract for the joint use of certain railroad terminals.

ORIGINAL

Application No. 409.

Decision No. 478

McCutchen, Olney and Willard and W. W. Cotton for Central Pacific Railway Company.
Wm. F. Herrin and Guy V. Shoup for Southern Pacific Company and Southern Pacific Railroad Company.
Chas. S. Wheeler and Allen P. Matthew for Western Pacific Railway Company.
Robert T. McKisick, City Attorney, for City of Sacramento.
Ben F. Woolner, City Attorney, for City of Oakland.
Seth Mann for San Francisco Chamber of Commerce.

BY THE COMMISSION.

SUPPLEMENTAL OPINION.

Inasmuch as we understand the imposition of the conditions set out in the main opinion and order will result in the rejection of the contract in its entirety, thus rendering further negotiations between the parties necessary, it is propor to set out specifically what arrangement we will approve and the reasons therefor.

The Supreme Court orders one act only, aside from the temporary expedients incidental to the carrying out of the decree, namely, the sale by the Union Pacific of the Southern Pacific stock. It permits, however, to the Union Pacific "the Central Pacific connection from Ogden to San Francisco.....thus effecting such a continuity of the Union Pacific and Central Pacific as was contemplated by the Acts of Congress under which they were constructed" (United States vs. Union Pacific Railroad Company, et al.) Recognizing the importance of such a suggestion from the Supreme Court, we will treat the decree as directing such an outlet over the Central Pacific as here suggested and will assume that it is the duty of any inferior tribunal acting within its jurisdiction to exercise any discretion which it may have in such a manner as to effectuate this de-

sign of the Supreme Court as well contained in its suggestion as required by its command. Therefore, we proceed upon the theory that the Union Pacific is to be divested of control of the Southern Pacific by such disposition of the Southern Pacific stock as will make these two lines bona fide independent lines, and that the Union Pacific is to be invested with an outlet to the Coast.

The Attorney General of the United States has recognized these two requirements but he has added an additional requirement, admittedly not commanded or suggested in the decree and which could not be directly brought about except by a new proceeding in the Federal Courts prosecuted to a decree favorable to his contention in the Supreme Court of the United States. This is the requirement that the Southern Pacific Company sell the stock of the Central Pacific. We assume, however, that the insistence by the Attorney General upon the sale by the Southern Pacific Company of the stock of the Central Pacific held by it is only incidental to his main design which is to prevent the control by the Southern Pacific Company which owns the Sunset line by way of the El Paso Gateway of a line at least in part competitive therewith to the Ogden Gateway. We cannot believe that the plan of the Attorney General to bring about his desired result makes necessary anything more than the surrender by the Southern Pacific Company of the Central Pacific main line and its exclusion from any interest therein. Certainly, the main design does not necessitate the surrender by the Southern Pacific to its present dominant ally but competitor to be, of its most important feeders and all of its advantage secured by reason of its being first in the field. Neither does it contemplate the admission of this formidable rival to the exclusion of any other rival or ally to the joint use of one of its advantageous short lines nor to the exclusive joint use of its important terminals. Neither do we think the Attorney General desires to upset local traffic conditions by breaking a well built system of local lines

well suited to serve the local needs of the people of this state into two disassociated sets of branches some of which begin and end nowhere if we have reference to their separate ownership. These local lines are the result of many years of growth and any one at all familiar with railroad conditions in this state knows that they can be much more conveniently and economically managed as one local system than by the substitution of two incomplete local systems and two agencies to perform the service now being carried on by one complete system in charge of one agency.

That the Attorney General has in view the bringing about of a result and is not insisting upon any particular method of accomplishing such result is we believe a fair inference. We are confirmed in this by his attitude expressed by telegraph on the first day of the hearing of this case as to the exclusive use of the Benicia cut off and the terminals of the Southern Pacific by the Union Pacific.

We then conclude that all that the Attorney General adds to the two requirements of the Supreme Court is the one additional which contemplates the disposition by the Southern Pacific Company of its control of the main line of the Central Pacific with which it is supposed to compete by the El Paso Route, and that he is not committed to any particular method and that his approval may be expected to any reasonable method of effectually accomplishing this result.

The essential elements of the plan of the Supreme Court as added to by the Attorney General are:

First, the sale of the Southern Pacific stock by the Union Pacific.

Second, the securing by the Union Pacific of an outlet to the Coast over the Central Pacific Line; and

Third, the surrender by the Southern Pacific Company of so much of the Central Pacific line as is necessary to prevent said Southern Pacific Company from controlling a line designed to compete with its El Paso Route.

With the first requirement we have no direct official concern, but we invite the attention of the Attorney General and the court to the contention of the Western Pacific Railroad Company that the syndicate formed by Kuhn, Loeb and Company, the Union Pacific Bankers, is in effect accomplishing by indirection what the Supreme Court refused to permit to be accomplished directly, viz., the purchase by the stockholders of the Union Pacific of the Southern Pacific stock. It is urged that this banking house and the syndicate formed by it are controlled by the large stockholders of the Union Pacific and that by making Southern Pacific stock an undesirable investment, the stockholders of the Southern Pacific Company will be deterred from buying and the Union Pacific controlled syndicate will thereby secure control of this stock, thus leaving the Union Pacific and Southern Pacific controlled by the same stockholders, an arrangement which the Supreme Court has already condemned.

The two other conditions we believe may be readily worked out together so as substantially to meet the requirement of the Court and the Attorney General as well. If a lease similar in terms to the one agreed upon to the Tehama-Oregon line of the Central Pacific be made by the Central Pacific to the Union Pacific of the line from Ogden to Sacramento, including the line from Roseville to Tehama freed from the objection already urged against the method of arriving at a value, this Commission will approve such a lease. We see no reason why a flat price covering the value of this line cannot be agreed upon since an exclusive lease for such a long time would be tantamount to ownership. Or a lease with option to purchase when bonded indebtedness admits might be consummated. This arrangement will place the Union Pacific at Sacramento in a position in regard to an outlet to the coast different from that occupied by any other line at that point. Under the Acts of Congress providing for the construction of Union Pacific and Central Pacific as construed by the Supreme Court of the United States, it is provided that the Union Pacific have an outlet over the Central Pacific to San Francisco. Such being the case, if the Central Pacific or

its successor in interest, gives to the Union Pacific access to San Francisco from Sacramento over the Central Pacific line between these two points, such agency will have done so not as a voluntary act, but as a requirement of Congress and certainly cannot be held as thereby subjecting itself to any penalty or disadvantage by reason of such act. Therefore, if the scheme which we have suggested is adopted and the Union Pacific secures exclusive control of the Central Pacific line from Ogden to Sacramento, it may likewise secure exclusive or joint control of the line from Sacramento to Oakland by way of Niles because of the fact that this is the outlet of the Central Pacific referred to in the Congressional Acts and admitted to be such by the parties to this case. Therefore, under such conditions we will sanction an arrangement which puts the Union Pacific in entire or joint control with the Southern Pacific of the Central Pacific line from Sacramento by way of Niles to Oakland.

As regards the terminals, we are willing to permit the exclusive use by the Union Pacific or the joint use by it with the Southern Pacific of such terminals as are incident to this line of railroad from Sacramento, but not the facilities which are incident to any other line independent of this line.

Having secured by the method herein outlined an outlet to San Francisco over the line and in a way selected for it by Congress the Union Pacific may not say that it finds itself in Sacramento in any different position as regards any other line from Sacramento to Oakland than is the Western Pacific or any other competing line, and there is no more reason for giving it a right of way over a more advantageous line between Sacramento and Oakland even for an adequate consideration than there is for giving such a right of way to the Western Pacific or any other independent line. The only warrant for the position of the Union Pacific that it should be allowed to get to San Francisco is derived from the Acts of Congress which alone constitute it superior in this regard to other

lines. The intention of Congress having been effectuated by its admission to the use of the line designated by Congress, it may not urge as a right its admission of ther to the joint or several use of another line. This conclusion has led the Commission in its main opinion and order to impose as a condition upon the use by the Union Pacific of the Benicia short line the right under similar terms of any other road to use the same.

We have endeavored to point out herein a method which we believe would satisfy the command and suggestion of the Supreme Court and the desire of the Attorney General, and have stated our reasons for recommending this arrangement. If, however, the Attorney General and the Circuit Court in its discretion shall hold that the Southern Pacific shall sell all of the Central Pacific stock to the Union Pacific thereby giving to the Union Pacific through stock ownership not only the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland, but also the important feeders of such line, we shall not be disposed to withhold our approval to the other provisions of the agreement presented to us on the sole ground that the Federal authorities have adopted the stock ownership plan for the transfer of this property with its attendant disadvantages and not the plan which we have recommended, which we believe from a careful investigation of the conditions is preferable from the standpoint of the public. In other words, we have deemed it best to point out to the Federal authorities our objection to the control of the entire Central Pacific system by the Union Pacific and have suggested an alternative plan which will meet such objections, but if after having considered our proposal the Federal authorities, acting within their jurisdiction, adhere to the original plan of the Attorney General we will waive this objection because while we consider it important we do not consider it entirely essential. Particularly, do we reach this conclusion by reason of the fact that this Commission has the power to regulate local rates and service and the admitted intention of the parties not to attempt to use the separation of these lines as a means and excuse

for increasing the rates and impairing the service.

If the Union Pacific under the permission of the Attorney General and the Federal Court is permitted to purchase the stock of the Central Pacific, then, we will limit it to the line between Sacramento and Oakland, to which this ownership entitles it and the terminals incident thereto. If it is accorded any other terminals, or any other route, by the voluntary act of the Southern Pacific Company, we shall insist upon the conditions which we have imposed in the main Opinion and Order. We, therefore, recommend the arrangement which we have suggested for the acquirement by the Union Pacific of the main line of the Central Pacific from Ogden by way of Sacramento and Niles to Oakland and the branch line from Roseville to Tehama, but, if the Attorney General and the Circuit Court in spite of such recommendation desire that the Union Pacific secure the stock of the Central Pacific, thereby securing, not only this main line, but the branches, our approval will be given likewise to the following arrangements, but only on the conditions outlined in the main Opinion and Order.

We will approve, if application is made therefor, the arrangement outlined in the main decision respecting the lease of the line from Tehama to the Oregon State line; the sale of the Wood Line; the lease of the Bay Shore cut off; the lease of the Benicia Short Line from Sacramento to Oakland; and the lease of the terminals including industry tracks, specified in the agreement, the latter to be made definite and specific hereafter.

We recognize that some of the facilities of the Central Pacific and Southern Pacific are so connected and interwoven that it is practically impossible to require their separation and the Commission will be disposed to recognize any necessities which may arise from such a cause, but if the use of any other facilities, such as industry spurs and terminal facilities of a similar character be accorded by the Southern Pacific to the Central Pacific, or the Central Pacific to the Southern Pacific, then, the voluntary according of such use will carry with it as an annexed condition the

necessity of according a similar privilege to any other line similarly situated and willing to pay a reasonable compensation therefor. And it shall only be necessary in each instance for the line desiring these privileges to be accorded to it to secure the consent of the owner of such facilities and not the consent of the other company which has been voluntarily admitted to the use.

Dated at San Francisco, California, this 24th day of February, 1913.

John M Eshleman
Alex Gordon
H Lovelace
Max Thelen
Edwin O. Edgerton

Commissioners.