

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

.....

In the matter of the one-way, round-trip and commutation fares and the rules and regulations affecting the same of the NORTHWESTERN PACIFIC RAILROAD COMPANY for the transportation of passengers between all points on the Southern Division of said NORTHWESTERN PACIFIC RAILROAD COMPANY, and of the practice of the NORTHWESTERN PACIFIC RAILROAD COMPANY in charging for the transportation of passengers, fares less than the fares provided in its passenger fare schedules on file with the Railroad Commission of the State of California.

.....

Case No. 333

(On the Commission's own initiative)

- Lilienthal, McKinstry & Raymond, and Joseph Haber, for Northwestern Pacific Railroad Company.
- Carlos P. Griffin, for Corte Madera Improvement Club.
- Edward I. Butler, and E. O. Allen, for the town of San Rafael.
- O. T. Meldon, for the town of Larkspur.
- Marcus Rosenthal, for California Schuetzen Park Building Association.
- Thomas E. Hayden, and J. J. Mazza, for Novato.
- George F. Cosby, for North San Anselmo Improvement Club.
- E. A. Wood, for School Authorities of Marin County.
- S. M. Augustine, for Marin County Civic League.
- Royal A. Vitrasek, for Commuters north of Santa Rosa.

Thelen and Loveland, Commissioners.

O P I N I O N

On November 15, 1912, this proceeding was instituted by the Commission upon information that the defendant was charging and collecting for the transportation of passengers between San Francisco and San Rafael fares less than the fares provided in its lawful passenger tariffs on file with the Commission.

In the original investigation the defendant's one-way fares between San Francisco and San Rafael and intermediate points only were put in issue. The scope of the investigation

was subsequently enlarged so as to bring into question all of the defendant's passenger fares, including the one-way, round-trip excursion and commutation fares, and all the rules and regulations affecting such fares, between all points on its Southern Division.

This action was taken by the Commission because numerous informal complaints were received from individuals, Civic Associations and Municipalities against fares, rules and regulations other than those comprehended in the original investigation and some of which the defendant had declined to informally adjust in cases submitted to it.

The jurisdiction of the Commission in this matter was not questioned and in view of the specific grant in the Constitution of power to the Commission "to authorize the issuance of excursion and commutation tickets at special rates" there seems to be no grounds for doubting that jurisdiction over excursion and commutation fares, although fares of a special character, is as fully vested in the Commission, in every regard, as is jurisdiction over the regular one-way fares of the carrier, which is well understood.

It is contended that the carrier is greatly over-capitalized and for that reason the reports filed by it with the Commission do not correctly reflect the return on the actual investment; that a decrease in the cost of operating its passenger service had been effected by the consolidation of the several lines formerly serving Marin, Sonoma and Mendocino Counties into one line and by the elimination of the regular transbay ferry service between San Francisco and Tiburon; that the fares between San Francisco, Tiburon and points reached by the electric lines of defendant, are excessive, unreasonable and unjust as compared with fares between San Francisco and other suburban points served by other lines and suburban fares in other localities, and are discriminatory as between themselves; that "school fares" in Marin

County and between various points on the line of the carrier are discriminatory and unjust as compared with "school fares" between San Francisco and those points and unreasonable of themselves; that fares within the corporate limits of certain points on the line of defendant are excessive and unjust and that the general adjustment of fares between stations on the Southern Division of the defendant is discriminatory and inconsistent and unreasonable. Also, the right and justice of the practice of charging and collecting through round-trip fares higher than the aggregate of the intermediate fares and of imposing and collecting an additional fare as a penalty from passengers boarding trains at agency stations without tickets, after opportunity to purchase same had been given, is put directly in issue. The practice of restricting the use of the monthly commutation tickets to the purchaser thereof is alleged to be unreasonable and unjust.

The defendant contends that the operation of its line, because of its nature - part ferry and part rail - is carried on at a great expense; that no dividends have been paid on its stock since its organization; that it has been necessary to expend all the surplus for improvements and that therefore the revenues from its passenger service are such as to preclude any reduction in the present fares. However, no general denial of the charge of discrimination, unreasonableness and lack of uniformity in its Southern Division fares, rules and regulations generally, was made by the defendant. In fact, one of the defendant's witnesses testified that the Commission would be aiding the carrier as well as the public in straightening out the inequalities of its rates. As to the fares in suburban territory, defendant specifically contends that such fares are as low as fares elsewhere for the same service and further that such fares in suburban territory are not in themselves remunerative.

It appears that the Northwestern Pacific Railroad Company was organized during the year 1907 and represents a consolidation of several companies which were in existence at that time, and is capitalized for \$35,000,000.00 and has an outstanding bonded indebtedness of \$22,695,000.00.

With the exception of ten directors shares the entire capital stock is held in equal amounts by the Atchison, Topeka & Santa Fe Railway Company and the Southern Pacific Company. The book value of the shares held by the Southern Pacific Company is shown in its reports as \$5,990,242.39, and the book value of the shares held by the Atchison, Topeka & Santa Fe Railway Company is shown as \$3,660,260.31 in its reports. It appears therefore that \$7,650,000.00 more closely approximates the actual capitalization of the line than the \$35,000,000.00 outstanding in stock. Again, at the time of the purchase of the stocks of the constituent companies and consolidation of the properties there was no detail valuation made of the properties of such companies and because of the keen rivalry, for the properties, existing between the Atchison, Topeka & Santa Fe Railway and Southern Pacific Company, the amount paid for the stock of these companies might have been in excess of the actual value of the properties. A concise and brief history of the conditions which prevailed at that time and which led up to the consolidation was given by a witness for the defendant, as follows:

"The Southern Pacific Company and the Atchison had been secretly, as far as the other one was concerned, endeavoring to get into that redwood country to the north which we thought was a very valuable thing;***** The Atchison had bought these northern properties about Eureka, the lines of railroad about Eureka, and had attempted, but failed, to buy the old Donahue Road. At this end the Southern Pacific succeeded in getting both the Donahue and North Shore Roads and then *** both energetically organized railroad companies and made surveys with a desire, we (the Atchison) of building from our Eureka end to San Francisco and the Southern Pacific building north from their end to Eureka; but they were staggered by the enormous cost of this undertaking and it became evident that it was absurd for two companies to parallel each other in that way; they never could have recouped themselves at all; therefore they came together and formed a organization in which each owns one-half of the stock".

The Commission has not proceeded with its valuation of the line of the Northwestern Pacific Railroad Company far enough to enable it to form its conclusions in regard thereto and therefore cannot place a check against the book values of the stock outstanding, nor has it investigated in detail into the many transactions involved in the consolidation, for the reason that many of the records containing such detail have been destroyed or are not available.

The capital stock of \$35,000,000.00 is admittedly excessive, and as a witness for the defendant testified, it would be absurd to expect to earn interest thereon.

Of the bonds outstanding \$10,516,000.00 have been issued for the purpose of constructing new lines to connect the Northern and Southern Divisions. The interest on these bonds is not paid out of the earnings of the operated line but out of the funds realized from their sale and the construction accounts are kept separate from and are not involved in the accounts of the operated lines, therefore, for the purpose of this investigation, no further attention need be given to this part of the funded debt of defendant. The funded debt outstanding, including all underlying bonds, against the entire operated line is as follows:

Underlying issues outstanding at date of reorganization, and not yet liquidated:

| | | |
|----------------------------------|----------------|-------------|
| S.F. and N.P. Ry. Co's issue '89 | \$3,718,000 | |
| Cal. Nor. W. Ry. Co. " '98 | 954,000 | |
| E.R. & E.R.R. Co. " '94 | <u>313,000</u> | \$4,985,000 |

| | |
|---|-------------|
| Issued, out of General Mortgage Fund of \$35,000,000, for reorganization..... | \$5,094,000 |
|---|-------------|

| | |
|--|------------|
| Issued, out of General Mortgage Fund of \$35,000,000, for additions and betterments..... | \$ 600,000 |
|--|------------|

| | |
|--|--------------------|
| Issued, out of General Mortgage Fund of \$35,000,000, to retire North Pacific Coast RR Co's issue of 1893..... | <u>\$1,498,000</u> |
|--|--------------------|

| | |
|--|---------------------|
| Total bonded indebtedness outstanding against operated line. | <u>\$12,177,000</u> |
|--|---------------------|

The issue of \$5,094,000.00 out of the general mortgage fund was made for the purpose of taking up a note of the Northwestern Pacific Railroad Company, of which the present company is the successor. The note had been executed to the Southern Pacific Company at the time of the consolidation and by the terms of the agreement it was to be paid out of the proceeds of the sale of general mortgage bonds. The bonds were issued to the Southern Pacific at 95 in exchange for the note with accrued interest.

The total operative mileage of the Northwestern Pacific Railroad Company for the year ending June 30, 1912, was 400.86 miles; therefore the bonded indebtedness is approximately \$30,000 per mile of operated line. The funded debt per mile of road in the United States for the year ending June 30, 1910, averaged approximately \$39,000.00. However, with an assumed capital stock of \$7,650,000.00 and a bonded indebtedness of \$12,177,000.00 the securities outstanding aggregate \$19,827,000.00 or approximately \$50,000.00 per mile of operated line which is a very liberal "capitalization" for this particular line of road, all things being considered.

The income account of the Northwestern Pacific Railroad Company for the year ending June 30, 1912, presents the following items:

| | | |
|--------------------------|----------------------|---------------|
| Operating Revenues | \$3,499,099.95 | |
| Operating Expenses | <u>2,563,618.29</u> | |
| Net Operating Revenue | | \$ 935,481.66 |
| Taxes | <u>\$ 143,175.11</u> | |
| Operating Income | | \$ 792,306.55 |
| Rent of Joint Facilities | \$ 102,268.97 | |
| Interest | <u>\$ 898.35</u> | |
| Other Income | | \$ 103,167.32 |
| Gross Corporate Income | | \$ 895,473.87 |

The following deductions were made from income

| | |
|---------------------------------|---------------------|
| Rents and Hire of Equipment | \$ 4,938.23 |
| Interest accrued on Funded debt | \$ 577,264.20 |
| Sinking & Redemption Funds | <u>\$ 39,788.65</u> |
| Total | \$ 621,991.08 |

The net corporate income was \$ 273,482.79

The interest paid represents interest at ~~4%~~ and 5% on bonds outstanding against the operated line only. No dividends were paid on capital stock. The entire net income was added to surplus which on June 30, 1912, was \$1,746,906.12. Of the surplus as of June 30, 1912, \$692,389.20 accrued prior to and was available at the time of consolidation. The amount credited to surplus does not, as is commonly supposed, represent cash on hand. The surplus here shown merely represents the balance of the Profit and Loss Account as of June 30, 1912, and all of it has been expended for additions and betterments and replacing old equipment, as indicated in the following table:

| <u>Year Ending</u> | <u>Expended for Additions & Betterments</u> | <u>Expended for Replacement of Equipment</u> |
|--------------------|---|--|
| June 30, 1907 | \$ 44,783.58 | \$ 40,520.58 |
| June 30, 1908 | 458,737.70 | 104,048.19 |
| June 30, 1909 | 153,266.79 | 55,412.17 |
| June 30, 1910 | 214,229.16 | * See Note |
| June 30, 1911 | 430,481.88 | * See Note |
| June 30, 1912 | <u>293,442.30</u> | <u>* See Note</u> |
| | Total \$1,594,941.41 | \$299,980.94 |

NOTE: Since 1909 charged to depreciation in maintenance accounts.

As of June 30, 1912, the total expenditures for additions and betterments since consolidation was approximately \$8,200.00 in excess of the funds available from surplus, which was appropriated from current receipts subsequent to closing of the year's accounts.

The expenditure out of surplus for new equipment has been \$683,475.20, and as set out above, the expenditure for replacing old equipment has been \$199,981.00, aggregating for equipment expenditure alone \$883,456.20 since the consolidation.

In Case No. 117, Geo. A. Egg, vs. Nevada County Narrow Gauge Railroad Company and Southern Pacific Railroad Company, this Commission held that, - "Railroads should make due allowance for depreciation and should be permitted to accumulate sufficient surplus to renew facilities worn out in service, but the public should not be called upon to provide the money for new construction and permanent improvements. If the stockholders wish to

invest their money in new construction and the like, the public might be reasonably asked to pay fair returns on the additional capital thus invested, but we believe it is absurd to ask the public to furnish both principal and interest, through the medium of excessive rates. Some of these improvements are designed to do service for all time and the shippers and travelling public of to-day should not be burdened to provide facilities for future generations". This principle is supported by the decision of the Supreme Court of the United States in the case of the Illinois Central Railway vs. Interstate Commerce Commission, - 206 U S 441 - 462, wherein it is said, - "It would seem as if expenditures for additions to construction and equipment, as expenditures for original construction and equipment, should be reimbursed by all of the traffic that they accommodated during the period of their duration and that improvements that will last many years should not be charged wholly against the revenue of a single year". It appears, therefore, that the expenditure for the new equipment out of surplus might reasonably be questioned, particularly in view of the fact that the defendant contends that no dividends have been paid its stockholders. Again, the defendant has set aside to sinking and redemption funds, since consolidation, the sum of \$219,099.30 to retire bonds in accordance with their terms. In Case No. 117 supra, the Commission said, - "we do not believe the public should be called upon to pay excessive rates so that bond issues can be retired from earnings of a road. The stockholders are the beneficiaries as bonds are retired and if bonds must be retired before the stockholders are prepared to do so, they - not the public - should pay for the mistake in financing". In this case, however, it is presumed that the management acted with full knowledge of the stockholders, the Atchison, Topeka & Santa Fe Railway and Southern Pacific Company, in providing from income a fund for retirement of bonds and expending from income for permanent improvements in lieu of distributing the same as dividends ^{and} there can be no objection to such disposition of the income, under such circumstances.

2
Suburban
 The revenue of the Northwestern Pacific Railroad is derived largely from its passenger business. For the year ending June 30, 1912, the gross passenger revenue was \$1,959,120.48, while the gross freight revenue was but \$1,068,179.65, for the Southern Division. In other words, of the entire revenue from the operation of the Southern Division, 62.72% was from its passenger service and but 35.28% was from its freight service. Although the bulk of the passenger traffic is between points in the territory located between San Francisco, Fairfax and San Rafael and Tiburon, and hereafter referred to as "suburban" territory, this traffic does not afford the bulk of the Southern Division passenger revenue as is evidenced from the following statement:

SOUTHERN DIVISION PASSENGER TRAVEL - YEAR ENDING DEC. 31, 1912

| Kind of Traffic | Passengers | Miles | Revenue | Average Distance Carried | Average earnings per Passenger | Average earnings per Passenger Mile |
|-----------------------------------|------------------|-------------------|---------------------|--------------------------|--------------------------------|-------------------------------------|
| Suburban Commutation | 2,597,322 | 35,328,061 | \$181,624.30 | 13.60 | 6.99 | .51 |
| Suburban (other than commutation) | 2,815,080 | 32,239,237 | 555,619.04 | 11.45 | 19.03 | 1.65 |
| Main Line | <u>1,303,571</u> | <u>47,997,152</u> | <u>1,070,168.65</u> | <u>38.82</u> | <u>82.10</u> | <u>2.23</u> |
| | 6,715,973 | 115,564,450 | \$1,787,411.99 | 17.20 | 26.61 | 1.55 |

Thus of the 6,715,973 passengers handled over the entire Southern Division during the year ending December 31, 1912, 5,412,402 or practically 80% were passengers between points in suburban territory while the revenue derived from its suburban service was but 40% of the entire revenue. The average earning per passenger mile from suburban traffic was but 1.06 cents, while it was 2.23 cents from traffic other than suburban.

This table also shows that of the suburban traffic 52% is other than commutation, on which 75% of the entire revenue from suburban passenger traffic accrues. Thus, though the volume of the commutation and other suburban traffic is about equal, the revenue

on the latter is three times greater than on the former.

It will be noted that the average earning per passenger mile on suburban commutation traffic is .51 cents, while on other suburban traffic the average is 1.65 cents and that the average on the main line which embraces such traffic as is not suburban or inter-suburban-territory traffic the average earning per passenger mile is 2.25 cents.

The defendant presented exhibits to show that the passenger service of its Southern Division not only does not yield a profit but is actually conducted at a loss and that the freight service in addition to affording the income from operation carries on its back a considerable passenger deficit. This conclusion is arrived at by charging to each branch of the service expenses directly attributable thereto, and by allocating expenses which cannot be charged direct to either, on a revenue train mile basis. Under general conditions this method of allocating joint expenses may be fair and proper but in cases where the passenger service is largely by two and three car electric trains and in some cases one car electric trains, the conditions, in our opinion, are such as to render questionable such a basis for the segregation of joint expenses impossible to charge direct to either service.

That traffic conditions on the Northwestern Pacific Railroad are peculiar to it is apparent but the contention that the preponderating passenger traffic thereon does not yield its proportion of profit is not sustained, for the reason that the method of arriving at the net results is not properly applicable, in our opinion, to the conditions existing on this line.

Many of the present passenger fares of the defendant were in effect at the time the present company took over the property and its policy has been to continue the rates as it found them without regard to their equity either to the community served or to itself. There seems to have been no adherence to any fixed rule for determining the fares and apparently no relationship was maintained one to the other. As illustrative of these conditions the following tables present a few examples:

| Between | And | Distance in Miles | One-way Fare is | Rate per Mile in Cents |
|---------------|------------|-------------------------|-----------------------|------------------------------|
| San Francisco | Cloverdale | 85.2 | \$2.25 | 2.6 ✓ |
| Santa Rosa | Willits | 85.8 | 3.50 | 4.1 ✓ |
| Healdsburg | Ukiah | 49.9 | 2.10 | 4.2 ✓ |
| San Francisco | Sonoma | 44.8 | 1.00 | 2.2 ✓ |
| San Francisco | Cotati | 44 | 1.15 | 2.6 ✓ |
| San Francisco | Petaluma | 38.5 | 1.00 | 2.6 ✓ |
| Cloverdale | Hilton | 37.6 | 1.35 | 3.5 ✓ |
| Hopland | Healdsburg | 32 | 1.50 | 4.7 ✓ |
| Cloverdale | Santa Rosa | 31.5 | 1.15 | 3.6 ✓ |
| Healdsburg | Cloverdale | 17.2 | .75 | 4.3 ✓ |
| Petaluma | Fulton | 19.9 | .45 | 2.3 ✓ |
| Hopland | Cloverdale | 14.8 | .75 | 5.0 ✓ |
| Healdsburg | Santa Rosa | 14.3 | .40 | 2.7 ✓ |
| Petaluma | Santa Rosa | 14.8 | .30 | 2.0 ✓ |

Again

| Between | And | Distance in Miles | Individual Monthly Commutation Fare is | Rate per Mile in Cents is |
|---------------|--------------|-------------------------|---|---------------------------------|
| San Francisco | San Rafael | 16.9 | \$5.00 | 0.49 ✓ |
| San Francisco | San Anselmo | 16.5 | 5.00 | 0.51 ✓ |
| San Francisco | Corte Madera | 12.6 | 5.00 | 0.66 ✓ |
| San Francisco | Mill Valley | 11.8 | 4.00 | 0.56 ✓ |
| Santa Rosa | Petaluma | 15.2 | 8.50 | 0.93 ✓ |
| Santa Rosa | Windsor | 9.1 | 5.75 | 1.05 ✓ |
| Santa Rosa | Healdsburg | 14.2 | 9.20 | 1.08 ✓ |
| Santa Rosa | Geyserville | 22.1 | 12.00 | 0.91 ✓ |
| Santa Rosa | Cloverdale | 31.4 | 12.50 | 0.66 ✓ |
| San Francisco | Novato | 27.8 | 10.50 | 0.65 ✓ |
| San Francisco | Sonoma | 44.8 | 12.50 | 0.45 ✓ |

Again the monthly commutation fares for school children between San Francisco and all points reached via the electric line is \$3.00, which includes points located as far distant as 18 miles from San Francisco; while for the same tickets between San Rafael and San Anselmo a distance of 2.5 miles; or between Corte Madera and San Rafael a distance of 4.4 miles; or between Corte Madera and Almonte a distance of 2.7 miles, a fare of \$3.00 is charged. Between Tiburon and Almonte a distance of 6 miles the monthly commutation fare for children attending school is \$4.60.

It is urged that the fares between San Francisco and the suburban points on the line of defendant should be the same as the fares between San Francisco and Alameda County points so

that the former would be at no disadvantage in the matter of transportation fares to and from San Francisco. It would, no doubt, be very advantageous to the property owners of Marin County if the Northwestern Pacific Railroad would make the same suburban rate as the Southern Pacific does to Alameda County with its greater population and travel and it might eventually prove beneficial to the railroad but if the railroad does not care to experiment in this direction the Commission cannot force them to do so, the Commission being empowered to prescribe just and reasonable rates only.

While the individual monthly commutation fare between San Francisco and Corte Madera for a distance of 12.6 miles via the lines of the defendant is \$5.00, or at a rate of .66 cents per mile, and the monthly commutation fare between San Francisco and Thousand Oaks for a distance of 12.1 miles via the lines of the Southern Pacific Company is but \$3.00 or at a rate of .41 cents per mile, and the individual monthly commutation fare between San Francisco and Mill Valley for a distance of 11.8 miles via the lines of the defendant is \$4.00 or at a rate of .55 cents per mile, while the similar fare between San Francisco and Northbrae for a distance of 11.2 miles via the lines of San Francisco - Oakland Terminal Railways is but \$3.00 or at a rate of .45 cents per mile, the fact must not be lost sight of that the individual monthly commutation fare between San Francisco and West Oakland (Pine St.) for a distance of 5 miles via the Southern Pacific Company is \$5.00 or at a rate of .99 cents per mile or that between San Francisco and Oakland (40th St & San Pablo Ave.) for a distance of ~~11~~ 6.7 miles via the San Francisco-Oakland Terminal Railways the fare is \$3.00 or at a rate of .74 cents per mile.

The average distance to which the \$5.00 individual monthly commutation rate between San Francisco and points on the lines of defendant applies is 15.25 miles; thus the average rate per mile to the \$5.00 commutation zone is .55 cents; the average distance to which the \$4.00 individual monthly commutation rate between San Francisco and points on the line of defendant applies is 9.75 miles; thus the average rate per mile to the \$4.00 com-

mutation zone is .68 cents; while the average distance to which the \$3.00 individual monthly commutation rate between San Francisco and Alameda County points on the lines of the Southern Pacific Company is 8.55 miles, an average per mile of 58 cents and the average distance to which the \$3.00 individual monthly commutation rate between San Francisco and Alameda County points on the line of the San Francisco-Oakland Terminal Railways is 8.95 miles - an average rate per mile of .55 cents. In all cases the transportation is by rail and ferry but in the case of the travel from and to Alameda County points the service is between thickly settled communities between which the flow of traffic is more or less regular and closely approaches a street car service while the service between San Francisco and the Marin County suburban points is more or less irregular, being handled mostly during a few hours of the forenoon and afternoon and the volume of traffic is considerably less. Again, the service by ferry, an expensive factor, is much shorter in the transportation to Alameda County points, the distance between San Francisco and Sausalito being 6.5 miles and between San Francisco and the Alameda County piers averaging approximately three miles.

In the light of these facts it would not, in our opinion, be proper for this Commission to require the defendant to establish the same fares between San Francisco and Marin County suburban points as those voluntarily established between San Francisco and Alameda County points by the carriers serving the latter territory. Nor is the fact that a commutation rate of \$3.00 was in effect at one time, between San Francisco and San Rafael, as was testified, a controlling reason why that fare should not be exceeded at the present time unless it were shown that that fare would be reasonable for the present service. There seems to be some misapprehension as to the transferability of the individual monthly commutation tickets of the Southern Pacific Company and the San Francisco-Oakland Terminal Railways between San Francisco and Alameda County points. These tickets as their

title imports are good for the use of the purchaser only and are not transferable, and this is an express condition under which the ticket is sold. Therefore, if any usage other than that authorized by the carrier's tariff is made or permitted it is improper and unlawful.

The practice of limiting the use of such tickets in certain designated ways is not improper if no discrimination is created thereby. The custom of providing fares for commutation tickets lower per mile than the rates for one-way trips is quite general and is justified generally upon the grounds that the sale in large quantities of the transportation and its limited use are the considerations for the reduction in the fare per trip, or otherwise expressed, the daily use of the transportation facilities by the person or persons designated in the ticket entitles such person or persons to a special low rate. Thus the rule is that the rate per mile increases as the condition of the ticket's interchangeability is enlarged. Manifestly, therefore, if the limitation as to the use of the ticket is a factor which is taken into consideration in arriving at the rate therefor, any usage other than that originally contemplated and provided in tariffs authorizing the sale of the ticket is improper and may be unprofitable to the carrier.

That some adjustment of the fares of the defendant should be made so as to remove existing inequalities is manifest and we are of the opinion that the defendant should be given ninety days in which to prepare and present to the Commission tariffs eliminating the inequalities and discriminations in its Southern Division one-way and round-trip fares also the commutation fares other than those applying between points in its suburban territory.

As to the commutation fares charged and collected by the defendant for transportation of passengers between points located in its suburban territory, we are of the opinion that many of such fares are unreasonable, unjust and discriminatory and that as to such transportation the fares hereinafter in the order specified are just and reasonable.

We find as a fact that the practice of restricting the use of so-called "school" commutation tickets to children and other young persons attending school to the exclusion of other children and young persons not attending school is discriminatory between persons and unlawful and that the children's monthly individual commutation ticket should be opened alike to all children or young persons under stated ages travelling under substantially similar circumstances.

We find as a fact that the carrier's practice of selling for 50 cents a two coupon ticket between San Francisco and San Rafael, both of the coupons of which are good for transportation in either direction between the points named and at the same time maintaining in its tariff a one-way fare of 35 cents between San Francisco and San Rafael, Fairfax, San Anselmo, Ross, Kentfield, Escalle, Larkspur, Schuetzen, Green Brae, Corte Madera and Chayman, not only results in a discrimination against the intermediate points named, in that a party by purchasing such a ticket could secure transportation for two trips from San Francisco to San Rafael for a total expense of 50 cents, while if two one-way continuous trip tickets were purchased to any of the intermediate points designated the transportation could not be secured for less than 70 cents, but is also unreasonable and unjust and not in accordance with the provisions of defendant's lawful tariffs on file with the Commission. We are of the opinion that the defendant should be required to provide similar tickets for sale between San Francisco and Fairfax, San Anselmo, Ross, Kentfield, Escalle, Larkspur, Schuetzen, Green Brae, Corte Madera and Chayman and intermediate points, under lawful tariff authority therefor, as a just and reasonable practice.

The defendant has provided in its tariffs bases for making Sunday and Saturday-to-Monday round-trip excursion fares, which are, in some cases, higher than the aggregate of the intermediate fares. Thus the Saturday-to-Monday round-trip fare between San Francisco and Santa Rosa is one and one-half times the regular one-way fare, or \$2.25; the Saturday-to-Monday round-trip fare between San Francisco and Petaluma is one and one-half

times the six months one-way fare between those points, or \$1.50. The one-way fare between Petaluma and Santa Rosa is 30¢; therefore, for the round-trip the fare would be 60¢, which amount added to the Sunday-to-Monday round-trip between San Francisco and Petaluma would enable a party by re-purchasing at Petaluma, to secure the Saturday-to-Monday round-trip transportation between San Francisco and Santa Rosa for \$2.10. Again, the round-trip suburban fares used in combination with one-way fares beyond such suburban points, in some cases have the effect of providing lower round-trip fares than is authorized in carrier's tariffs. Thus the round-trip fare from San Francisco to San Rafael is 50¢; the one-way fare between San Rafael and Petaluma is 65¢, therefore for the round-trip the fare would be \$1.30. The aggregate of these separate fares is \$1.80, for which amount a daily round-trip between San Francisco and Petaluma could be made, while the fares in carrier's tariff for such a round-trip on any day except Saturday or Sunday is \$2.00, or 20¢ in excess of the aggregate of the intermediate fares.

It is contended that such adjustments are in violation of the Constitution and the Public Utilities Act prohibiting the charging of any greater compensation as a through rate than the aggregate of the intermediate rates. Such a conclusion, logically followed out, leads to such results as to preclude the belief that it was ever the intention that this prohibition should apply to any other passenger fares than one-way fares higher than the aggregate of the intermediate one-way fares, and if applied will tend to discourage the granting of special excursion or week-end or suburban round-trips for a special service as the granting of such fares would demoralize the entire one-way passenger fares adjustment. That these round-trip fares of the defendant are of a special nature contemplating a different service than that furnished under the one-way fares, is apparent. The Sunday and the Saturday-to-Monday round-trip fares are purely excursion fares. The suburban round-trip fares are for a suburban electric service and we are of the opinion should not serve as a basis for fares to points beyond suburban territory. We are of the opinion that this practice is not unlawful, unduly discriminatory or unjust or unreasonable and that as to such round-trip fares in

excess of the aggregate of the intermediate fares, the defendant should be authorized to continue same until further order of the Commission.

The defendant's practice of collecting additional fares from passengers boarding trains at agency stations without tickets, opportunity to purchase same having been given, is quite general - particularly with the steam lines - and is justified on the grounds that the carrier provides at agency stations facilities for the sale of tickets, which for various reasons, it prefers passengers to procure before boarding trains, and if passengers neglect to avail themselves of the opportunity before boarding trains, the carrier is within its right in imposing and collecting a penalty.

+ The right of the carrier to impose such a penalty is doubtful and carriers in the past seemed to have relied upon express statutory authority therefor, which seems to have been repealed by subsequent acts which contain no such authority. Carriers are entitled to just and reasonable rates and fares and are prohibited from charging and collecting rates or fares that are unjust, unreasonable and discriminatory. If, therefore, a fare is charged and collected from a person who has boarded a train at an agency station, without a ticket, higher than the fare charged a party travelling from the same agency station to the same destination under circumstances alike in every particular, except as to the purchase of the ticket, can it be said that the party who failed to procure a ticket before boarding the train is not being discriminated against by the amount he pays the carriers as a "penalty" for not having purchased a ticket, or if the amount paid for the ticket is a reasonable fare for the service that any amount in excess thereof is not unreasonable? There is in our opinion no merit to the contention that a different service is rendered in the case where the fare is paid on the train than that rendered where the ticket is purchased before boarding the train, the transportation being between the same points and all other circumstances being alike.

The Commission has made a wide investigation into this practice, embracing practically all of the States, and has developed that in the majority of the States where the additional train fare is collected it is refunded to party paying same upon presentation of receipt therefor to any agent of the carrier making the collection. It also appears that in most cases where the additional train fare is collected and retained that it is done so under express statutory authority or order of the regulatory body of the State governing such matters.

It is our opinion that the practice of collecting and retaining such excess admits of much discrimination and is unreasonable and unjust and should be discontinued. As a reasonable practice we recommend that, on the steam lines the carrier be permitted to collect without discrimination, a charge of 25 cents in addition to the fare for transportation from each passenger boarding trains at agency stations without tickets, after having had opportunity to purchase same, for which a receipt should be given and which should be redeemable in money at its face value at any agency of the carrier, if presented within thirty days from its date. This will at once protect the carrier and at same time free the travelling public from any unreasonable imposition or discriminatory treatment.

We submit the following form of order:

O R D E R

The Commission having heretofore instituted an investigation into the one-way, round-trip and commutation fares and the rules and regulations affecting the same of the Northwestern Pacific Railroad Company for the transportation of passengers between all points on the Southern Division of said Northwestern Pacific Railroad Company, and of the practice of the Northwestern Pacific Railroad Company in charging for the transportation of passengers, fares less than the fares provided in its passenger fare schedules on file with the Railroad Commission of the State of California, and a hearing having

been had and being fully apprized in the premises,

IT IS HEREBY ORDERED:

1. That the Northwestern Pacific Railroad Company present to this Commission within ninety days from the date of this order tariffs eliminating the inequalities and inconsistencies in its one-way, round-trip and commutation fares for the transportation of passengers between points on its line known as the Southern Division - except the commutation fares for transportation between points hereinafter in this order specified.

2. That the Commutation fares set out in Schedule No. 1 attached hereto and made part hereof, be and they are hereby established as just and reasonable fares to be charged by the Northwestern Pacific Railroad Company between the points on its line, as specified.

3. That the Northwestern Pacific Railroad Company provide in its lawful tariffs and place on sale at all places where such tickets for the transportation of passengers are sold, a two-coupon ticket, each coupon of which being good in either direction between San Francisco and Chapman, Corte Madera, Green Brae, Schmetzen, Larkspur, Escalle, Kentfield, Ross, San Anselmo and Fairfax, for a fare of fifty cents as a just and reasonable charge for such service.

4. That the Northwestern Pacific Railroad Company be and it is hereby authorized to continue its present round-trip fares in excess of the aggregate of the intermediate round-trip fares until further order of the Commission.

5. That the Northwestern Pacific Railroad Company cease and desist from ~~charging~~ charging passengers boarding its trains at agency stations without tickets, fares different from the fares charged passengers boarding its trains with tickets, in cases where the transportation is alike in all its circumstances, except as to the place of the purchase of the transportation, provided, however, that the Northwestern Pacific

Railroad Company may under proper tariff authority collect without discrimination a charge of 25 cents in addition to the fare for transportation from each passenger boarding its steam trains at agency stations, without tickets after having had an opportunity to purchase same and issue a receipt therefor redeemable in money at its face value if presented within thirty days from its date at any agency of said company.

† AND IT IS FURTHER ORDERED, that the Northwestern Pacific Railroad Company publish and file, in accordance with the rules of this Commission, and within twenty (20) days from date hereof, tariffs setting out rates, rules and regulations herein established as just and reasonable.

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 May, 1913.

H. H. Randall
Chas. Gordon
Edwin O. Edgerton
Max Thelen

Commissioners.

SCHEDULE NO. 1.

| BETWEEN AND | SAN FRANCISCO | | UNION HIGH SCHOOL | | SAN RAFAEL | |
|--------------------|---------------------------------------|--|--|---------------------------------------|---------------------------------------|--|
| | Monthly Individual Commutation Fares. | Childrens' Monthly Individual Commutation Fares. | Childrens' Monthly Individual Commutation Fares. | Monthly Individual Commutation Fares. | Monthly Individual Commutation Fares. | Childrens' Monthly Individual Commutation Fares. |
| Sausalito | 3.00 | 3.00 | 2.00 | 3.00 | 2.90 | |
| Pine | 3.50 | 3.00 | 2.00 | 3.00 | 2.55 | |
| Waldo | 3.50 | 3.00 | 2.00 | 3.00 | 2.35 | |
| Manzanita | 3.50 | 3.00 | 2.00 | 3.00 | 2.15 | |
| Almonte | 3.50 | 3.00 | - | 3.00 | 2.00 | |
| Union High School | 4.00 | 3.00 | - | 3.00 | 2.10 | |
| Locust Avenue | 4.00 | 3.00 | 2.00 | 3.00 | 2.25 | |
| Park Avenue | 4.00 | 3.00 | 2.00 | 3.00 | 2.35 | |
| Mill Valley | 4.00 | 3.00 | 2.00 | 3.00 | 2.50 | |
| Alto | 4.00 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Chapman | 4.50 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Corte Madera | 4.50 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Baltimore Park | 4.50 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Larkspur † | 4.50 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Escañe | 4.50 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Kentfield | 5.00 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Ross | 5.00 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Bolinas Ave. | 5.00 | 3.00 | 2.00 | 3.00 | 2.00 | |
| San Anselmo | 5.00 | 3.00 | 2.00 | 3.00 | 2.00 | |
| Yolanda | 5.00 | 3.00 | 2.15 | 3.00 | 2.00 | |
| Lansdale | 5.00 | 3.00 | 2.25 | 3.00 | 2.00 | |
| Pastori | 5.00 | 3.00 | 2.35 | 3.00 | 2.00 | |
| Fairfax | 5.00 | 3.00 | 2.45 | 3.00 | 2.00 | |

SCHEDULE NO. 1.

| BETWEEN , AND | SAN FRANCISCO | | UNION HIGH SCHOOL | SAN RAFAEL | |
|----------------------|---------------------------------------|--|--|---------------------------------------|--|
| | Monthly Individual Commutation Fares. | Childrens' Monthly Individual Commutation Fares. | Childrens' Monthly Individual Commutation Fares. | Monthly Individual Commutation Fares. | Childrens' Monthly Individual Commutation Fares. |
| Detour | 5.00 | 3.00 | 2.00 | 3.00 | 2.00 |
| Green Brae | 5.00 | 3.00 | 2.00 | 3.00 | 2.00 |
| Schuetzen | 5.00 | 3.00 | 2.00 | 3.00 | 2.00 |
| San Rafael | 5.00 | 3.00 | 2.10 | 3.00 | - |
| B. Street S.R. | 5.00 | 3.00 | 2.10 | 3.00 | 2.00 |
| West End S.R. | 5.00 | 3.00 | 2.10 | 3.00 | 2.00 |
| Belvedere | 3.50 | 3.00 | 5.00 | 3.00 | 2.45 |
| Tiburon | 3.50 | 3.00 | 3.00 | 3.00 | 2.45 |
| Hilarita | 4.00 | 3.00 | - | 3.00 | 2.35 |
| Reed | 4.50 | 3.00 | - | 3.00 | 2.15 |
| San Clemente | 5.00 | 3.00 | - | 3.00 | 2.00 |