

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

In the Matter of the Application)
of the Pacific Electric Railway)
Company for authority to increase)
rates for the transportation of)
Petroleum and Petroleum Products,)
carloads.)

APPLICATION NO. 4733.

- Frank Karr, for Pacific Electric Railway Company,
- O'Melveny, Milliken & Tuller, for Holly Sugar Company,
Southern California Sugar Company and Santa Ana
Sugar Company.
- Jess E. Stephens, for the City of Los Angeles.
- Bishop & Bahler Company, by B.H. Carmichael, for
Vernon Oil & Refining Company; A.F. Gilmore & Company;
Wilshire Oil Company; Los Angeles Pressed Brick Company;
California Petroleum Exchange and Graham-Loftus.
- H.Z. Osborne, Jr., for the Board of Public Utilities of the
City of Los Angeles.
- R. S. Sawyer, for the Associated Jobbers of Los Angeles.

LOVELAND and BRUNDIGE, COMMISSIONERS:

O P I N I O N

This is an application to increase rates on Petroleum and
Petroleum Products, in carloads, classified 5th Class in the Western
Classification, to the following basis:

4½ cents per 100 pounds higher than rates
effective June 24, 1918, but not in excess
of 5th class rates as increased June 25, 1918.

When charges on a continuous through movement
are obtained by combination of separately
established rates, the increase of 4½ cents
per 100 pounds will apply as to the total of
such combined rates in effect June 24, 1918,
5th class rates as increased June 25, 1918
not to be exceeded.

This basis does not apply in connection with
rates for switching service in connection with
a line haul.

The causes leading up to this application are as follows:

On June 25, 1918, by authority of this Commission, applicant, following similar action of roads under federal control, made a general increase in freight rates of approximately 25%. Later, the federal controlled roads superseded the 25% increase, insofar as it appertained to petroleum and its products, by a flat advance of $4\frac{1}{2}$ cents per 100 pounds over the rates in effect June 24, 1918, but not to exceed the 5th class rates as increased June 25, 1918. Applicant now desires to bring its rates in line with those of the federal controlled roads by establishing the same basis of increase.

As an illustration of the effect of the proposed change, the following table has been prepared from an exhibit which accompanied application, showing in the order of columns from left to right:

- 1- Rates in effect prior to June 25, 1918.
- 2- Present rates (25% increase effective June 25, 1918).
- 3- Proposed rates, viz; those in effect prior to June 25, 1918 increased by $4\frac{1}{2}$ cents per 100 pounds, observing as a maximum the 5th class rates as increased June 25, 1918.

Petroleum Crude Oil, Petroleum Gas Oil, Petroleum Fuel Oil, viz: Refinery Residuum, carloads.

Rates in Cents per Ton of 2000 Pounds.

From To	Los Angeles			El Segundo			Stewart		
	1	2	3	1	2	3	1	2	3
Los Angeles	:	:	:	40	50	130	40	50	130
San Pedro	40	50	130	60	80	150	80	100	170
Whittier Groves	50	60	140	90	110	180	90	110	180
North Pomona	60	80	150	100	130	190	100	130	190
Sherman	75	90	170	115	140	210	115	140	210
Santa Ana	80	100	170	100	130	190	80	100	170
Sierra Madre	100	130	190	100	130	190	100	130	190
San Fernando Mission	125	160	220	125	160	220	125	160	220

From this it will be seen that if the 25% increase of June 25, 1918 is displaced by the basis proposed, as was done in the case of

federal controlled roads, advances over the original rates ranging as high as 225% will result. While the foregoing statement is limited to crude oil and articles taking same rate, it is typical of the oil situation as a whole.

In support of its petition applicant avers that, notwithstanding increased earnings realized by the advance in freight rates of June 25, 1918, and subsequent increases in freight and passenger rates authorized by this Commission and the Interstate Commerce Commission, its revenues are insufficient to meet operating expenses and certain fixed charges and that further increases are necessary in order to help defray such items of expense.

It was stipulated by counsel that insofar as they are applicable to the case at bar, petitioner's annual reports on file with the Commission, also the record in Application No. 3791, decided November 21, 1918 (Decision No. 5953) and Applications 4403 and 4407, now in process of adjudication, are to be considered in evidence herein. The three proceedings enumerated propose establishment of increased passenger fares.

In the Opinion and Order in Application No. 3791, supra, the following statement appears:

"Applicant has a bonded indebtedness of \$58,141,000.00 and unfunded debt of approximately \$10,000,000.00. There is an outstanding stock issue of \$34,000,000.00 which is owned by the Southern Pacific Company and on which no dividends have ever been paid. Since its incorporation in 1911 this company has failed to earn operating expenses and fixed charges, the total corporate deficit as of April 30, 1918 being \$5,958,008.39.

"Applicant alleges, and has shown by uncontroverted testimony, that present revenues are insufficient to meet operating expenses and fixed charges."

That this condition still exists is evident from an exhibit filed by applicant in the present proceeding, consisting of

income account for six month ending June 30, 1919, which shows that operating expenses are increasing in a much greater proportion than revenue and the total corporate deficit as of June 30, 1919 has advanced to \$8,366,806.73.

No detailed valuation of applicant's system had been made prior to the hearing and decision of Application No. 3791. The matters presented to the Commission in the hearing of that application clearly demonstrated that an emergency existed which required immediate action and that the necessity of awaiting a valuation was not apparent, as applicant was not asking for the establishment of rates that would pay a return upon investment.

There can be no question as to the insufficiency of applicant's income, and this feature will be passed without further comment.

Much stress is laid by applicant on the fact that proposed increases will place its rates on a level with those of the federal controlled roads; that before the last change on the part of the Federal Railroad Administration the oil rates between common points were equal, but now that the rates of the Government roads have been further increased the maintenance of a lower basis by applicant will lead to confusion and discrimination and have the effect of forcing a competitive relationship in the rates of the two classes of carriers; furthermore, that joint rates between applicant and federal controlled roads are now on the higher basis. While uniformity of rates as between federal and non-federal controlled lines is greatly to be desired, this reason alone would not justify the granting of the application.

As heretofore stated, the petroleum and petroleum products rates of federal controlled railroads were increased 25%, effective June 25, 1918. On July 11, 1918 Director, Division of Traffic issued Freight Rate Authority No. 96, which cancelled the rates of

June 25, 1918 and provided for a flat increase of $4\frac{1}{2}$ cents per 100 pounds higher than rates in effect May 25, 1918, but not in excess of the 5th class rates as advanced June 25, 1918. This caused an increase where the base rate on June 25, 1918 was 16 cents per 100 pounds and under and a reduction where it was 19 cents or higher. While the tonnage movement over the federal roads, segregated with respect to rate, is not a matter of record, it is fair to assume that the advances and reductions would result in somewhat of an equalization of revenue when applied to the petroleum traffic as a whole. Such, however, is not true in the present case of the Pacific Electric, where with but few exceptions the volume of the rates is such that the addition of the flat amount results in an increase over the present figures. Moreover, the average length of haul of the federal roads, many of which traverse several states, is necessarily much greater than that of applicant, whose rails reach only four counties of this state. Consequently, the average rate is greater over the federal controlled roads and, therefore, better able to stand a flat increase.

It is also urged by applicant that the existing petroleum rates are unduly depressed owing to the influence of pipe line competition and other conditions affecting the transportation of such commodity, but nothing substantial was submitted in confirmation of such contention and no attempt was made to prove the present rates non-compensatory, applicant apparently relying on the difference existing between its rates and those of federal controlled lines and that this variance in rates would not be present under the adjustment proposed.

A mere statement that rates are too low, unaccompanied by competent evidence in support of such declaration, will not suffice. Section 63 of the Public Utilities Act of this State

provides, in substance, that no increases in rates may be made except upon a showing before the Commission and a finding by the Commission that such increase is justified. The burden resting upon applicant under this section of the Act to justify the increase proposed is a positive requirement of law which cannot be satisfied by a mere perfunctory showing. On the contrary, applicant must not only show by evidence of probative value that the existing rates are unreasonably low, but must demonstrate the propriety and reasonableness of those proposed before this Commission can make a finding such as prescribed by the statute.

When the general 25% increase was granted applicant June 25, 1918, this formality was waived in consideration of the emergency caused by the war, not only that applicant might, to the extent of such advance, be relieved from the extraordinary operating expenses consequent upon war conditions, but that by so doing the rate parity thus created would permit the competing Federal roads to secure the full amount of the increase established by the Railroad Administration, thereby enabling such roads to more efficiently discharge their important function in the prosecution of the great task in which this country was engaged. Under prevailing conditions, the same elements of consideration do not enter into the present case, for which reason the lawful requirements should be fully complied with.

It may well be that some of the oil rates are below the normal scale and should, upon proper showing, be increased. Conversely, there may be rates already above the normal plane which if further advanced, as contemplated under the application, would cause an injustice. This was practically admitted by witness for applicant, who stated that the 90 cent advance would in some instances bring about inequality of rates. In this connection,

particular attention was drawn by applicant to rate of 50 cents per ton on petroleum and its products, carloads, from El Segundo and Oleo to Los Angeles, and the statement made that the rate is so low it fails to assume its proper proportion of the burden of carrying traffic.

In comparing this rate with others shown on applicant's exhibit, it is found that the distance from El Segundo to Los Angeles is 17 miles, the rate for crude oil and articles taking same rate, carloads, 50 cents per ton, while from Los Angeles to Santa Monica, 16 miles, the rate is \$1.00 per ton. From Oleo to Los Angeles, 25 miles, (also El Segundo) rate is 50 cents per ton, while from El Segundo to Santa Monica, 24 miles, rate of \$1.40 per ton applies.

The record, however, is devoid of any effort on the part of applicant to show the unreasonableness of the present rates and the fairness of those proposed.

In view of this insufficient showing, it is unnecessary to discuss at length the testimony introduced in behalf of the various protestants which in general was directed to the point that the present rates are in some instances discriminatory and excessive by comparison and that the advances contemplated under application would so increase the costs of operation as to seriously retard their future progress or force them to haul their products by auto trucks.

Upon a careful consideration of the evidence submitted, it is our opinion that applicant has failed to make the necessary showing required under Section 63 of the Public Utilities Act and the application should be denied without prejudice.

The following form of order is submitted:

O R D E R

The Pacific Electric Railway Company having applied under Section 63 of the Public Utilities Act for permission to increase certain rates for the transportation of petroleum and its products, as set forth in the opinion which precedes this order, a public hearing having been held and the Railroad Commission being fully apprised in the premises,

IT IS HEREBY ORDERED that the application be and the same is hereby 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 28th day of November, 1919.

Edwin O. Edwards
H. L. ...
H. T. ...
J. ...
Commissioners.