

ORIGINAL

Decision No. 8074

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

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In the Matter of Application of  
Carriers for themselves and on  
behalf of carriers parties to  
their tariffs for relief from the  
long and short haul provisions of  
Section 21, Article 12, of the  
Statutes of California, and Section  
24(a) of the Public Utilities Act  
relating to intermediate freight  
rates in excess of rates to more  
distant points. )

Southern Pacific Company for it-  
self and carriers parties to  
its individual tariffs. )

APPLICATION NO.6049

Northwestern Pacific Railroad Co. )

APPLICATION NO.6057

F. W. Gomph, in the name and on  
behalf of the Southern Pacific  
Company. (Joint Tariff) )

APPLICATION NO.6058

F. W. Gomph, in the name and on  
behalf of the California Western  
Railroad & Navigation Company,  
Atchison, Topeka & Santa Fe  
Railway., Northwestern Pacific  
Railroad and the Southern  
Pacific Company. )

APPLICATION NO.6061

Atchison, Topeka & Santa Fe Rail-  
way Company. )

APPLICATION NO.6063

F. W. Gomph, in the name and on  
behalf of The Atchison, Topeka  
& Santa Fe Railway Company.  
(Joint Tariff). )

APPLICATION NO.6064

F. W. Gomph, in the name and on  
behalf of the Los Angeles &  
Salt Lake Railroad Company and  
the Pacific Electric Railway Co. )

APPLICATION NO.6076

E. W. Camp, for Atchison, Topeka & Santa Fe Ry.Co.  
H. C. Booth, for Southern Pacific Company and  
Northwestern Pacific Railroad.  
G. H. Baker, for Atchison, Topeka & Santa Fe Ry.Co.  
F. W. Gomph, Agent for Southern Pacific Co.,  
Northwestern Pacific Railroad, Atchison, Topeka &  
Santa Fe Ry. Co. & Western Railroad & Nav.Co.  
Seth Mann, by H.M.Remington, for S.P.Chamber of  
Commerce.

LOVELAND, Commissioner -

O P I N I O N

In this proceeding the carriers mentioned above for themselves and on behalf of the carriers parties to their tariffs and to the tariffs of the Pacific Freight Tariff Bureau seek authority to continue charging the rates now published in tariffs on file with this Commission which are in violation of Section 21, Article 12 of the Statute of California, and Section 24(a) of the Public Utilities Act.

The Commission has heretofore considered the violative freight rate situations in Cases 214(a)-(f) inclusive, and by decisions rendered June 19, 1916, Vol. 10, Opinions and Orders of the Railroad Commission, Page 354-412 authorized carriers to continue rates greater for a shorter than for a longer distance over the same line or route .

In Decision No.3436, Case 214(a) supra, we said:

"The applications presented in this case were originally filed December 30, 1911, in compliance with an order promulgated by this Commission October 26, 1911, Prior to October 10, 1911, section 21 of article XII of the Constitution of this State forbade the charging of a greater compensation for a short haul than for a long haul, the short haul being included within the long. On that date this section of the Constitution was amended so that it now reads as follows:

'No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this state. It shall be unlawful for any railroad or other transportation company to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates, provided, however, that upon application to the Railroad Commission provided for in this constitution such company may, in special cases, after investigation, be authorized by such commission to charge less for longer than for shorter distances for the transportation of

persons or property and the Railroad Commission may from time to time prescribe the extent to which such company may be relieved from the prohibition to charge less for the longer than for the shorter haul  
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The long and short haul provision herein contained is, it will be noted, incorporated in the section generally preventing discrimination. The legislature submitting the amendment and the people adopting it, no doubt consider a lesser charge to a more distant point than to an intermediate point to be a discrimination against the intermediate point. Not all discriminations, however, are undue or unlawful. There may be cases where the apparent discrimination is merely a difference which is legitimately brought about by circumstances operative in one case that do not exist in another. Discrimination is a question of fact, and whether it be undue and illegal is also a question of fact and the Constitution and the Public Utilities Act (Sec.24(a) have imposed upon this Commission the duty of determining these questions of facts. Acting within its authority, the ruling of this Commission in this regard is conclusive (Public Utilities Act, Sec. 67). Of course, it is not here intimated that under this power the Commission has authority to invade any rights which are conferred upon the carrier either by the Constitution of this State or the United States or to deprive it of its property without just compensation or due process of law.

While, therefore, the State is not compelled under any provision of the Constitution to accord to carriers the right to meet competition, yet it may do so as a matter of policy in proper cases, and that the people of this State have desired, as a matter of policy, to permit such procedure on the part of the carriers is evidenced by the language of section 21 of article XII of our Constitution, heretofore referred to but they have left to this Commission the determination of the questions as to what are proper cases, and it is my view that in all cases where an advantage will accrue to the carrier and no substantial disadvantage to the public, that the carriers should be accorded the right, as a matter of policy, to meet competition over which they have no control."

All of the original applications were carefully investigated, numerous hearings were held and independent investigations conducted by the Commission and by employees of its Rate Department.

In addition to the applications covered by Case No.214 the carriers had prior to June 19,1916, filed other applications covering specific cases not included in the application filed after October 10,1911, and in response to these applications

the Commission had authorized certain specific deviations from the long and short haul provisions of the Public Utilities Act and the Constitution. The authorizations in special cases were in some instances issued prior to June 19, 1916, and some subsequent thereto. The rate situations authorized in Decisions in Case 214 of June 19, 1916, were continued in effect and existed up to the 28th day of December, 1917, at which time the railroad properties in the State of California were taken into the possession and control of the Government of the United States and thereafter operated by the Government of the United States continuously up to March 1, 1920, during which time this Commission had no control over the rates charged by these applicants.

The rates in effect on December 28, 1917, were continued by the Government of the United States with but few changes up to June 25, 1918. Acting under the powers granted by the Act of Congress entitled "An Act to Provide For The Operation of Transportation Systems etc.," approved March 21, 1918, 40 Stats., et al., Page 451, the President of the United States made an order effective June 25, 1918, known as General Order No.28, wherein and whereby the freight rates were increased 25% with certain exceptions, which rates were thereafter charged by the Government of the United States for services rendered over the lines of these applicants. The situation created by General Order No.28 continued with but few exceptions up to the termination of federal control of the railroads on March 1, 1920.

By the Act of Congress, known as the Transportation Act of 1920, approved February 28, 1920, it was provided under Section 208 that all rates, fares and charges in effect on February 29, 1920, should continue in force and effect until changed by State or Federal authority, but that prior to

September 1, 1920, no such rate, fare or charge should be reduced unless such reduction or change were approved by the Interstate Commerce Commission and thus the situation with respect to practically all of the long and short haul rates continued unchanged after March 1, 1920.

On the 21st day of May 1920, these carriers filed applications for increase in rates concurrent with, and equal to the increases applied for in an application presented to the Interstate Commerce Commission. On July 29, 1920, the Interstate Commerce Commission by its order in Ex Parte 74, 58 I.C.C. 220 authorized the carriers in the Mountain-Pacific Group to increase freight rates by approximately 25%. Thereafter on the 17th day of August 1920, this Commission in its Decision No.7983 passed upon the applications of these carriers and allowed applicants to increase their existing freight rates between points within California by 25%.

The order in Decision No.7983 carried a provision reading:

Long and Short Haul Violations

"Carriers affected by this order are hereby authorized to publish rates, fares and charges in accordance with this order which may be in violation of Section 21 of the State Constitution and Section 24 of the Public Utilities Act."

In these proceedings, applicants presented the testimony of witnesses and furnished many exhibits giving details not covered by the hearings held in Application No.5728, Decision No.7983. The Commission by the hearings held in these proceedings August 27th and 28th, 1920, again carefully investigated the questions involved in these applications; has had before it and reviewed the records in the aforementioned cases, which were decided in June 1916; has considered the new and additional testimony and finds and concludes that the facts set

forth in the applications are true and that the applications should be granted and the carriers are hereby permitted and authorized to charge a greater compensation for the transportation of freight for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, and the extent to which the applicants may be relieved from the prohibition to charge less for the longer than for the shorter haul should be the extent shown in and by the rates named in the tariffs described in the following Order, as such rates have been increased pursuant to Decision No.7983 in Application No.5728.

Applicants are hereby authorized to charge less for any longer than any shorter haul as shown in said applications.

O R D E R

Applicants in these proceedings having applied to this Commission for an order granting relief from the provisions of Section 21 of Article XIII of the Constitution of California and Section 24(a) of the Public Utilities Act for authority to continue freight rates greater in the aggregate for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, as set forth in the exhibits and tariffs referred to in the Opinion which precedes this Order, and a hearing having been held and the Commission being fully apprised in the premises, and basing its conclusions on the findings of fact set forth in said opinion,

IT IS HEREBY ORDERED, that the applicants herein be and they are hereby authorized to continue freight rates as set forth in the applications and exhibits referred to in said opinion, and maintain higher rates at the intermediate points.

The rates referred to are published in the following tariffs:

<u>SOUTHERN PACIFIC TARIFF NUMBER</u>	(Application No.6049) <u>C.R.C. NO.</u>	<u>DESCRIPTION</u>
G.F.D.Cir.198-1	2461	Application Rates, Rich- mond, Cal.
121-D	2409	Dried Fruit
330-C	2413	Gravel & Sand etc.
332-B	2414	Lime & Plaster
333-F	2395	Petroleum & Petroleum Products
421-D	2420	Pits, Apricots, etc.
464-A	2421	Explosives
584-B	2382	Cement
602-B	2425	Hay and Straw
634	699	Lumber
635-B	2428	Ore
659-B	2431	Flour, etc.
667-B	2432	Dried Beans and Peas
707-E	2390	Class and Commodity
711-A	2434	Class
725-A	2435	Fertilizer
730-A	2436	Commodity
763-E	2386	Class and Commodity
793-A	2441	Grain, etc.
817-A	2443	Fresh Fruit
825-A	2444	Clay and Clay Products
930-A	2451	Sacramento River Tariff

<u>NORTHWESTERN PACIFIC TARIFF NUMBER</u>	<u>C.R.C. No.</u>	<u>DESCRIPTION</u>
	(Application No.6057)	
31-C	221	Lumber
8-B	223	Cereal & Cereal Prod- ucts
10-B	226	Hay & Straw
12-B	230	Lumber
38-B	234	Commodities
25-C	235	Classes & Commodities

<u>PACIFIC FREIGHT TARIFF BUREAU TARIFF NUMBER</u>	(Application No.6058) AGENT GOMPH'S <u>C. R. C. NO.</u>	<u>DESCRIPTION</u>
16-D	211	Class & Commodity
30-D	210	Class & Commodity
31-D	212	Class & Commodity
34-G	214	Class & Commodity
42-D	208	Class & Commodity
48-E	215	Lumber and other Forest Products
88-D	195	Cement

PACIFIC FREIGHT  
TARIFF BUREAU  
TARIFF NUMBER

(Application No.6061)  
AGENT GOMPHE'S  
C. R. C. NO.

DESCRIPTION

16-D  
153-C  
117-C

211  
202  
201

Class & Commodity  
Various Commodities  
Forest Products

ATCHISON, TOPEKA  
& SANTA FE RY.CO.

(Application No.6063)  
C. R. C. NO.

DESCRIPTION

9885-C  
11569-C  
9821-C  
11988-B  
12375-A  
9373-E  
9788-G  
5958-F  
9777-F  
9798-G  
11992-B  
5907-D

428  
406  
420  
421  
423  
417  
425  
415  
418  
419  
422  
414

Classes  
Classes & Commodities  
Commodities  
Commodities  
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PACIFIC FREIGHT  
TARIFF BUREAU  
TARIFF NUMBER

(Application No.6064)  
C. R. C. NO.

DESCRIPTION

16-D  
30-D  
31-D  
34-G  
38-D  
42-D  
48-E  
88-E  
117-C

211  
210  
212  
214  
209  
208  
215  
195  
201

Classes & Commodities  
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Commodities  
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PACIFIC FREIGHT  
TARIFF BUREAU  
TARIFF NUMBER

(Application No.6076)  
C. R. C. NO.

DESCRIPTION

31-D

212

Class & Commodity

provided that this authorization shall not be construed to pass upon the reasonableness of the intermediate rates or any other matter except the application of the rates in violation of the long and short haul clause of the State Constitution, and the Public Utilities Act.

IT IS FURTHER ORDERED, that this authority will extend the rates from and to points more distant than the terminals between



which violations occur when combinations are made over the low rates at the terminals.

All the rates herein authorized are subject to complaints, investigation and correction.

The foregoing Opinion and Order and 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 13<sup>th</sup> of September, 1920.

Edwin O. Edgerton  
H. S. Loveland  
H. S. Brundage  
COMMISSIONERS.