

Decision No. 8106.

ORIGINAL

BEFORE THE RAILROAD COMMISSION  
OF THE STATE OF CALIFORNIA.

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In the Matter of the Application	)	
of Steam and Electric Interurban	)	
Railways and Boat Line and Common	)	Application No. 5728.
carriers to increase freight and	)	
passenger rates and fares.	)	

BY THE COMMISSION:

OPINION ON PETITION FOR REHEARING.

The Cities of Oakland, Berkeley, Alameda and Albany on August 25, 1920 filed their separate applications herein for rehearing in the above entitled matter. The applications are identical in form, with the exception of the names of the applicant cities, and are in the following language:

"The City of (name of city), a Municipal Corporation, on behalf of itself as a party to the above-entitled proceeding, and as the representative of its citizens who use the transbay ferry systems of the Southern Pacific Company, and of the San Francisco-Oakland Terminal Railways, respectfully petitions your honorable body to grant a rehearing as to that portion of your Decision No. 7983, which increases the transbay ferry rates (both one way and commutation) and authorizes said Southern Pacific Company and said San Francisco-Oakland Terminal Railways to charge and collect such increased rates on their respective transbay ferry systems.

"Your petitioner considers said portion of said Decision to be unlawful for the following reasons and does urge the following grounds as reasons for setting aside and annulling said portion of said Decision and granting a rehearing as thereto:-

I.

"That said portion of said Decision is against law.

II.

"That the evidence does not support said portion of said Decision."

III.

"That the evidence is insufficient to support the findings.

IV.

"That the findings are insufficient to support said portion of the said Decision.

V.

"That said portion of said Decision is contrary to the evidence.

VI.

"That your honorable body erred in denying said City of (name of city) an opportunity to present evidence showing that the proposed increase of ferry rates was unnecessary, unwarranted and that the present rates were reasonable, just, sufficient and adequate and that the proposed increase was unreasonable and unjust.

VII.

"That your honorable body erred in granting an increase of ferry rates merely upon the decision of the Interstate Commerce Commission and without any showing that the present rates were unreasonable, unjust and insufficient, or that the proposed increased rates were reasonable and just.

VIII.

"That your honorable body is without jurisdiction to grant an increase of ferry rates solely upon the authority of the decision of the Interstate Commerce Commission, and without a showing that the present rates are unreasonable, unjust, inadequate and insufficient and without a showing that the proposed increased rates are reasonable and just.

IX.

"That your honorable body did not regularly pursue its authority in granting an increase of ferry rates without a hearing as to the unreasonableness, insufficiency and injustice of the present rates and as to the reasonableness and justness of the proposed increased rates.

X.

"That your honorable body erred in increasing rates without a hearing as to and a determination of the value of the service rendered to the consumer who was to pay such increased rates.

XI.

"That your honorable body erred in so increasing transbay ferry rates as to require the commuter to pay a return upon property owned by said Southern Pacific Company and said San Francisco-Oakland Terminal Railways, but not devoted to the use of said commuter and not used or useful in the service rendered him.

XII.

"That your honorable body erred in increasing transbay ferry rates more than necessary to yield an adequate return upon the value of the transbay ferry system so that the said Southern Pacific Company and said San Francisco-Oakland Terminal Railways might have funds sufficient to rehabilitate other properties of theirs not devoted to use of that portion of the public using such transbay ferries.

XIII.

"That your honorable body erred in increasing ferry rates without an investigation as to the necessity, reasonableness and justice of such increase.

XIV.

"That your honorable body erred as a matter of law in considering said decision of the Interstate Commerce Commission as obligatory and mandatory upon you and erred as a matter of law, in fixing rates solely because of the supposed mandates of said decision of the Interstate Commerce Commission.

"WHEREFORE, the City of (name of city), a Municipal Corporation, requests that a rehearing may be granted as to that portion of said decision which increases the transbay ferry rates and empowers the Southern Pacific Company and the San Francisco-Oakland Terminal Railways to charge and collect increased transbay ferry rates."

Although the opinion in the above matter set forth quite fully the reasons for the original order made herein, the Commission has since the filing of said applications for rehearing given further and very careful consideration to the matter and feels compelled to adhere to its original order.

In view of the fact that said applications for rehearing indicate not only a lack of full understanding of the purport of the decision and also a full understanding of the opinion upon which it is based, it may be well to direct at-

tention to some of the declarations and language of the opinion and order as well as to call attention to the views of the many interested shippers and representatives of the public appearing at the three different public hearings before the Commission in this matter.

The original application was filed by the carriers herein on May 21, 1920; thereafter, to-wit: on June 3, 1920, and July 16, 1920, other carriers by petition requested that they be joined as applicants in the original petition.

On July 17, 1920 said application was set down for first hearing before the Commission en banc at its office in San Francisco for August 2, 1920 at 10 A.M., and notice of such hearing was directed to be given, and was given in the usual manner required by this Commission in newspapers in different parts of the State.

The first hearing of said application was held at San Francisco and among the appearances, other than those of the petitioning carriers, were representatives of the San Francisco Chamber of Commerce, Oakland Chamber of Commerce, Fresno Traffic Association, and Stockton Chamber of Commerce.

After partial presentation on August 2nd, the matter was continued for further hearing at the office of the Commission at San Francisco on August 6th. On the latter date additional appearances were entered, including a representative of the City of Oakland, and representatives of other shippers. At the conclusion of the hearing on August 6th, further adjournment was had to August 11th at Los Angeles.

At the Los Angeles hearing, several additional appearances were entered, including representatives of the Lumbermen's Exchange, Associated Jobbers of Los Angeles,

Imperial Valley interests, and Mr. Frank V. Cornish, City Attorney of Berkeley, entering an appearance for East Bay cities, and also Hon. Louis Bartlett, Mayor of the City of Berkeley. At the conclusion of the hearing at Los Angeles on August 11th, the matter was submitted.

On July 29th, the Interstate Commerce Commission made its order (Docket ex parte No. 74), authorizing horizontal increases to carriers throughout the Nation, such increases being made on percentage bases after the Interstate Commerce Commission had first territorially grouped the Nation, California being embraced within the territorial group known as the Mountain Pacific Group, which group, under said order, carried a 25 per cent increase on freight and a 20 per cent increase in passenger rates. The action of the Interstate Commerce Commission in making said increases was under the authority of the Act of Congress ordinarily designated the Esch-Cummins Act.

Obviously, it was necessary for carriers to comply with the spirit of the law that they publish the increases set forth under the mandate of Congress effective at the earliest possible date and the carriers determined that August 26th was the earliest date within which tariffs could be amended and distributed. This Commission was confronted with the necessity, therefore, of rendering its decision in this case at the earliest possible time, so that both state and interstate rates could become effective simultaneously, otherwise any different action would have resulted in chaos.

With but a single exception, all shippers and groups of shippers appearing before this Commission at the hearings in this matter agreed and, in effect, urged the necessity of this Commission making the order which it has made herein.

The representative of the Chamber of Commerce of San Francisco, which constitutes one of the largest group of shippers in the State, and who would be directly affected by the increases, in the course of his statement regarding his attitude as representative of those shippers, declared -

"I don't see how it is possible at this time, and under the general plan which is presented to us of endeavoring to give back to the carriers their former credit, in an endeavor to put them upon their feet as far as service is concerned, as soon as possible, I don't see how we can consider the separate conditions of California from those of Washington or Oregon or Idaho or Utah or New Mexico or Arizona, or even those parts of Colorado, or even the separate parts of the State of California itself, if you please, or the separate and individual items of the tariff. The question is, shall this Commission grant the 25 per cent increase in this territory irrespective of what the other states do within the territory -- that is a matter of interest but none of our consideration, I should think -- or whether we should refuse to do anything at all. I now amend my position, therefore, to be simply this: It seems to me, inasmuch as the idea of considering California separately must be logically out of the case, impossible, that this Commission must say, 'Yes' or 'No', 'We will' or 'We will not grant this 25 per cent increase so far as the State of California is concerned.' And in so doing they practically say, 'We agree with the Congress of the United States in this new plan and in the endeavor to carry it out through the action of the Interstate Commerce Commission and we will not put anything in its way.' Therefore, the possibility of considering California separately, or certainly of considering various parts of California separately, pass out of this case."

This Commission, in its opinion, expressed its view as to the duty imposed upon it by law to the existing conditions in the following language:

"The Railroad Commission of California is confronted with these alternatives -- either it must proceed and take evidence as to valuation, revenues and expenses, competitive conditions, long and short haul violations and the various other factors to which consideration is given in reaching a conclusion as to the reasonableness of rates, and come to a conclusion based on the conditions in California alone, regardless of the effect the income produced by the rates thus fixed would have upon the action of the Inter-

state Commerce Commission, or it must proceed in harmony with the decision of the Interstate Commerce Commission and put into effect the assumption that state rates would be increased in harmony with its decision.

"We have given this matter very careful consideration and in doing so have attempted to give weight to the probable consequence of proceeding upon either of these alternatives. We realize that without requiring more evidence than is now before us in this proceeding to impose on intrastate business the identical percentage authorized by the Interstate Commerce Commission would in effect be the fixing through us of state rates by the Interstate Commerce Commission. Whether or not this constitutionally may be done is a question we do not consider it our function to decide. On the other hand, to proceed in the usual manner as though this were entirely an independent proceeding would result in serious delay, as it is evident that to gather and submit adequate data upon which to base a sound judgment of what practically all transportation rates in California ought to be, would require many months and all possibility of immediate relief to the carriers found to be imperative by the Interstate Commerce Commission, would disappear."

And later the opinion declares -

"We feel that regardless of any opinion we might have as to the wisdom or unwisdom of the Each-Cummins Act, it is the foundation upon which the regulation of the railroads now rests and to shake that foundation would be against the public interest.

"We do not mean to say that this Commission has abdicated its functions in rate fixing, as we believe that our determination to grant the prayer of applicants is sustainable upon the ground of reasonableness. Furthermore, we realize that we have a heavy responsibility in the matter of adjusting state rates which inevitably will become necessary upon the imposition of a percentage increase. The shippers who appeared before us in this proceeding have taken a very commendable position. Practically without exception they have stated their conviction that the railroads must have relief in increased rates in order adequately to give service. Furthermore they believe that this Commission should cooperate with the Interstate Commerce Commission and make effective its order increasing rates. They do urge, however, that this Commission keep control of the matter of adjustment of rates after the imposition of a percentage increase."

The foregoing discussion of the history of this proceeding, including the expressions of the shippers, through their representatives at the hearing, is addressed to those portions of the petitions for rehearing herein which urge that the decision is against law and is unsupported by the evidence, and similar grounds of objection.

Again declaring our firm conviction of the wisdom and necessity of the order granting the increases prayed for, there still remain the contentions of the applicants for rehearing that different treatment should be had of the so-called East Bay ferry situation from that which was accorded in other commuter or shipping conditions in the State of California.

The Southern Pacific East Bay ferry system is a part of the interstate system of that Company. It must be evident that whatever obligation rested upon this Commission to increase intrastate rates of interstate carriers applied to the Southern Pacific East Bay ferry rates. Indeed, the Mayor of the City of Berkeley, at the last hearing of this matter at Los Angeles, strongly indicated concurrence in that view in the following language:

"I want to agree with what Mr. Mann has said about the desirability of this Commission laying down certain general principles for the application of this order, and among others, I desire to call your attention to the situation that exists in the East Bay Cities. We have two transportation systems there, the Key Route and the Southern Pacific. I take it it is the general consensus of this gathering here that the Interstate Commerce Commission ruling as to the increase of rates should apply to the Southern Pacific, as it is an interstate carrier. The Commission, I think, has announced the general principle that, where the companies are competitive, a rate which is granted to one will also be granted to the other."



The Mayor further proceeded to urge that if the Commission should, without further investigation as to the reasonableness of the commutation rates and the increased passenger rate, raise also the Key Route rates, that the community represented by him would be in a position where its prosperity would be vitally affected, and urged that in the event of such increase of Southern Pacific ferry rates that a parallel increase should not be allowed the competing company until investigation was made.

The difficulty, if not impossibility, of adopting the suggestion of the Mayor of Berkeley is pointed out in a protest filed with this Commission August 16, 1920, signed by the City Attorney and Assistant City Attorney of the City of Oakland, by the City Attorney of Berkeley, and by the City Attorney of Alameda, in which statement and protest they lay great emphasis upon the impossibility of having a differential in the East Bay ferry rates between the competing companies.

Paragraph III of said protest is entitled, "The Mere Granting of an Increase to the Southern Pacific Company Would Compel the Granting of an Increase to the Key Route", and following such title appears the following presentation by the legal representatives of these cities:

"The granting of an increase in the ferry rates to the Southern Pacific Company would forestall any opposition the cities might have to an increase of fares to the Key Route system. Obviously since the Key Route and the Southern Pacific operate competitive ferry systems there must be an absolute parity of rates as to the same service. In the present case if a three cent increase were granted to the Southern Pacific and the same increase were not granted to the Key Route, the Key Route would make inroads upon the present business of the Southern Pacific. The loss of business thus caused would defeat the very object of granting an increase to the Southern Pacific. Without

any other showing than an order increasing the trans-bay ferry rates of the Southern Pacific, the Key Route would be entitled to an equivalent raise."

The protest proceeds then to object to any increase being granted the Southern Pacific without a showing of the necessity therefor.

Unquestionably many of the large shippers of the State suffer undue prejudice and hardship through the horizontal increases, as this inevitably follows all horizontal increases which disturb previous differentials. With practical unanimity, however, such shippers, through their representatives at the hearing, recognizing the necessity of the situation, accepted, and in many instances suggested correction of such unjust relationships through early readjustments with the carriers, and if such were denied by the carriers, through the intervention of this Commission.

To have made any different or other order regarding the East Bay ferry rates would have been discriminating unjustly against all persons in this State who would be required to pay the increased freight or passenger rates. Had the exception been made which the objecting cities urge, justice would require that the same consideration be given the commuters on the Northwestern Pacific ferries to Sausalito and points beyond; similarly, the so-called Peninsula commuters would be entitled to the same consideration, as they constitute a body of commuters whose business and home relationships are similar to those of the East Bay commuters, - the service of the Southern Pacific, in so far as its East Bay commuters, being that of furnishing ferry and rail service, and the Peninsula being furnished by the same company with rail commutation service. If the

San Francisco Bay commuting patrons of the carriers should be shown this consideration, at some point an injustice would be imposed in determining where the increased commutation rates should stop - whether at Sausalito, Mill Valley, San Rafael, Burlingame, San Mateo or San Jose. Indeed, a similar situation would be present in Los Angeles and its suburban territory and the unjust discrimination in favor of the commuters about San Francisco Bay would be apparent if similar limitations were not imposed upon the commutation rates out of Los Angeles and other larger centers in the State.

Petitioners for rehearing herein urge as a further ground for excepting the East Bay ferry rates from the operation of the increases, that increases have been allowed in these rates as follows: A 10 per cent increase authorized June 8, 1918, (Decision No. 2985, Vol. 15, C.R.C., p. 832), and thereafter on August 11, 1919, (Decision No. 6549), an increase to 15 cents for single fare and monthly commutation fare from \$3.30 to \$4.00 was authorized, and therefore these rates should be excepted from the present increases.

The former increases were authorized to allow what this Commission at that time deemed a proper rate under the then existing conditions.

The Interstate Commerce Commission in the present situation directed increases on the existing rates. To pursue the suggestion of petitioners herein would be to inquire fully not only into all questions of differentials and relationship of rates occasioned by so-called General Order 28 of the Federal Railroad Administrator, but indeed an inquiry into the reasonableness of all rates, both freight and passen-

ger, prior to the 25 per cent increase of the Interstate Commerce Commission, a situation which, for reasons hereinbefore stated, was and is practically impossible.

The refusal of this Commission to except the application of the increased rates to the East Bay ferry rates manifestly does not foreclose the applicants for rehearing herein from a presentation to this Commission of the question of reasonableness of these rates, unless subsequent judicial action would determine that the Esch-Cummins Act absolutely precludes consideration by this Commission of any intrastate rate of an interstate carrier.

Aside from the general and at all times existing right to have the reasonableness of those rates challenged, is the expressed declaration by this Commission in the concluding paragraph of the order herein, under subtitle "Adjustments", which reads as follows:

"This proceeding will be kept open for the purpose of considering adjustments of rates and all appropriate matters which may properly be brought before the Commission.

"Adjustments will be necessary and carriers will be expected to deal promptly and effectively therewith, to the end that such readjustments may be made in as many instances as practicable without forcing an appeal to this Commission."

The remedy, therefore, to all parties interested is available to the protesting cities herein, but no effort has as yet been made by any of said cities to avail themselves thereof.

#### O R D E R .

The Cities of Oakland, Berkeley, Alameda and Albany having filed separate applications for rehearing in the above entitled matter, and the Commission having

given full and careful consideration to said applications,

IT IS HEREBY ORDERED that applications of said cities and each thereof for rehearing herein be and the same are hereby denied.

Dated at San Francisco, California, this 13<sup>th</sup>  
day of September, 1920.

Edwin O. Edgerton  
H. D. Loveland  
Frank D. Dole  
H. A. Anderson  
J. W. Martin  
Commissioners.