

Decision No. 26869.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Joint Appli-)
cation of F. W. COMPE, Agent for)
and on behalf of THE ATCHISON,)
TOPEKA AND SANTA FE RAILWAY COMPANY)
et al., for relief under the Long)
and Short Haul Provision of Section)
24(a) of the Public Utilities Act.)

Application No. 16179.

- E. E. Bennett, L. N. Bradshaw, G. E. Duffy, E. H. McELroy and R. E. Wedekind, for applicants.
- Seth Mann, for San Francisco Chamber of Commerce, protestant.
- E. G. Wilcox, for Oakland Chamber of Commerce, protestant.
- G. H. Whitney, R. P. McCarthy and E. J. Forman, for Globe Grain and Milling Company, protestant.
- R. S. Sawyer, for Associated Jobbers and Manufacturers, protestant.
- Robert Hutcherson and W. H. Murphey, for Associated Oil Company, protestant.
- B. E. Carmichael, C. A. Olson, J. P. Quigley and F. W. Turcotte, for Carmichael Traffic Corporation and members of their Association, protestants.
- J. A. McNair and B. W. Max, for the Texas Company.
- E. W. Hollingsworth, for Pacific Coast Aggregates, Incorporated.
- A. Larsson and E. L. Howland, for Larsson Traffic Service.
- Carl R. Schulz and Max B. Schulz, for Outsen Brothers and Consolidated Milling Company.
- R. P. McCarthy, for Phillips Milling Company and J. H. Baxter and Company.
- H. E. Sanborn, for Union Lumber Company, and E. E. Sanborn and N. E. Keller for Pacific Portland Cement Company.

SEAVEY, Commissioner:

O P I N I O N

This proceeding, before the Commission on rehearing, involves the extent to which the rail carriers should be permitted to depart from the long and short haul provisions of Section 24(a) of

the Public Utilities Act and Article XII Section 21 of the Constitution where such departures are created by absorbing connecting lines' switching charges on competitive traffic¹ while not absorbing such charges on non-competitive traffic.²

By Decision No. 22670 in the above entitled proceeding, rendered on July 11, 1930, the major rail carriers were granted long and short haul relief "for the purpose of meeting competition at the more distant points, provided the same competition does not exist at the intermediate points * * * ". Thereafter and on August 29, 1932, the Commission rendered its Decision No. 25100 broadening the relief granted by Decision No. 22670. By the second decision relief was extended to all the California carriers parties to the current Western Classification, and in addition unrestricted authority was given to create long and short haul departures resulting from the application of applicants' definitions of competitive and non-competitive traffic. Upon petition filed by the Pacific Coast Aggregates a rehearing on Decision No. 25100 was granted and had on October 6, 1932. Following the rehearing Decision No. 25100 was set aside (Decision No. 25401 of November 25, 1932).

The record upon which our decisions in this proceeding was based contained many instances in which the carriers, by reason of the broad definitions of competitive and non-competitive traffic in their tariffs, created long and short haul departures when the physical conditions surrounding the traffic at the competitive points,

¹ Competitive traffic is defined in applicants' terminal tariffs as "traffic which at time of shipment, may be handled at equal rates (exclusive of switching charge) from same point of origin to same destination via other carriers, one of which performs the switching service."

² Non-competitive traffic is defined as "other than that described as competitive traffic."

where the absorptions were made, were not materially different than at the intermediate non-competitive points, where no such absorptions were made. Graphically illustrative is rock traffic from Livermore and Eliot on the Southern Pacific to an industry track on the Western Pacific at San Francisco. Livermore and Eliot are served by both the Southern Pacific and Western Pacific, although there are no track connections at that point between the two carriers. There is one rock company located on the rails of the Southern Pacific at Livermore and served by an industry track at that point. There is likewise a rock quarry served by a spur track of the Southern Pacific at Eliot. The rails of the Southern Pacific and Western Pacific at Eliot are approximately 200 feet apart. On traffic from Livermore the Southern Pacific absorbs the Western Pacific switching charge at San Francisco but on traffic from Eliot no absorption is made.

With the foregoing facts before it the Commission, by Decision No. 22670, held that as a practical matter Eliot was as much a competitive point as Livermore. (See also Coast Rock and Gravel Co. vs. Southern Pacific et al., 26 C.R.C. 549.) Or, stated in the converse, neither Livermore nor Eliot, in so far as rock traffic is concerned, is a competitive point. But by Decision No. 25100, in addition to broadening our previous grant of authority, we also eliminated from Decision 22670 all reference to rock traffic from Niles and Eliot. Thus the Commission attempted to change its Decision No. 22670 nunc pro tunc. The effect of this on complainant in Pacific Coast Aggregates Inc. vs. Southern Pacific Co. et al., Case 2837, is set forth in Decision No. 26378, rendered this date.

The record as it stands at present authorizes applicants to depart from the long and short haul provisions only to the extent authorized by Decision No. 22670. This authorization does not permit

long and short haul departures on rock traffic from Eliot to San Francisco or elsewhere where the Western Pacific is a competitor for this traffic only because of the tariff definition, but not in fact. Nor does it include any authorization to violate the long and short haul provisions where similar conditions exist.

Decision No. 22670 is correct in principle but impracticable to apply literally. It is impossible to name every non-competitive point where the conditions are different than at the more distant competitive point. The practice of absorbing switching charges at competitive points has been a practice for over 20 years. No particular harm has flowed from this practice. We should be as liberal as possible in granting applicants long and short haul relief to continue the absorption. Under the law, however, it is doubtful if we should go as far as applicants desire. But they should be given broad relief, restricted only by the condition that should a meritorious complaint be filed attacking the absorption practice on the ground that there is no dissimilarity of conditions between the competitive and non-competitive points, such as on rock traffic from Livermore and Eliot to San Francisco, the burden of proof will be upon applicants to defend the long and short haul departures.

The following form of order is recommended:

O R D E R

A rehearing having been held in the above entitled proceeding, full investigation of the matters involved having been had,

IT IS HEREBY ORDERED that applicants herein be and they are hereby authorized to depart from the long and short haul provisions of Section 24(a) of the Public Utilities Act where such departures are created by the absorption of connecting line switching

charges on competitive traffic as defined in applicants' tariffs while not concurrently absorbing switching charges on non-competitive traffic as defined in applicants' tariffs, subject to the condition that should a meritorious complaint be filed attacking the absorption practice on the ground that there is no dissimilarity of conditions between the competitive and non-competitive points, the burden of proof will be upon applicants to defend the long and short haul departures.

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 2^d day of October, 1933.

C. S. Sweeney
Leon C. Sweeney
M. A. C. C.
W. B. Lewis
Commissioners.