

Decision No. 26806

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension by the Commission on its own motion of reduced rates on grain and commodities enumerated therewith, named in Southern Pacific Company's Tariff No. 659-E, C.R.C. No. 3373, and Pacific Freight Tariff Bureau Tariff 30-L, C.R.C. 511, between Port Costa and points grouped therewith, and various points in California.

ORIGINAL

Case No. 3763

- J. E. Lyons and E. E. Mc Elroy, for Southern Pacific Company.
- F. A. Somers, for Grangers Business Association.
- G. E. Duffy and Berne Levy, for The Atchison, Topeka and Santa Fe Railway Co.
- M. J. Mc Carthy and Stanton & Berry, for Port Costa Warehouse.
- E. G. Wilcox, for Oakland Chamber of Commerce.
- C. S. Connolly, for Albers Bros. Milling Company.
- R. P. Mc Carthy for Globe Grain & Milling Company.
- John E. Mc Curdy, for Poultry Producers of Central California.
- G. H. Baker, for California Inland Water Carriers.

BY THE COMMISSION -

OPINION

Upon representation by interested parties that certain reduced rates proposed by respondents for the transportation of grain and related articles between various points in California and Port Costa and points grouped therewith were unreasonably low, unwarranted, and that they discriminated unduly against industries at Oakland, the Commission suspended the proposed rates pending a determination of their lawfulness.¹

The matter was submitted at a public hearing had before Examiner Geary at San Francisco, February 5, 1934.

¹ The suspended rates are contained in the following publications: Southern Pacific Company Tariff No. 659-E, C.R.C. No. 3373; Fourth Revised Page 34, Second Revised Page 64-A, Fifth Revised Page 67, Seventh Revised Page 70, Seventh Revised Page 74, Eighth Revised Page 74 reproduced effective February 15, 1934, Fourth Revised Page 77, Fourth Revised Page 80, Fourth Revised Page 83, Fourth Revised Page 87. Pacific Freight Tariff Bureau Tariff No. 30-L, C.R.C. No. 511; Supplement No. 53, Column B, rates named in Items 2210-C to 2340-C inclusive.

For many years prior to 1932 warehouses at Port Costa enjoyed a rate differential under San Francisco and Oakland.² This advantage was largely eliminated in 1932, when respondents reduced the rates to Oakland and San Francisco for the purpose of meeting motor truck competition without making corresponding changes in the rates to Port Costa. The new rates to San Francisco and Oakland were not low enough, however, to hold the traffic against the competition of the motor carriers, and further reductions were made in 1933. At this time respondents also proposed to reduce the rates to Port Costa so as to reestablish the differentials prescribed in the Albers case, supra, and to do so on less than statutory notice. Upon an admission, however, that there was no motor competition at Port Costa and a failure to show "good cause"³ authority to publish rates to Port Costa on less than statutory notice was denied.⁴ Respondents thereupon made these reductions on full statutory notice. It is these rates that are here under suspension.

Respondents testified that the publication of the assailed rates was motivated by a desire to "protect an industry from being destroyed." They assert that the Port Costa grain warehouses will practically be put out of business unless the former differentials, which they long enjoyed and upon which they have in fact been built, be reestablished. They contend that the proposed rates are not unduly low, and introduced testimony to show that the out-of-pocket line haul cost of hauling grain from

² By Decision No. 10153 of March 6, 1922, in Albers Bros. Milling Co. v. S.P.Co., 21 C.R.C. 302, the Commission prescribed rates from the Sacramento and San Joaquin Valleys to Oakland, which were made differential over the rates to Port Costa. Port Costa, however, had a rate advantage over Oakland for a long time prior thereto.

³ Section 15 of the Public Utilities Act reads: "Unless the Commission otherwise orders, no change shall be made by any public utility in any rate * * * except after 30 days' notice to the Commission and to the public as herein provided * * *. The Commission for good cause shown may allow changes without requiring the 30 days' notice herein provided for * * *."

⁴ Rates of the volume of those respondent sought to establish were made effective on interstate traffic August 30, 1933.

points in the San Joaquin Valley to Port Costa is 4 mills, 7.8 mills and 14.5 mills per 100 pounds, respectively, less than that of hauling like shipments to Oakland, San Francisco and San Francisco on the State Belt Railway. Truck competition, either actual or potential, they contend, exists at all the points herein involved, and there is some evidence in the record of joint truck and water competition via Stockton.

A witness for the Grangers Business Association, engaged at Port Costa in grading, cleaning, storing and assembling grain shipments chiefly for export trade, and another for the Port Costa Warehouse Company, engaged principally in the exportation of barley, corroborated respondents' testimony relative to the need for a rate differential if they are to continue in this business. It was in reliance of such a differential that their warehouses were located at Port Costa. These companies have investments of approximately \$300,000 and \$800,000, respectively.

Protestants made no attempt to show that the assailed rates were noncompensatory or that they were lower than necessary to enable the Port Costa warehouses to continue in business. Neither did they show that the rates were unduly discriminatory or that they were placed at any serious disadvantage because of the lower rates to Port Costa. The record furthermore shows that exportation of grain constitutes but a small portion of protestants' business, whereas it is the activity in which the Port Costa interests are chiefly engaged.

Protestants claim they have an advantage because their rates have been reduced to meet motor truck competition, and that respondents, particularly in view of their present financial conditions, are not justified in making corresponding reductions at points such as Port Costa, where there is no actual truck competition. They rely on I.C.C. v. Dittenbaugh, 222 U.S.42, Texas & Pacific Railway Co. v. U.S. 289, U.S. 629, et al.

These cases simply hold, however, that regulatory authority cannot order carriers to reduce rates where there is no actual competition solely because they have voluntarily made reductions to points where competition does exist. Where, as here, industries have been located at a particular point because of a rate advantage, which advantage has been maintained over a long period of years and appears to be necessary to the continued existence of the industry, the Commission will not deny carriers the right voluntarily to accord to such industries rates low enough to enable them to continue operations unless it is shown that the rates to be established are noncompensatory or unduly discriminatory.

Upon this record we find that the assailed rates have been justified and that our suspension order of January 15, 1934, should be vacated and set aside and this proceeding discontinued.

ORDER

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that our order of January 15, 1934, in the above entitled proceeding, suspending until February 22, 1934, reduced rates on grain and commodities enumerated therewith, be and it is hereby vacated and set aside and this proceeding discontinued as of February 22, 1934.

Dated at San Francisco, California, this 19th day of February, 1934.

O. D. Seavey
Leon Whitely
W. L. ...
M. B. ...
...
COMMISSIONERS.