

Decision No. 27100.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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.

BY THE COMMISSION:

**ORIGINAL**

SUPPLEMENTAL OPINION AND ORDER

By Decision No. 26369 (October 2, 1933) in the above entitled proceeding applicants were 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 lines' switching charges on competitive traffic as defined in applicants' tariff, while not concurrently absorbing switching charges on non-competitive traffic as defined in applicants' tariff. The order was 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".

Applicants have petitioned for a rehearing. It is clear from a reading of the petition that considerable confusion exists in their minds as to the scope of the Commission's order, as well as the interpretation of previous orders in this proceeding.

Decision No. 26369 was one of three orders in this mat-

ter. The original decision, No. 22670, was rendered on July 11, 1930. It granted long and short haul relief to applicants "to the extent set forth in the opinion which precedes this order". Decision No. 22670 did not authorize all long and short haul departures which may be created by a literal interpretation of the terms "competitive traffic" and "non-competitive traffic", as defined in applicants' tariffs. (In Re Suspension of Northwestern Pacific Terminal Tariff et al., 35 C.R.C. 644, 646.) Specifically it did not apply to such departures created at Eliot on rock traffic to San Francisco where a higher charge was made on like traffic from Livermore to San Francisco. This is very clear from a reading of the opinion which preceded the order in Decision No. 22670.

Following Decision No. 22670 came Decision No. 25100 (August 29, 1932), wherein the Commission granted unlimited long and short haul relief to applicants. Not only was unlimited relief granted but the Commission eliminated all reference in Decision 22670 to rock traffic from Eliot and Livermore. The effect of this was to change Decision 22670 nunc pro tunc. The Pacific Coast Aggregates, Inc., thereupon filed a petition for rehearing, and oral argument was had thereon before Commissioner Seavey. Following the oral argument Decision No. 25100 was set aside. It was, however, in effect from September 18, 1932, to November 28, 1932. Thereafter, as previously related, Decision No. 26369 was rendered, but this decision has never become effective.<sup>1</sup>

The record before this Commission justifies the following findings:

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<sup>1</sup> The pending petition for rehearing was filed more than 10 days prior to the effective date of Decision 26369.

1. That Decision No. 22670 was in full force and effect during the period July 31, 1930, until September 17, 1932, both dates inclusive, and since November 28, 1932, has been continuously in effect.

2. That Decision No. 25100 was in effect during the period September 18, 1932, to November 28, 1932, both inclusive.

3. That Decision No. 22670 did not authorize all departures from the long and short haul provisions of Section 24(a) created by the practice of applicants' absorbing connecting line switching charges on competitive traffic while not absorbing such charges on non-competitive traffic, and specifically did not authorize any departures on rock traffic from Eliot to San Francisco or other departures where the conditions are not substantially different at the non-competitive point than at the more distant competitive point.

4. That during the period Decision No. 25100 was in effect all departures from the long and short haul provisions were authorized.

5. That Decision No. 26369 should be clarified to provide:

- (a) That on and after the effective date of said decision all long and short haul departures are authorized 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.
- (b) That said decision shall become effective if and when applicants file a stipulation with the Commission agreeing that in the event a complaint is filed with the Commission 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 justify the continuance of said departures.

#### O R D E R

Upon further consideration of the record in the above en-

titled proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED that the second paragraph of the order in Decision No. 26369 be and it is hereby amended to read as follows:

"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 applicants on or before the effective date of this order shall file with the Commission a stipulation agreeing that in the event a complaint is filed with the Commission 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 justify the continuance of any long and short haul departures which may exist."

IT IS HEREBY FURTHER ORDERED that applicants' petition for rehearing be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that the effective date of Decision No. 26369 shall be thirty (30) days from the date hereof.

Dated at San Francisco, California, this 24<sup>th</sup> day of May, 1954.

OC Seaman

W. H. Carr

M. B. Lewis

Walter S. Brown  
Commissioner