

Decision No. 29991

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of maximum or minimum, or maximum and minimum rates, rules and regulations of all Radial Highway Common Carriers and Highway Contract Carriers operating motor vehicles over the public highways of the State of California, pursuant to Chapter 223, Statutes of 1935, for the transportation for compensation or hire of any and all commodities and accessorial services incident to such transportation.)

Case No. 4088
Part "M"

In the Matter of the Investigation and Establishment of rates, charges, classifications, rules, regulations, contracts and practices, or any thereof, of Common Carriers of property.)

Case No. 4145
Part "B"

Additional Appearances

T. A. L. Loretz, for Loretz and Olsen.
Harold W. Dill, for Truck and Warehouse Association of San Diego and Imperial Counties.
E. W. Baugh, for Motor Truck Association of Southern California.

BY THE COMMISSION:

THIRD SUPPLEMENTAL OPINION AND ORDER

By Decision No. 29480 as amended in the above entitled proceedings, the Commission prescribed reasonable and sufficient rates for common carriers, and just, reasonable and non-discriminatory minimum rates for radial highway common and highway contract carriers, for the transportation of property¹ between points in the territory bounded generally by Burbank and San Fernando on the

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Certain traffic was excluded from the application of the rates. A tabulation of the exclusions is contained in Rule No. 20(c) of Appendix "A" to Decision No. 29480 as amended in these proceedings.

north, Redlands, Yucaipa, Hemet Valley and Escondido on the east, the Mexican border on the south, and the Pacific Ocean on the west. The rates became effective on April 12, 1937.

Thereafter various interested parties represented to the Commission that modifications and minor changes should be made in the established rates and in the rules governing them. For the purpose of receiving evidence relative to such proposed modifications and changes a public hearing was had before Examiner Howard G. Freas at Los Angeles on June 22, 1937.

Twenty-eight modifications, a list of which is contained in Appendix "A" hereto, were suggested. Seven witnesses testified.²

No evidence was introduced with respect to a number of the proposals, although the record shows that all parties suggesting changes were particularly advised that the matters would be considered at the public hearing. Proposals for which no justification was introduced will not be further discussed in this opinion.³

Considerable testimony was received, both in support of and in opposition to proposals dealing with boundary lines of certain zones in the Los Angeles area.⁴ However upon the request of Mr. H. R. Brashear, representing the Los Angeles Chamber of Commerce, it was agreed that action upon these matters should be deferred to permit the introduction of evidence in behalf of interested shippers at a later hearing.

² E. W. Baugh and E. Halverson, for The Motor Truck Association of Southern California.

George T. Hurst, for The Atchison, Topeka & Santa Fe Railway Company, and Santa Fe Transportation Company.

M. Smith, for Southern Pacific Company and Pacific Motor Transport Company.

J. P. Cozad, for Towner Manufacturing Company.

H. J. Bischoff, for Southern California Freight Lines and Southern California Freight Forwarders.

M. D. Brombaugh, for E. M. Cope Commercial Company.

³ They are numbered 6, 9, 11, 12 and 13 in Appendix "A".

⁴ They are numbered 1, 5, 20 and 27 in Appendix "A".

Witnesses Baugh and Smith urged that the orders be modified to establish the charge provided for a shipment of 15,000 pounds as minimum, for a shipment weighing in excess of 15,000 pounds (Proposal 2). Both witnesses pointed out that in the absence of such a modification shipments weighing in excess of 15,000 pounds might be transported at lesser total charges than shipments weighing 15,000 pounds or less, and said that this practice had a demoralizing effect upon carriers and shippers alike. Mr. Smith stated he believed that the change would involve few, if any, increases in rates so far as his companies were concerned. No objection was made to the adoption of this proposal.

Proposals 3 and 28 involve the application of rates at Long Beach and Los Angeles Harbor, and are closely related to each other. No evidence was introduced in direct support of either of them, although witness Smith requested that if consideration be given to them, the same rates be established from and to both harbors.

Witness Baugh proposed that rules be added providing for a limitation of the periods within which credit might be extended in the collection of the carriers' own charges and also in the collection of charges of connecting carriers, steamship companies and warehouses (Proposal 25, superseding 4). In the former instance he recommended a rule corresponding to that prescribed by the Interstate Commerce Commission for motor carriers; in the latter a period of 96 hours. He stated it as his belief that some limitation of credit was necessary and urged that the requirements applicable to interstate commerce be adopted here in the interest of uniformity.

Several proposals (7, 23 and 24) involve changes in Rule 90, governing split pick-up or delivery service.⁵ Witness Baugh

⁵ Established rules referred to herein are those provided in Appendix "A" of Decision No. 29480, as amended, in these proceedings.

suggested that the word "directly" be inserted before the word "intermediate" in paragraphs (a) and (b) of the rule, and also recommended the adoption of a requirement that charges upon split delivery shipments be paid by the shipper and charges upon split pick-up shipments be paid by the consignee. He stated that the carriers he represented⁶ had had little experience with the operation of the split pick-up or delivery rule as yet, but were fearful that unless the suggested changes were made the rule would serve to break down their rates and deplete their revenues. Witness Bischoff introduced an exhibit (MB-8) in connection with which he proposed a complete revision of the split pick-up or delivery rule. Among other things the revised rule would permit split pick-up or delivery service upon shipments weighing 2,000 pounds or more where the maximum distance between any point of origin and point of delivery did not exceed 20 miles. It would also provide a sliding scale of minimum charges based upon the weight of each pick-up or delivery, in lieu of the present minimum of 25 cents per pick-up or delivery. Charges upon both split pick-up and split delivery shipments would have to be prepaid, the former by the consignee and the latter by the consignor. Mr. Bischoff also stated that the practice of performing split pick-up or delivery service was relatively new, and that the carriers had had little experience therewith. Witness Smith introduced exhibits (MB-5 and MB-6), setting forth proposed modifications of and additions to the split pick-up or delivery rule, principally designed to prohibit back hauls and out-of-line hauls.

Witness Hurst asked that Rule No. 20(b) be modified by providing that the restrictions of the rule should not operate to prohibit a railroad from meeting the competition of a shorter rail line by

⁶ Witness Baugh stated that The Motor Truck Association of Southern California has approximately 200 members, about 30 of which are common carriers, and the balance radial highway common carriers, highway contract carriers and city carriers.

charges no lower than those applying via the shorter line.⁷ (Proposal 8). He explained that until such modification was made the Santa Fe would be unable to compete with its competitors between Los Angeles and Bakersfield and other points. No objection was offered to the adoption of this proposal.

Witness Cozad, whose company manufactures and ships approximately 300 tons of agricultural implements and parts annually from Santa Ana destined principally to Los Angeles, Imperial Valley and San Joaquin Valley, requested the establishment of a commodity rate of 25 cents per 100 pounds for the transportation of these commodities in any-quantity lots from Santa Ana to Los Angeles (Proposal 10). He explained that common carriers did not generally maintain through rates from Santa Ana to the Imperial and San Joaquin Valleys, although through rates were provided from Los Angeles and Oxnard, where competing manufacturers were located. He testified that the 25 cent rate was sought primarily for the purpose of reducing the combined transportation charges from Santa Ana to the Imperial and San Joaquin Valleys, and said that if through rates were provided from Santa Ana to those points, comparable to the rates applying from Los Angeles and Oxnard, the proposed commodity rate would not be necessary.

Mr. Bischoff requested the adoption of a rule providing that on light and bulky articles weighing less than twelve pounds per cubic foot of space occupied, charges should be computed by applying the first class rate on the basis of twelve pounds for each cubic foot of space occupied (Proposal 14). He stated that the average weight of first class freight was approximately twelve pounds to the cubic foot, whereas fourth class freight averaged about twenty pounds per cubic

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Rule 20(b) provides that for the transportation of any shipment from, to or through the territory within which the established rates apply, the charge for the entire service shall be not less than the charge established for the service performed within such territory.

foot. He said that without a cubic foot rule the freight classification did not return adequate transportation revenue on bulky shipments. The proposed rule, he testified, was to be applied as minimum only and not operate in cases where classification ratings produced higher charges. The Southern Pacific Company, Pacific Motor Transport Company, The Atchison, Topeka & Santa Fe Railway Company, and Santa Fe Transportation Company opposed the prescription of the suggested cubic foot rule insofar as it might be applied to their own operations. They expressed the opinion that its enforcement would prove unduly burdensome to the carriers because of the necessity of requiring clerks to measure shipments and calculate density and pointed out that unless it were applied with great diligence it would result in discrimination between carriers and between shippers.

Rules 40(a) and 70(a) now provide an additional charge of 5 cents per 100 pounds, minimum 25 cents per shipment, for pick-up or delivery at other than street level where no vehicular elevator or vehicular ramp is provided. Witness Baugh asked that these rules be amended to make this charge applicable also where the capacity of an elevator or ramp is insufficient to receive the carrier's vehicle. He further asked that the same charge be applied to any shipment picked up or delivered more than 15 feet from carrier's vehicle (Proposals 15, 21 and 22). He stated that carriers were sometimes required to transport shipments considerable distances from the truck, and were occasionally called upon to render upstairs pick-up or delivery without additional compensation, even though the available vehicular elevator or ramp could not accommodate the truck used. The limitation of 15 feet was arrived at arbitrarily, he said, but the carriers he represents believed the suggested additional charge reasonable for shipments moved more than that distance beyond the vehicle.

Witness Bischoff requested that shipments weighing less than 100 pounds be excluded from application of the accessorial charge provided in Rule 70(a). He stated that in his opinion the charge was not reasonable for small shipments, which in many cases the driver may carry with him when advising consignee of arrival. As further justification for exclusion of small shipments Mr. Bischoff pointed out that property transported by Railway Express Agency and certain parcel-delivery carriers is exempted from the established rates, and that these carriers make inside and upstairs pick-ups and deliveries without additional charge.

Witness Brombaugh, testifying in behalf of E. M. Cope Commercial Company of Redlands, requested that the Commission restore certain group commodity rates formerly maintained by several common carriers from Los Angeles to Redlands, and that the class rates now provided for shipments of 500 pounds or more be made applicable to smaller shipments, regardless of weight (Proposal 17). He asked that commodity rates be provided for washing machines, electric refrigerators, ranges, garbage cans, tinware, electrical appliances, and all classes of hardware and housewares. He compared the rates now charged for the transportation of certain of these commodities from Los Angeles to Redlands with those in effect prior to April 12, 1937, and indicated that on shipments of less than 500 pounds the increases have been substantial. He stated that his company bought in small quantities and found the increased transportation costs burdensome.

Mr. Baugh urged that the exceptions to the applicable classification provided in Section No. 2 of Appendix "A" to Decision No. 29480, as amended, be restricted to shipments of 4,000 pounds or more, except on fresh cut flowers (Proposal 26). He alleged that the classification of shipments of less than 4,000 pounds at percentages of

fourth class was burdensome to the carriers, and stated that it was not the intention of the carriers proposing classification exceptions at earlier hearings in these proceedings that such exceptions should be applied to small shipments. He conceded that in some cases the amount of classification work would be increased rather than reduced by the adoption of his proposal.

The Commission's attention was directed to the fact that obviously erroneous mileages are shown in Section No. 4 of Appendix "A" to Decision No. 29480, as amended, between Santa Ana and Prado, and between Oceanside and Fort McArthur (Proposals 16 and 18).

The rates which became effective April 12, 1937, were established upon a comprehensive record,⁸ and the rate adjustment made was a broad one. It is recognized that the necessity or desirability of making modifications in a rate plan as sweeping as the one here involved may well appear after a reasonable trial period. On the other hand, it is believed that when the Commission has, upon a comprehensive record, established a scale of transportation rates for a large and important section of the state, it should be reluctant to make changes except upon an adequate showing that the changes are desirable and will not result in a maladjustment.

Little justification was offered for the proposal that a limitation be prescribed for the extension of credit by carriers. The Interstate Commerce Commission recently adopted such a limitation upon interstate shipments, but only after an extensive series of hearings devoted to the particular subject. Witness Baugh testified that a change in the credit period allowed on interstate shipments was receiving consideration. Furthermore, the question of credit allowed by

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Eleven days of public hearing were had in September and October, 1936, followed by an oral argument on February 16, 1937, before the Commission en banc. Thirty-nine witnesses testified at the public hearings, and introduced fifty-nine exhibits. Fourteen parties participated in the oral argument.

common carriers throughout the state is involved in Case No. 3773.⁹
For these reasons the proposals cannot now be given effect.

The several changes proposed in the rule governing split pick-up and delivery service are complex and in some respects contradictory and the record does not clearly establish which if any of these changes would actually better the present rule. As it now stands the rule is in all essential respects identical with the rules established in other phases of Case No. 4088 and in other proceedings.¹⁰ On this record, and particularly in view of the fact that split pick-up and delivery rules are comparatively untried, changes in the existing rules do not appear advisable. It is hoped that further experience and study will show definitely what changes should be made.

The record indicates that the suggested rate on agricultural implements and parts is desired primarily to assist the Santa Ana shipper in competing with Los Angeles and Oxnard manufacturers on shipments destined to Imperial Valley and San Joaquin Valley points. It would appear that if any adjustment is necessary it should be made in the through rates rather than in those applying locally from Santa Ana to Los Angeles. Those rates, however, are not before us in these phases of these proceedings.¹¹

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In the Matter of the Investigation by the Commission on its own motion into the rates, rules, regulations, charges, allowances, contracts, practices, operations and schedules, or any of them, of The Atchison, Topeka & Santa Fe Railway Company, et al.

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Decision No. 29723 in Case No. 4088, Part "B", Case No. 4137 and Case No. 4141; Decision No. 29313 in Case No. 4088, Part "C", Case No. 4106 and Case No. 4107; Decision No. 28928 in Case No. 4088, Part "D", and Case No. 4115.

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Rates from, to and between points in the Imperial and Coachella Valleys are embraced in Part "R" of Case No. 4088 and Part "E" of Case No. 4145; those applying to San Joaquin Valley points will undoubtedly be considered in the near future.

It is apparent that the proposed alternative rule for assessing transportation charges on a cubic foot basis would be burdensome to apply and difficult to enforce, and unless strictly applied and enforced would result in undue discrimination. Moreover, although the rule would result in increased charges the record gives no indication of the extent of this increase or its probable effect upon the carriers' revenues. The rule will not be adopted at this time.

The suggestion that an additional charge of 5 cents per 100 pounds, minimum additional charge 25 cents, be established for pick-up or delivery more than 15 feet from carrier's vehicle, appears to be unreasonable when it is considered that the prescribed rates and charges are minimum in application. Moreover, it seems probable that discrimination between shippers would result through differences in parking and traffic conditions at different locations and at different times of the day. The restriction proposed in connection with vehicular elevators and vehicular ramps would appear to invite discrimination between carriers and between shippers. If the proposal were adopted the charges for identical service might vary according to the size of trucks used, and carriers employing large vehicles would in some cases be unable to compete at an equality of charges with carriers using smaller vehicles.

In establishing the present rates, the Commission recognized that both increases and reductions would result but found that there was no need for the maintenance of the then existing commodity rates.¹²

¹² In speaking of rates in effect prior to April 12, 1937, the Commission, in Decision No. 29480 in these proceedings, said: " * * * commodity rates lack consistency and appear to have largely come into existence through unrestrained competition among the carriers * * * . When class rate structures are properly adjusted, few if any commodity rates for shipments weighing 18,000 pounds and less are justified. The promiscuous filing of commodity rates tends toward discrimination between commodities and communities, and serves to break down the class rates and the classification upon which the rate structure is built."

The mere contention that at this time the rates are excessive compared with prior rates is of little probative value. There is nothing in this record to justify the restoration of former group commodity rates for the transportation of electric refrigerators, washing machines, garbage cans, tinware, electrical appliances and "all classes of hardware and housewares". The proposal that rates established for shipments weighing 500 pounds or more be made applicable to smaller shipments regardless of weight, is likewise not supported in this record.

The proposal that the classification exceptions be restricted to apply to shipments of 4,000 pounds or more is not a new one. A similar suggestion was made at the oral argument in the proceedings at Los Angeles on February 16, 1937, and in disposing of the matter¹³ the Commission said, "The classification exceptions were resorted to in order to take care of instances in which, under the particular circumstances, the class rates prescribed appeared to be improper. Since the rates in connection with which they apply are graded according to the tonnage transported, there appears to be no good reason why additional weight restrictions should be provided. To do so, moreover, would result in rate complications which on this record do not appear to be necessary."

The other proposals have been justified.

FINDINGS

Upon consideration of all the facts of record we are of the opinion and find that Appendix "A" of Decision No. 29480 of January 25, 1937, as modified, should be further modified as follows:

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Decision No. 29592 dated March 8, 1937, in these proceedings.

(1) Change Paragraph (b) of Rule No. 20, Section No. 1,

to read:

(b) For the transportation of any shipment from, to or through the territory referred to in paragraph (a) hereof, the charge for the entire service shall be not less than the charge herein established for the service performed within said territory; provided that this restriction shall not operate to prohibit a railroad from meeting the competition of a shorter rail line by rates no lower than those legally applicable via the shorter rail line.

(2) Change Item (9) of Paragraph (c) of Rule No. 20,

Section No. 1, to read:

(9) Shipments weighing more than 15,000 pounds, except that such shipments shall not be transported at a lesser total charge than the charge herein established for the same transportation of a shipment of the same commodity (or of the same commodities in the same proportions) weighing 15,000 pounds.

(3) Change Paragraph (a) of Rule No. 70, Section No. 1,

to read:

(a) For pick-up or delivery at other than street level, where no vehicular elevator service or vehicular ramp is provided, an additional charge of 5 cents per 100 pounds, minimum additional charge 25 cents per shipment, shall be made; except that no additional charge shall be made for this service in connection with shipments (or portions of split pick-up or delivery shipments - see Rule No. 90) weighing 100 pounds or less.

(4) Change the equated mileages shown in Section No. 4 between the following points to read as follows:

Between Santa Ana and Prado - - - - - 22.5 miles

Between Oceanside and Fort McArthur - 75.5 miles

O R D E R

Public hearings having been held in the above entitled proceedings and based upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that Decision No. 29480 of January 25, 1937, as modified, in the above entitled proceedings, be and it is hereby further modified to the extent indicated in the foregoing opinion, effective twenty (20) days from the effective date of this order.

IT IS HEREBY FURTHER ORDERED that all common carriers as defined in the Public Utilities Act be and they are hereby ordered and directed to establish on or before twenty (20) days from the effective date of this order, on not less than five (5) days' notice to the Commission and to the public, rates, rules and regulations no lower in volume or effect than those established in and by said Decision No. 29480, as modified by prior orders and by this order.

IT IS HEREBY FURTHER ORDERED that in all other respects said Decision No. 29480 as modified shall remain in full force and effect.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 27th day of July, 1937.

Walter H. ...

Frank R. ...

Robert ...

Commissioners.

APPENDIX "A"

LIST OF PROPOSALS

1. That Exception 2, Rule 30 be eliminated from the order.
2. That Rule 40(f) be re-stated to provide that the aggregate charges on shipments of 15,000 pounds, at rates as provided in the decision, be established as minima for any shipment weighing in excess of 15,000 pounds.
3. That a common point of origin and destination applying to San Pedro, East San Pedro, Terminal Island and Wilmington be established and that such point be designated Los Angeles Harbor.
4. That a rule be provided for payment, on demand, of any charges that the delivering carrier has advanced to connecting carriers, warehouses, steamship companies, etc.
5. That to simplify the application of Section 4 (equated mile-ages) notations, opposite those points that are included within the boundaries described in Rule 60(c), referring to "Los Angeles" for the official distances.
6. That a definition of Hollywood be provided, similar to Rule 60(c) and (d).
7. That the Commission consider recommendations for revision of Rule 90 (Split Pick-up or Delivery).
8. That the following be added to Rule 20(b):
"provided that this restriction shall not apply to a longer line where such longer line meets the competition of a shorter line by rates no lower than rates applying via the shorter line."
9. That different rates be established for the transportation of property between Los Angeles and Gardena and between Los Angeles Harbor and Gardena.
10. That a 25-cent rate on agricultural implements from Santa Ana to Los Angeles be granted.
11. That commodity rates or a classification exception on wet nitrocellulose be established.
12. That a fourth class exception be provided on cardboard, viz., chipboard, newsboard, etc., processed.
13. That different rates be provided on hardware and household supplies.
14. That a so-called "cubic foot rule" for large and bulky articles be adopted.

15. That a rule prescribing additional charges for inside pick-up and delivery service or for the performance of such services at other than the ground floor be adopted.
16. That the distance set forth between Santa Ana and Prado be changed from 12.5 miles to 22.5 miles.
17. That lower rates be established on household washing machines, garbage cans, tinware, gas ranges and other hardware and houseware, from Los Angeles to Redlands.
18. That the distance set forth between Oceanside and Fort McArthur be changed from 16.5 miles to 75.5 miles.
19. That Rule No. 30, Exception No. 2, be amended to read as follows:

"This appendix does not apply upon traffic having both origin and destination in the territory described in Rule No. 60(c)."
20. That the boundary description in Rule No. 60(c) be amended to read as follows:

"Commencing at the intersection of North Broadway and Mission Rd., thence westerly on North Broadway to Daly St., northerly on Daly St. to Pasadena Ave., northerly on Pasadena Ave. to North Figueroa St., southwesterly on North Figueroa St. to Sunset Blvd., northerly on Sunset Blvd. to Hollywood Blvd., westerly on Hollywood Blvd. to La Brea Ave., southerly on La Brea Ave. to Manchester Ave., easterly on Manchester Ave. and Firestone Blvd. to Atlantic Blvd., northerly on Atlantic Blvd. to Washington Blvd., easterly on Washington Blvd., to Anaheim-Telegraph Rd., north westerly on Anaheim-Telegraph Rd. to Goodrich Blvd., northerly on Goodrich Blvd. to Whittier Blvd., westerly on Whittier Blvd. to Eastern Ave., northerly on Eastern Ave. to Alhambra Ave. (Valley Blvd.), westerly on Alhambra Ave. to Mission Rd., northerly on Mission Rd. to point of beginning."
21. That Rule No. 40(a) be amended to read as follows:

"Except as otherwise provided in Rule No. 90, rates are for the transportation of shipments as defined in Rule No. 10(c). Rates include pick-up and delivery at sidewalk platform truckside or inside shipper's or consignee's door at street level only and not to exceed 15 ft. from carrier's motor vehicle; except that rates include pick-up and delivery at other than street level where vehicular elevator service or vehicular ramp accomodating carrier's truck, is provided."
22. That Rule No. 70(a) be amended to include the 15 foot limitation proposed in Proposal No. 21.
23. That Rule No. 90 be amended by inserting the word "directly" before the word "intermediate" in paragraphs (a) and (b) of said rule.

24. That new paragraphs be added to Rule No. 90, as follows:

"(f) Charges upon split delivery shipments shall be paid by shipper and charges upon split pick-up shipments shall be paid by consignee. No consignee shall be entitled to demand split pick-up under this rule unless he furnishes the carrier with written instructions on each shipment specifying the points of pick-up and the name and addresses of the consignors.

(g) No carrier or any agent or employee thereof shall act as the shipper or consignee, or as the agent of any shipper or consignee in assembling freight, for the purpose of according split pick-up or delivery to shipments transported by such carrier."

25. That a rule be added providing for a limitation of the period for which credit may be extended in the collection of rates and charges corresponding to that prescribed by the Interstate Commerce Commission for motor carriers and a limitation of 96 hours for the extension of credit in the collection of charges to connecting carriers, steamship companies and warehouses.
26. That Section No. 2 be amended to provide for the restriction of the application of exceptions to current classification therein listed to shipments of 4,000 lbs. or more on all items except Item No. 70.
27. That Section No. 4 be amended by adding notations opposite those points which are included within the boundaries of the Los Angeles pick-up and delivery zone as described in Rule No. 60(c) referring to "Los Angeles" for applicable mileage and similar notations opposite those points which are included within the city limits of any other cities shown in Section No. 4.
28. That Section No. 4 be amended by adding the points Long Beach Harbor and Wilmington Harbor.