

Decision No. 30784

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Increases in Rates,)
Fares and Charges. Application of)
Railroads (and Connecting Water Lines)) Application No. 21603
for Authority to Increase their Rates,)
Fares and Charges.)

R. E. Wedekind, for all applicants not specifically represented by other counsel
Gerald E. Duffy and George T. Hurst, for The Atchison, Topeka and Santa Fe Railway
L. N. Bradshaw, for Western Pacific Railroad Company, Sacramento Northern Railroad, Tidewater Southern Railway Company, and Delta Finance Company, Ltd.
Reginald L. Vaughan, for Pacific Coastwise Conference
J. J. Deuel, for California Farm Bureau Federation
W. J. Lane, for Guggenlime & Company
Ralph D. Mitchell, for Henry Cowell Lime & Cement Company
A. E. Van Slyke, for Yosemite Portland Cement Company
N. E. Keller, for Pacific Portland Cement Company
W. G. Higgins, for Santa Cruz Portland Cement Company
C. R. Boyer, for Southwestern Portland Cement Company
R. L. Vance, for Monolith Portland Cement Company
A. Larrison, for California Redwood Association
E. J. Forman, for Los Angeles Grain Exchange; California Hay, Grain and Feed Association and Globe Grain & Milling Company
F. F. Miller, for California Milling Corporation
L. R. Keith and Irving F. Lyons, for Canner's League of California and California Packing Corporation
E. M. Berol and Roy B. Thompson, for Truck Owners' Association of California
Sanborn, Roehl & MacLeod for Tank Truck Operators' Association of California
R. F. Walker, for Spreckels Sugar Company
Lowe P. Siddons, for Holly Sugar Corporation (Colorado Springs)
R. F. Ahern, for Dried Fruit Association of California and Rosenberg Bros. & Company
Frank B. Hartung, for Owens-Illinois Pacific Coast Company
L. R. Bishop, for Bishop and Behler
L. H. Wolters, for Golden State Company, Ltd.
F. Merkelbach, for Albers Bros. Milling Company
Elmer Westlake, for California-Hawaiian Sugar Refining Corporation and the Western Sugar Refinery
F. P. Kensinger, for Loose-Wiles Biscuit Company
J. H. Anderson, for The River Lines
J. L. Roney, for S & W Fine Foods, Inc.
C. G. Anthony, for Pacific Freight Lines and Keystone Express System and Pacific Tank Lines
John E. McCurdy, for Poultry Producers of Central California
B. F. McKibben, for Pacific States Butter, Egg and Cheese Association

Harold A. Lincoln, for Fibreboard Products, Inc.
Walter A. Rohde, for San Francisco Chamber of Commerce
Edwin G. Wilcox, for Canner's League of California and Dried
Fruit Association of California
Gwyn H. Baker and E. I. Allen, for Allied Drug Distributors
Association
William Guthrie, for California Portland Cement Co., and
Riverside Cement Co.
Gunter Carlberg, for the National Wooden Box Association
George D. Cron, Traffic Manager, for Chevrolet Motor Division,
General Motor Sales Corporation

BY THE COMMISSION:

O P I N I O N

On November 5, 1937, substantially all the Class I railroads in the United States filed with the Interstate Commerce Commission an application requesting authority to make a general increase of 15% in their rates, fares and charges, including those in effect to and from Canada and Mexico, and those published jointly with water carriers, subject to certain maximum increases. A supplemental petition in support of the above mentioned application was filed November 6, 1937, by the American Short Line Railroad Association on behalf of its 323 member lines. Following the filing of these petitions, the Interstate Commerce Commission on November 8, 1937, instituted its proceeding of investigation (Ex Parte 123, In the Matter of Increases in Rates, Fares and Charges). Thereafter, and as a part of the carrier program, applications were filed with the various state commissions requesting increases on intrastate rates, fares and charges consistent with those which may be authorized by the Interstate Commerce Commission on interstate traffic. Such an application was filed by this Commission on November 24, 1937.

The Interstate Commerce Commission invited the various state regulatory commissions to cooperate with it in the consideration of the applications under the cooperative plan contemplated by Section 13(3) of the Interstate Commerce Act. Commissioner Wakefield of this

Commission was selected as one of two representatives from the Mountain Pacific states¹ and participated with the Interstate Commerce Commission in the disposition of this proceeding.

The Interstate Commerce Commission held hearings in Washington, D. C.; Atlanta, Georgia; Chicago, Illinois; El Paso, Texas; Los Angeles, California; New Orleans, Louisiana; Portland, Oregon; and Salt Lake City, Utah.

On the record before it the Interstate Commerce Commission, on March 8, 1938, issued its decision and analyzed at length the evidence before it. Among its conclusions it was found:

"The present revenues of the applicants are inadequate, whether the simple common law tests be applied, or if they be judged by the statute with reference to their sufficiency, under honest, economical and efficient management, to provide in the public interest adequate and efficient railway transportation service at the lowest cost consistent with furnishing such service. The record shows that the existing basis of rates is not sufficient to maintain in full vigor either rail or water transportation, or to permit improvement of the relations between and the coordination of transportation by motor and other carriers."

It was also found while the proposals before it were not entirely justified, applicants had justified increases of 5% on (1) products of agriculture other than tropical fruits, (2) animals and products and the products thereof and articles taking the same rates, exclusive of horses and mules, (3) lumber, shingles and laths and articles taking the lumber rate, (4) cottonseed oil and vegetable oils N.O.S., other than linseed oil, and increases of 10% on other commodities, subject to some exceptions.²

¹ California, Oregon, Washington, Idaho, Montana, Utah, Wyoming, Colorado, Nevada, Arizona and New Mexico.

² Among the exceptions are (1) no increases authorized for charges for protective service against heat or cold, charges upon fresh milk and cream, bituminous coal, lignite, coke and iron ore, (2) an increase of 10 cents per ton on anthracite coal, (3) prior increases must be taken into account and considered part of the increases authorized under authority of General Commodity Rate Increase 1937, (4) maximum increases on fruits and vegetables limited to 15 cents per 100 pounds; lumber limited to 6 cents per 100 pounds and the sugar rate effective December 15, 1937, limited to 6 cents per 100 pounds.

Upon the issuance of the Interstate Commerce Commission decision, the application before this Commission was set for public hearing. Hearings were had at San Francisco on March 18, 19, 21 and 25, and the matter was orally argued before the Commission en banc on March 28, 1938.

The record before the Interstate Commerce Commission and its decision in Ex Parte 123 were made a part of the record in the instant application.

Applicants and the other railroads in the United States in requesting this Commission and the other state commissions for the same increases granted by the Interstate Commerce Commission contend that only by obtaining such increases can they receive the full measure of relief which the Interstate Commerce Commission found was necessary in order to maintain in full vigor an adequate transportation system. They have requested the state commissions to consider their petitions as revenue measures, as did the Interstate Commerce Commission, and have made no attempt to justify the lawfulness of individual rates. They have supplemented the showing before the Interstate Commerce Commission by evidence submitted in this proceeding which shows that the gravity of their plight is no less than that of rail carriers generally throughout the United States. The rate of return for the six Class I railroads³ serving California from 1929 to 1937 closely approximates the rate of return throughout the country, the average return for California carriers being 1.94%, and 2.11% for all carriers. Based upon 1936 revenues, expenses and taxes, the rate of return for the six California carriers varied from .08% to 3.87%, the average return being 2.32%. An exhibit was also introduced show-

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The Atchison, Topeka and Santa Fe Railway Company, Great Northern Railway, Northwestern Pacific Railroad Company, Southern Pacific Company, Union Pacific Railroad Company and The Western Pacific Railroad Company.

ing the results for the year 1936 reconstructed to reflect the latest costs and rate bases. So adjusted, two of the six carriers in 1936 would have experienced deficits, while the rate of return for the four remaining carriers varied from 0.66% to 2.98%, the average for the six carriers being 1.37%. According to the estimates for 1938, revenues will be approximately \$2,909,878 less than the 1936 revenues, while the operating expenses will be \$29,243,569 higher;⁴ taxes \$7,233,692 greater,⁵ creating a decrease of \$39,387,139 in net railway operating income. A witness for the short line railroads testified that the situation with respect to the short line railroads was probably more severe than with the Class I roads.

The coastwise water carriers, members of the Pacific Coastwise Conference, Truck Owners Association of California and some certificated carriers supported the application of the railroads, the latter two groups, however, requesting to have certain exceptions made thereto, particularly with respect to the rates considered and established by the Railroad Commission since the passage of, and pursuant to, the Highway Carriers' Act (Statutes 1935).

Generally speaking, the shippers who appeared at the hearings in this proceeding were sympathetic to the plight of the carriers and for the most part conceded that they are in need of additional revenue to properly maintain an essential transportation service.

However, specific protests were made (1) by the Canner's League of California against any increase on the movement of fruits and vegetables to the canneries and on the empty containers returning,

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Due to increased costs of fuel, material and wages.

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Social security and railroad retirement taxes.

(2) by the California Farm Bureau Federation against any increase on agricultural products, where such rates have recently been increased,⁶ (3) by the Holly Sugar Company and the Spreckels Sugar Company against any increase on sugar beets and limerock to the refineries, (4) by the Holly Sugar Company against any increase on sugar from Tracy and Alvarado to San Francisco Bay points, (5) by various milling interests against any increase on grain and grain products or, in the event increases are found justified, such increases not to exceed 5% be applied only to the so-called temporary rates now published by applicants to expire with May 31, 1938, and not to the permanent rates effective June 1, 1938,⁷ (6) by the California Redwood Association against any increase on logs; any increase in excess of 5% on box shooks, and to the immediate effective date of the proposed increase on lumber and related articles from points on the Northwestern Pacific Railroad north of Willits,⁸ (7) by the San Francisco Chamber of Commerce and various shippers⁹ against any further increases in the rates where such rates have been considered by this Commission in formal proceedings since the passage of the Highway Carriers' Act, (8) by some of the cement mills against an horizontal increase in rates which may disturb ex-

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Mr. J. J. Duvel, on behalf of the California Farm Bureau, also asked for a dismissal of the entire application on the grounds that applicants had failed to make a sufficient showing. As previously stated, the entire record before the Interstate Commerce Commission is before us in this proceeding, supplemented by additional evidence from applicants.

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The Globe Grain & Milling Company also opposed any increase on the ingredients used in manufacturing feeds.

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It is requested that the increased rates on lumber and related articles be deferred until thirty days after the existing embargo on shipments from and to points north of Willits on the Northwestern Pacific Railroad be lifted. Due to slides and washouts, this embargo has been in effect since January 31, 1938.

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Guggenlime & Company, Golden State Company, Wholesale Grocery Distributors and Loose-Wiles Biscuit Company.

isting differentials,¹⁰ (9) by the California Cattlemen and California Wool Growers Associations against any increase which may result in rates higher than the distance scale of mileage rates established by the Interstate Commerce Commission in Docket 17,000, (10) by the Dried Fruit Association, Rosenberg Bros., and Guggenbume & Company against any increases in excess of 5% on dried fruit, and (11) by Rosenberg Bros. against any increase in excess of 5% on apricot pits, almonds, walnuts and rice.

We have carefully weighed the evidence in support of the various protests made in this proceeding. With few exceptions, we cannot find where any undue or unreasonable burden will be placed on the California shippers. It should be emphasized that this is a co-operative proceeding under Section 13(3) of the Interstate Commerce Act and because of the acute financial distress of the carriers, we must treat this as a revenue proceeding, as did the Interstate Commerce Commission, necessary to preserve an adequate transportation system. We are not here called upon, nor could we on this record determine, the reasonableness of individual rates. In permitting applicants to apply the increases on intrastate traffic which were authorized by the Interstate Commerce Commission on interstate traffic, with certain exceptions hereinafter made, it should be distinctly understood that any shipper or group of shippers may properly challenge the reasonableness or lawfulness of any individual increases herein authorized. We shall expect the applicants, if any undue maladjustments are brought about by these increases, to cooperate with the shippers to bring about a prompt and equitable readjustment of the rates. If applicants and shippers are unable to reach a prompt solution of their problems, the Commission will take prompt action

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They suggest in lieu thereof a flat increase of 1 cent per 100 pounds.

in considering any complaints filed with it.

Based upon the record in this proceeding and taking judicial notice of our decisions and outstanding orders, we are of the opinion and so find that the increases authorized by the Interstate Commerce Commission in Ex Parte 123 should be authorized by this Commission with the following exceptions:

- (1) On forest products, as described in Item 580 of Pacific Freight Tariff Bureau Exception Sheet No. 1-P, C.R.C. No. 597 (L. F. Potter series), the maximum increase should be 5%;
- (2) Increases on rates authorized in the preceding paragraph from or to points north of Willits on the Northwestern Pacific Railroad should be authorized as effective thirty (30) days from the lifting of the embargo on such traffic;
- (3) On grain, grain products and animal or poultry feed listed in Items 100, 110 and 140, respectively, of Pacific Freight Tariff Bureau Tariff No. 240-B, C.R.C. No. 622 (L. F. Potter series), increases should not exceed 5% and should apply only on applicants' "temporary" rates (expiring with May 31, 1938); and
- (4) No increases should be permitted in rates established pursuant to the Commission's Decision 29267, as amended in Case 4079; Decision 29469, as amended in Case 4191; Decision 29313, as amended in Case 4107; Decision 28928, as amended in Case 4115; Decision 29480, as amended in Case 4145, Part "B"; Decision 30370, as amended in Case 4145, Parts "F" and "G", except rates prescribed from, to or between points situated north of Chico, Corning and Keddie; Decision 30746 in Case 4145, Part "K"; and Decision 30757 in Case 4293.

Applicants will be authorized to file and make effective upon one day's notice the increases herein authorized. It will be necessary that our order provide that all outstanding unexpired orders of the Commission, whether or not effective upon the date of this order, authorizing or prescribing rates and charges which have or have not been published at the date of this order, and all outstanding suspension orders, be modified to the extent necessary to permit the increases herein authorized to be applied to the rates and charges authorized or prescribed in or maintained or held by virtue of such outstanding orders. It will also be necessary to grant general relief from the provisions of Section 24(a) of the Public Utilities Act, and thus authorize departures incidental to the establishment of the increases herein authorized and to grant relief from the provisions of our Tariff Circular No. 2.

The carriers before accepting the benefits of this order, and before filing the rates authorized herein, will be required to agree that they will never urge before this Commission, in any reparation proceeding under Section 71 of the Public Utilities Act, or in any other proceeding, that the opinion and order herein has found that any individual rate authorized is reasonable.

O R D E R

Application having been made to the Railroad Commission for an order, as indicated in the foregoing opinion, public hearings having been held, the matter having been orally argued before the Commission en banc, and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED that the application subject to the modifications, exceptions and conditions indicated in the opinion which precedes this order and in the order herein, be and it is hereby granted.

IT IS HEREBY FURTHER ORDERED that the increased rates and charges herein authorized may be made effective on not less than one (1) day's notice to the Commission and the public.

IT IS HEREBY FURTHER ORDERED that applicants be and they are hereby authorized to depart from the provisions of Section 24(a) of the Public Utilities Act to the extent necessary to effect the increases herein authorized.

IT IS HEREBY FURTHER ORDERED that applicants be and they are hereby authorized to publish increased rates and charges in the form authorized by the Interstate Commerce Commission. To the extent departure from the terms and rules of Tariff Circular No. 2 of this Commission is required to accomplish such publication, authority for such departure be and it is hereby granted.

IT IS HEREBY FURTHER ORDERED that all outstanding unexpired orders of the Commission, whether or not effective upon the date of this order, authorizing or prescribing rates which have or have not been published at the date of this order, and all outstanding suspension orders be and they are hereby modified to the extent necessary to permit the increases herein authorized to be applied but that in all other respects said orders shall remain in full force and effect, unaffected by this order.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the express condition that no carrier to this proceeding will ever urge before this Commission, in any proceeding under Section 71 of the Public Utilities Act, or in any other proceeding, that the opinion or order herein constitutes a finding of fact of the reasonableness of any particular rate; and the filing of rates pursuant to the authority herein granted will be construed as consent by the respective carriers to this condition..

The authority herein granted is void unless the rates are published, filed and made effective not later than July 31, 1938.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 11th day of April, 1938.

Nathan Brown
Leon Whidell
James K. Brown
Ralph Whitfield
Wm L. Riley
Commissioners.