Decision No. 32427

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of maximum and minimum, or maximum or minimum rates, rules and regulations of all common carriers, as defined in the Public Utilities Act of the State of California, as amended, and all highway carriers, as defined in Statutes 1935, Chapter 223, as amended, for the transportation, for compensation or hire, of any and all agricultural products.	Case No. 4293
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 "G"
In the Matter of the Investigation and Establishment of rates, charges, classifications, rules, regulations, contracts, and practices or any thereof, of Common Carriers of livestock.	Case No. 4123
In the Matter of the Suspension by the Commission on its own motion of the cancellation of rates on feeder cattle from Kalina and Stronghold, California, to Montezuma, Willota, Woodland, Sacramento, Marysville, Chico and Oroville and return to Kalina and Stronghold.	Case No. 3962
In the Matter of the Investigation by the Commission on its own motion into the rates on feeder livestock between points in California.	Case No. 3941
In the Matter of the Application of the Atchison, Topeka & Santa Fe Railway, Los Angeles & Salt Lake Railroad Company, Northwestern Pacific Railroad Company, Pacific Electric Railway, San Diego & Arizona Eastern Railway Company, Southern Pacific Company (Pacific Lines), and the Western Pacific Railroad Company for an increase in rates on carload shipments of livestock.	Application No. 19636

WAKEFIELD, Commissioner:

Additional Appearance

William H. Murphey, for Cantlay and Tanzola Co.

FIRST SUPPLEMENTAL OPINION

The order in Decision No. 31924, as amended, in these proceedings, established minimum rates for the transportation of livestock throughout California by highway common, radial highway common and highway contract carriers, and prescribed maximum rates for like transportation by common carriers by railroad. Thereafter, petitions seeking modification of the order were filed. Evidence relative to these petitions was received at public hearings held in San Francisco and the matters were submitted on briefs.

Joint Line Arbitrary on Sunset Railway Company

Decision No. 31924, supra, provides that for a joint line rail haul involving certain specified carriers there will be added to the prescribed maximum rail rates a 6½ cents per 100 pounds arbitrary. Among the specified carriers is the Sunset Railway Company. Several shippers and shippers' organizations urged that no arbitrary be authorized in connection with shipments involving that carrier.[1] The witness for these petitioners pointed out that the Sunset Railway Company is owned jointly by the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company, and that these companies alternate in its management and control. He referred to various decisions of this Commission and the Interstate Commerce Commission

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1 Petitioners were California Cattlemen's Association, California Wool Growers' Association, J. B. Boswell Company, Producers Cotton Oil Company, California Cotton Oil Corporation and Fred Gill and Sons.

assertedly holding that rail lines under the same ownership, management or control should be considered as the same agencies of transportation for rate making purposes.[2] He stated, further, that many of the present intrastate joint livestock rates maintained by the Sunset Railway Company in connection with the Southern Pacific Company and The Santa Fe Railway, and all interstate rates published by those lines pursuant to I.C.C. Docket 17000, Part 9, "Livestock Rates in Western District," 176 I.C.C. 1, are on a single line basis with no arbitrary added for joint hauls.

A witness for the Southern Pacific Company introduced an exhibit showing the net railway operating income for the Sunset Railway Company for the years 1934 to 1938, and for the first six months of the year 1939. This exhibit indicated that substantial operating deficits were sustained by this company during those periods and the witness contended that, therefore, the Sunset Railway requires the additional revenues which the joint line arbitrary would provide.

Subsidiaries of the Southern Pacific Company, such as the Holton Inter-Urban Railway, Visalia Electric Railroad Co. and Northwestern Pacific Railroad Company were excluded from the application of the arbitrary. In view of this fact, and of the further facts that the Sunset Railway Company is wholly owned and controlled by two Class I railroads and that no arbitrary is applicable in connection with interstate transportation over the Sunset Railway Company, it is recommended that the modification proposed be adopted.

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2 Russ Market Company v. Northwestern Pacific Railroad Company, 171 I.C.C. 117; Western Pacific Railroad Company v. Northwestern Pacific Railroad Company, 191 I.C.C. 127; Jahn and Bressi Construction Company v. Holton Inter-Urban Railway, 38 C.R.C. 54.

Subsequent Haul Rule for Rail Shipments of Feeder Livestock

The maximum rail rates prescribed for the transportation of feeder livestock were restricted to apply only when a rail carrier receives a subsequent haul within a period of one year. The petitioners previously mentioned objected also to this restriction. It was testified in their behalf that feeder livestock is ordinarily sold at a price which takes into consideration the cost of transportation to the feeding point; that it is not usually known at the time the inbound shipment is made whether the outbound movement will be by rail or by truck; and that, consequently, the subsequent haul rule would make it impossible to compute transportation charges accurately in advance of shipment. It was asserted, moreover, that feeder livestock which has moved inbound by rail is often allowed to graze over wide areas so that it is seldom convenient to reship from the same rail point.[3] Other objections to the rule were said to be that it would result in confusion in computing charges in instances where changes in ownership take place at the feeding point; that shippers do not maintain records to show whether or not livestock has received previous rail transportation; and that shippers would be deprived temporarily of the use of money held by the railroads subject to refund only upon proof of the outbound shipments having been made. A differential in rates between fat and feeder livestock was claimed to be justified without regard to whether or not a subsequent rail haul was made, by reason of the assertedly lower value and lighter weight of feeder livestock and the less expedited service required in its transportation. It was pointed out, in addition,

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[3] The witnesses assumed that under the ordered basis, reshipment from the same rail point is required. The only requirement in the order, however, is that a reshipment by rail be made.

that the subsequent haul rule does not apply in connection with interstate transportation and that in Matador Land & Cattle Co. v. A.T. & S.F. Ry., 231 I.C.C. 566, the Interstate Commerce Commission had declined to permit such a rule to be established. Petitioners' witnesses conceded on cross-examination that it is often difficult if not impossible to distinguish between fat and feeder animals, the designation given being dependent largely upon market prices and conditions.[4]

The rail lines advocated the retention of the subsequent haul rule.[5] Their witness asserted that there is little, if any, difference in the type of rail service afforded feeder and fat livestock. He argued, moreover, that the conclusions of the Interstate Commerce Commission in the Matador case, supra, are not binding on this Commission, and pointed out that conditions attending intrastate transportation of livestock, particularly with regard to the intensity of truck competition and the mode of reshipping from feeding points, are different from those attending interstate transportation. He

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A cattleman extensively engaged in the raising of livestock testified as follows: (R.T. page 421)

"Q. So that a steer that somebody might call a feeder somebody else might call fat, that is, ready for sale, is that it? A. Yes, sir, depending on who the killer is and the class of trade that he has to supply.
Q. Is that true generally throughout the State of California in the livestock industry? A. We never knew from a packer whether our steers are fat or not and there was no proof we could make, never made, by court action, even, made stick, whether our steers were fat or not. Got so bad and so serious if we were selling on a contract basis we provided for a board of arbitration whose decision would be final and decide whether they would be fat or feeder."

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The rail lines also filed a petition proposing that in lieu of the subsequent haul rule, a single line scale of rates be provided for both fat and feeder livestock. This petition was not received in time to notify interested parties in advance of the hearing, and hence no evidence was received in connection therewith, in the instant hearing.

also pointed out that, in any event, interstate rules preclude entirely the application of feeder rates to feeding lots adjacent to public livestock markets.

In the Matador case, supra, the Interstate Commerce Commission did not pass upon the reasonableness of the subsequent haul rule for interstate traffic generally, but merely held that its application to the particular shipments in that proceeding was unreasonable. The Commission's opinion concluded with a statement that its decision in the Matador case was without prejudice to any different conclusion respecting the rule for the future, which might be reached in the reopened "Livestock - Western District Rates," (I.C.C. 17000, Part 9).[6]

The subsequent haul rule does not differ substantially in principle from feeding-in-transit rules long maintained by the rail lines and with which shippers are generally familiar, and it presents no more burdensome requirements from the standpoint of record keeping or tariff complexity. If the rule were discarded a compensating increase in the rate level would manifestly become necessary and, possibly, restrictions against the application of feeder rates to points adjacent to livestock markets would have to be added. Petitioners object to either of these courses being followed.

As pointed out in the original decision in these proceedings, the principal reason for the maintenance of rail rates for

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On June 13, 1938, the Interstate Commerce Commission reopened I.C.C. Docket No. 17000, Part 9, for further hearing with respect to the application of the feeder rates on edible livestock. The order reopening the proceeding was entered in response to the petitions filed by the rail lines and asserted that abuses had grown up under the interstate rates on feeder livestock, and authority was sought to establish certain rules and regulations to govern the application of feeder rates on interstate shipments. Several proposals offered at the hearings in the interstate proceeding are similar to the rule prescribed by Decision No. 31924, herein.

feeder livestock differentially lower than those for fat livestock has been the expectation that the rails would receive a subsequent haul of the livestock. Petitioners' own witnesses conceded that there are no definitely distinguishable characteristics between fat and feeder livestock from the standpoint of either weight or value, and the record is not convincing that rail transportation of feeder livestock is less expensive to perform than is transportation of fat livestock. Under these circumstances, a differential for reasons other than the occurrence of a second movement by rail does not appear warranted. The subsequent haul rule should be retained.

Equalization of Rates for Sheep and Hogs

Rates prescribed for the transportation of sheep were made subject to minimum weights of 12,000 pounds and 20,000 pounds; those for fat hogs to minimum weights of 16,500 pounds and 24,000 pounds. Cudahy Packing Company and Swift & Company sought the establishment of an additional scale of rates for the transportation of sheep in minimum quantities of 24,000 pounds, equivalent to the rates prescribed for the transportation of hogs in like quantities. Their witnesses asserted that the rates established by the Commission for sheep in minimum quantities of 20,000 pounds were predicated on the assumption that the average loading weights of sheep approximated that amount, whereas actual average loading weights of shipments of sheep received at their plants in Los Angeles, San Diego and South San Francisco were considerably in excess of 20,000 pounds.[7] They

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[7] Exhibits introduced on behalf of petitioners show that the average weight of sheep received at the Los Angeles plant of Cudahy Company was 25,331 pounds; at the Los Angeles plant of Swift & Company was 24,616 pounds; and at the San Diego plant of Cudahy Company was 24,206 pounds. Corresponding figures for Swift & Company's plant at South San Francisco were not shown but it was stated that sheep received at that plant will average somewhere between 20,000 pounds and 24,000 pounds per load.

contended, further, that the transportation characteristics of sheep are the same as of hogs and that similar minimum weights as well as rates should apply. On the other hand, the witnesses uniformly stated that there was need for a retention of the present 20,000-pound weight bracket in connection with sheep rates.

The original record in these proceedings indicates that although the cost per truck unit of transporting sheep may not differ substantially from that of transporting hogs, the average loading weights of the two types of livestock vary widely.[8] The established minimum rates were predicated upon such average loading weights rather than upon the prescribed minimum weights and it is evident that any adjustment which would affect the average loading weights of shipments moving under any individual rate scale would require a readjustment of that scale itself. If, for example, all shipments of sheep weighing in excess of 24,000 pounds were rated under the hog scale, the average weight of the shipments remaining for movement under the 20,000-pound sheep scale would be substantially reduced. This reduction in loading weights would necessitate a corresponding increase in the rate level. Petitioners' showing was confined to shipments made or received by their own companies and did not attempt to portray transportation conditions throughout the state, to which the established basis is to apply. It is recommended that the proposal be denied. The following form of order is recommended.

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8 The average loading weights ascertained by the various witnesses to be typical were as follows:

Kind of Stock	Witness Jacobsen Pounds	Witness Landmark Pounds	Witness Anthony Pounds	Witness Walk Pounds
Sheep, D.D.	26,400	25,000	26,000	20,920
Hogs, D.D.	35,700	34,000	36,000	31,140

ORDER

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

IT IS HEREBY ORDERED that Appendix "D" of Decision No. 31924, dated April 11, 1939, as amended in the above entitled proceedings, be and it is hereby further amended by eliminating from Item No. 20, Note 1, of said appendix, the designation "Sunset Railway Company."

IT IS HEREBY FURTHER ORDERED that in all other respects said Decision No. 31924, as amended, shall remain in full force and effect.

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

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 10th day of October, 1939.

Commissioners.