

Decision No. 23349.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of The Atchison, Topeka & Santa)
Fe Railway Company, Santa Fe)
Transportation Company, Union)
Pacific Railroad Company, The)
Western Pacific Railroad Com-)
pany, Sacramento Northern Rail-)
way, Tidewater Southern Railway)
Company, Holton Inter-Urban)
Railway Company, Northwestern)
Pacific Railroad Company, Pac-)
ific Electric Railway Company,)
Pacific Motor Trucking Company,)
Petaluma & Santa Rosa Railroad)
Company, San Diego & Arizona)
Eastern Railway Company, Visalia)
Electric Railway Company, Sunset)
Railway Company and Southern Pac-)
ific Company for a finding by the)
Commission that the lawful charges)
were collected on specified ship-)
ments or that, in the event it be)
found that undercharges exist on)
such shipments, for authority to)
waive collection of such under-)
charges.)

Application No. 23349

ORIGINAL

BY THE COMMISSION:

OPINION AND ORDER

By this application various common carriers by railroad and subsidiary highway carriers seek a finding by the Commission that charges were lawfully assessed on certain shipments of property transported by them during the period September 26 to December 26, 1938, inclusive. In the event it be found that charges were not lawfully assessed on said shipments and that undercharges exist, applicants request authority to waive collection of the undercharges.

The facts and circumstances upon which the application is

based are as follows:

In Decision No. 31309 of September 26, 1938, in Cases Nos. 4088 and 4145, the Commission, among other things, expressed its interpretation of rules contained in various outstanding minimum rate orders, (sometimes referred to as the "liberalized packing rules"), specifying the manner in which charges were to be computed where two or more ratings, subject to different packing requirements were provided for the same commodity in the Western Classification or the Pacific Freight Tariff Bureau Exception Sheet. To the extent the decision related to this matter, its effective date was stayed, however, by the filing of a petition for rehearing more than ten days prior thereto, (Section 66 of the Public Utilities Act). Thereafter, a rehearing and oral argument before the Commission en banc were had, following which Decision No. 31607 of December 27, 1938, was issued. The latter decision set aside Decision No. 31309 in so far as it involved the interpretation of the liberalized packing rules, and expressed an interpretation different from that originally given. The interpretation in this decision resulted in higher charges, in some instances, than the charges accruing under the interpretation originally given.

The application does not show upon what basis charges were assessed by applicants prior to September 26, 1938. On or about that time, however, applicants commenced rating shipments in accordance with the interpretation set forth in Decision No. 31309. They continued to rate shipments in this manner until December 27, 1938, the date of issuance of Decision No. 31607. After that date they abided by the interpretation contained in the latter decision.

Applicants contend that since, during the period between September 26, 1938, and December 27, 1938, they followed a formal

interpretation of the Commission in rating shipments, charges were lawfully assessed despite the fact that the decision in which the formal interpretation was expressed was subsequently set aside and superseded by a changed interpretation. Applicants ask, however, that a formal finding to this effect be made in order to eliminate possible controversy in the future.

In support of their request for authority to waive undercharges in the event the Commission should determine that undercharges are due, applicants allege that the cost of checking, billing and collecting such undercharges would be greater than the total amount of the additional charges involved. This allegation is supported by detailed figures showing the results of checks made by the principal rail carrier applicants of representative numbers of freight bills.¹ It appears that this is a matter in which a public hearing is not necessary. Decision No. 31309 first interpreting the packing rule was stayed by a petition for rehearing. It was subsequently set aside by Decision No. 31607 insofar as it involved the packing rule. Decision No. 31309, therefore, has had no formal effect. In any event both of these decisions were merely interpretative and did not operate to change the rule as originally pre-

¹ The Atchison, Topeka & Santa Fe estimated that the cost of reviewing all waybills for the period involved and issuing corrections would amount to \$400 and that there were approximately 2,000 shipments upon which charges would have to be increased. A check of 500 waybills disclosed 25 shipments subject to correction, the average increase in charges being 11 cents. Southern Pacific Company estimated that it would be necessary to review 1,500,000 waybills at a total cost of more than \$2,000; that increases would be required on approximately 13,320 shipments; and that the increases would average about 20½ cents per shipment. Checks made by the Union Pacific and Western Pacific railroads produced substantially the same results as those of The Atchison, Topeka & Santa Fe and Southern Pacific Company.

scribed.² Under these circumstances it must be held that charges lower than those established by the original decisions as finally construed by Decision No. 31609 are in violation of the Commission's orders.

The record is clear, however, that in the assessing of such lower charges, applicants acted in good faith, and the history of this matter shows unquestionably that the rule was extremely controversial. The uncertainty was augmented by the Commission's Decision No. 31309. Under these circumstances and in view of the fact that the outstanding amounts are extremely small and that the expense of reviewing the records and attempting to collect these amounts would be considerable, we are of the opinion that to require such collections would be unreasonable. Applicants will be authorized to waive such collections. Therefore, good cause appearing,

IT IS HEREBY ORDERED that applicants The Atchison , Topeka and Santa Fe Railway Company, the Western Pacific Railroad Company, Sacramento Northern Railway, Tidewater Southern Railway Company, Holton Inter-Urban Railway Company, Northwestern Pacific Railroad Company, Pacific Electric Railway Company, Pacific Motor Trucking Company, Petaluma & Santa Rosa Railroad Company, San Diego & Arizona Eastern Railway Company, Visalia Electric Railway Company, Sunset Railway Company and Southern Pacific Company be and they are hereby authorized to waive collection of undercharges accruing on

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Decision No. 31309 did purport to make a slight revision "in the hope of eliminating all controversy in this regard in the future." This revision is not here important, particularly since the decision never became effective.

shipments moved during the period September 26, to December 26, 1938, inclusive, resulting from the application by applicants of charges on such shipments on the basis of the interpretation of the packing rule of the Commission's minimum rate orders, in Decision No. 31309 of September 26, 1938, instead of the interpretation of said rule contained in Decision No. 31607 of December 27, 1938.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 11th
day of June, 1940.

W. L. Riley
Frank A. Weber
Ralph A. Baker
H. H. Miller
Justus F. Cramer
Commissioners.