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Decision No. 25628

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of H. C. Cantelow, Agent, under Powers of Attorney on file with the Railroad Commission, for the following marine terminal operators, to-wit: Encinal Terminals, Howard Terminal, Parr-Richmond Terminal Corporation, Golden Gate Terminals, State Terminal Company, Ltd., for an Order authorizing increases in certain Rates and Charges.	)	Application No. 24999

SACHSE, COMMISSIONER:

Appearances

Joseph J. Geary and Ira Lillick, for the applicant.
W. Reginald Jones, for the Board of Port Commissioners of Oakland.
Eugene A. Reed, for the Oakland Chamber of Commerce.
Walter A. Rohde, for the San Francisco Chamber of Commerce.
Henry Ohm and J. C. Somers, for the Port of Stockton.
Arthur Eldridge, for the Los Angeles Harbor Commission.
Earl Warren, Attorney General, by Lucas E. Kilkenny and Robert K. Hunter, for the Board of State Harbor Commissioners.
James A. Keller, for the Pacific Coast Cement Institute.
C. A. Hodgman, for the Harbor Administration of San Diego.
D. S. Kilgour, for the California Oil & Gas Association.
P. L. Hollingsworth, for the American Potash & Chemical Corporation.
Robert Hutcherson, for the Tide Water Associated Oil Company.
Vincent L. Smith, for the Aircraft Traffic Association.
Chas. A. Bland and John L. Kelly, for the Harbor Commissioners of the City of Long Beach.
C. E. Donaldson, for the Shell Oil Company, Inc.
J. D. Reardon, for the Union Oil Company of California.
W. I. Narry, for the Richfield Oil Corporation.
H. R. Brashear, for the Los Angeles Chamber of Commerce.

O P I N I O N

Encinal Terminals, Howard Terminal and Parr-Richmond Terminal Corporation are engaged in the operation, as public utilities, of marine terminals at Alameda, Oakland and Richmond, respectively, all on the eastern shore of San Francisco Bay. Golden Gate

Terminals and State Terminal Company, Ltd., operate in San Francisco. Among the services they perform are dockage, wharfage, wharf demurrage, car and truck loading and unloading and miscellaneous service to vessels.

They seek authority through their agent to increase certain of their rates and charges, to make changes in designated rules and regulations which result in increases, and to make the changes effective on one day's notice. Among other things they propose that car and truck loading and unloading rates be increased 10 per cent on cargo handled directly to or from vessels and 11 per cent when the cargo movement is from or to the terminal property; that the present 10-day free time period allowed for assembling outbound cargo and removing inbound cargo be reduced; that wharfage rates on all traffic other than between points on San Francisco Bay and inland waters tributary thereto be increased 60 per cent; and that wharf demurrage rates be increased by varying amounts ranging as high as 100 per cent.[1] In addition to per-diem wharf demurrage rates presently applicable on cargo which remains on the terminals after expiration of the free-time period a new basis of monthly storage rates is proposed. This new basis provides lower charges than the proposed per-diem wharf demurrage rates in instances where the merchandise remains on the terminals more than two months.

This matter was heard at San Francisco on June 11, 12 and 15, 1942, and submitted following oral argument on June 17, 1942. The Commission allowed petitions for leave to intervene on behalf of

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[1] The participation of Golden Gate Terminals and State Terminal Company, Ltd. in this rate increase proposal is limited to the truck loading and unloading and cargo handling rates. Their operations are conducted on property of the State of California and revenues for other services performed by them accrue to the Board of State Harbor Commissioners of the Port of San Francisco.

applicants filed by the Board of Harbor Commissioners of the City of Los Angeles, the Board of Harbor Commissioners of the City of Long Beach, the Harbor Commission of the City of San Diego and the Board of Port Commissioners of the City of Oakland.[2] Petitions for leave to intervene in opposition to the granting of the application filed by Monolith Portland Cement Company and Pacific Coast Cement Institute were also allowed. Thereafter and before taking any evidence all parties were advised that the General Maximum Price Regulation issued by Price Administrator Leon Henderson on April 28, 1942, which provides in general and among other things that the maximum price for any commodity or service shall be the highest obtaining during March, 1942, is construed by the Office of Price Administration as applying to the charges for the services performed by applicants and to similar services performed by public port bodies; that the Commission was prepared to take the evidence of the interested parties for the purpose of determining the facts and subsequently issuing its decision; that if, however, charges in excess of those obtaining during March, 1942, may not be maintained without the express authority of the Office of Price Administration any order which this Commission may issue authorizing an increase in charges must be conditioned upon the securing of proper authority from the Office of Price Administration; that it is the Commission's intention, upon request, to furnish a summary of the evidence and of its findings to the Office of Price Administration; and that in view of the asserted authority of that office over public and private terminal operators and because the services performed by the applicants in this proceeding constitute but a small percentage of the total services

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[2] The Board of State Harbor Commissioners and the Port of Stockton also appeared in support of the application.

performed by public and private operators in this area, testimony covering all such operators could appropriately be taken should the parties so desire.[3] The parties were further informed that should they prefer to refer the matter to the Office of Price Administration direct or follow some other course, they were, of course, at liberty to do so.

Applicants took the position that the Office of Price Administration was without jurisdiction and declared their readiness to proceed before this Commission. The public port bodies who are outside this Commission's jurisdiction, likewise disclaimed jurisdiction of the Office of Price Administration.

It is the contention of both the public port bodies and the public utility wharfingers here involved that competition between them requires that their rates be uniform. Applicants' tariff agent declared that this was realized by the Commission in its Decision No. 29171 of October 13, 1936, in Case No. 4090, In re Commission's Investigation Into Rates, etc. of Encinal Terminals, et al., 40 C.R.C. 107, when it provides that the prescribed rates should not be established until the publicly owned terminals adopted them.[4] Moreover, he said that the United States Maritime Commission in its decision in Docket No. 555, In re Practices, Etc. of San Francisco Bay Area Terminals, 2 U.S.M.C. 588, suggested that both the public and private terminals endeavor to reach an agreement regarding the establishment of rates through the medium of the associations which they had formed pursuant to Section 15 of the Shipping Act, 1916, for

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[3] The record shows that in 1939 applicants handled approximately 3-1/3 per cent of the total tonnage handled by both the applicants and the public port operators who endorse this application.

[4] Decision No. 29171, supra, among other things, established just, reasonable and nondiscriminatory rates to be observed by certain respondents, including applicants, for dockage, wharfage, service charges and wharf demurrage subject to the provision that the rates would apply only at such times and to such degree as they are adopted, charged and collected by the Port of Oakland, Port of Stockton and/or the Board of State Harbor Commissioners.

that purpose.[5] In this respect, the witness explained that pursuant to Section 15 of that Act, the five wharfinger applicants herein formed the Marine Terminal Association of Central California of which he is manager and that the publicly owned port bodies in central and southern California together with three of the applicants in this proceeding likewise formed an organization called the California Association of Port Authorities.[6] Following the suggestion of the United States Maritime Commission in Docket No. 555, the witness stated the California Association of Port Authorities, after detailed study, adopted the rate proposal here involved as the basis to be established by both its publicly and privately owned members.

It appears, therefore, that if increased rates and charges are authorized by us for the five applicants represented in this proceeding who handle approximately 3-1/3 per cent of the total tonnage handled by applicants and the publicly owned and operated terminals supporting this application, the balance of over 96 per cent of the tonnage, which is handled by these public terminals not under this Commission's jurisdiction, will be equally affected and will also pay the increased rates and charges. In terms of gross revenue this relationship is as follows: If 3-1/3 per cent of the total operations is assumed to represent $1,000,000 gross revenue then upwards of 96 per cent will represent $30,000,000 gross revenue.

It is applicants' contention that they are unable to continue the performance of their terminal operations with adequacy

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5 The Maritime Commission's decision in Docket No. 555 is before the United States District Court on an injunction proceeding. In this proceeding the public port bodies are questioning the jurisdiction of the Maritime Commission over their operations.

6 Section 15 of the Shipping Act, 1916, specifically permits formation of associations to meet, discuss, fix and determine rates, rules and practices to be observed in their operations and provides that rates fixed and determined in that manner are exempt from the provisions of the Sherman Anti-Trust Act.

and efficiency under existing rates and regulations and that in 1942, under such rates, they will operate at a loss. It is alleged in the application that applicants' existing revenue deficiencies are due in part to the drastic changes which their terminal operations have undergone by reason of war activities and to substantial increases in their operating costs as a result of precautionary measures required to be taken because of the existing war conditions. While the allegations contained in the application were not amended, counsel for applicants stated at the opening of the proceeding that the matter should not be considered "in any sense of the word as a proposed increase which has resulted from recent conditions, but is a situation which has been in need of correction literally for years." However, from the nature of the testimony given and the oral argument made on applicants' behalf, it appears that applicants again changed their position to that expressed in the application.

Applicants' tariff agent testified that the alleged increase in applicants' cost of operations was attributed to increases in wages paid labor and in practically all other items of expense which are incurred in their wharfinger operations; also that the commodities normally handled have been largely replaced by government cargo. Thus, the record shows that where in the past 65 or 70 per cent of Encinal Terminals' outbound tonnage consisted of canned goods and dried fruit, practically all of the tonnage it handles today is for the Navy. About 70 per cent of the cargo presently handled by Howard Terminal is Army cargo. This government cargo was said to consist of a variety of articles ranging from airplanes and ambulances to torpedoes and to include many articles never before seen on the terminals except in very limited quantities. Unlike the cargo which the terminals heretofore handled, this cargo was

represented as often being very difficult and dangerous to handle.[7] In the past most of the cargo was transported to the terminals by truck and was not unloaded by the terminal operators, whereas today the greater part of it arrives in rail cars and is unloaded by them. The cost of unloading this cargo was said to be much greater than the cost of unloading the commodities which previously moved over their facilities because of its difficult handling characteristics.[8] The witness for Encinal Terminals testified that much of the cargo presently handled moves under government bills of lading; that individual packages must be checked by number; and that this has resulted in increased clerical and supervision costs. This witness also testified that prior to the war it was known when vessels would call to load or discharge cargo and what terminal space they required. This knowledge, he said, permitted utilization of space in the most economical manner. Today the vessels are said to work on a "catch-as-catch-can" schedule and in secrecy with the result that no knowledge of the type of cargo to be discharged is available beforehand.[9]

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7 The witness for Encinal Terminals testified that due to the increase in accidents caused in handling this changed cargo the amount paid in compensation benefits increased from $37.50 for the period from January to May, 1941, to $1,825 for a like period in 1942.

8 He stated that recently a gang of 6 men required a full day to unload a single car of steel sheets. The cost of unloading 5 such cars amounted to $250 while the revenue derived therefrom was only $50. It was not disclosed whether this was an isolated instance or a common occurrence.

9 To show the effect this condition has on terminal operations the witness referred to a recent instance where 4,000 tons of general cargo had been assembled on one of the dock facilities for shipment on a specified date. He said the vessel loaded only 400 tons with the result that the operating schedule was entirely disrupted. He stated further that there have been instances where Encinal Terminals was advised that it would receive 4,000 or 5,000 tons of cargo from an inbound vessel and after moving cargo already on the dock to make space available only 10 per cent of the expected cargo arrived.

He said that under present day conditions they are sometimes required to work on a 24-hour basis in loading and discharging vessels with the result that a great deal of overtime must be paid. Other costs to Encinal Terminals were said to have resulted from its operations under war conditions. Thus, this wharfinger was said to have been required to increase greatly the number of watchmen employed; to purchase cargo handling equipment which was heretofore not needed; to inaugurate an identification system; to install a large parking area and night lighting equipment; to employ an additional telephone operator at an added yearly expense of about $1560; and to hire an additional billing clerk due to the added time consumed in complying with government billing requirements.

In addition to the substantial increases in operating costs referred to, applicants' tariff agent attributed their unsatisfactory financial condition to the delay and in some instances inability to bring all of their rates to the level prescribed by Decision No. 29171, supra. He pointed out that although Decision No. 29171, supra, found the revenues of the terminal operators here involved to be inadequate and established rates for all their services which would permit their earning an adequate return on investment, it was not until March 15, 1940, that the recommended basis of wharfage rates was established.[10] He also pointed out that the wharf demurrage rates and free-time period which applicants were authorized to cancel and supersede by the rates and free-time periods set forth in Decision No. 29171, supra, are with minor changes in effect today. The existing

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[10] According to applicants' tariffs, the increased wharfage rates became effective December 1, 1939. The delay in establishing the recommended wharfage rates was attributed to the refusal of the Board of State Harbor Commissioners to establish them sooner. The record indicates that had these increased rates been made effective immediately, Encinal Terminals would have earned additional wharfage revenues amounting to $240,000.

wharf demurrage rates were said to be 33 per cent lower than those prescribed in the decision referred to.[11] The wharf demurrage rates and free-time periods recommended in Decision No. 29171, supra, were not accepted, the witness testified, because of the difference of opinion which existed among the publicly and privately owned terminals with respect to the advisability of making them effective.

In support of the proposal to increase applicants' car and truck loading and unloading rates by 10 and 11 per cent, the witness submitted Exhibit No. 1 designed to demonstrate the reasonableness of the proposed rates. To do this the per-ton weighted average labor cost, based on the actual payrolls of the applicants for handling specified commodities aggregating almost 80 per cent of the total cargo handled during August, September and October, 1941, was first determined.[12] This cost was thereafter increased by 13.9 per cent to reflect wage increases paid by the East Bay terminals which were granted after October, 1941.[13] The resulting basic labor cost was then increased by 30 per cent to cover the overhead expense because it was found in the Final Report[14] in Case No. 4090 that this

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11 He stated that the Maritime Commission in Docket No. 555 found that for the fiscal year ending October 31, 1939, Howard Terminal and Encinal Terminals' revenue deficiency on canned goods from wharf demurrage was 88 per cent and that canned goods comprised their heaviest moving and most competitive outbound commodity.

12 The witness explained that he used the months of August, September and October, 1941, on which to compute the basic costs because at that time he had happened to make a study, covering this period, for the benefit of the applicants and himself.

13 In San Francisco the wage increase was 11 per cent.

14 The Final Report consists of studies and recommendations made by Dr. Ford K. Edwards, Transportation Economist, and T. G. Differding, Assistant Engineer of the Commission's staff, in the matter of the marine terminal problem obtaining in the San Francisco Bay area. This report, which is Exhibit No. 14 in Case No. 4090, and Decision No. 29171, supra, in that proceeding, were made a part of this record by reference.

percentage represents the minimum to be allocated for the elements entering into a rate other than the out-of-pocket labor cost. These other elements were said to include such items as cost of equipment, salaries, and general and miscellaneous expenses. The witness stated the resulting rates could not be considered as fully compensatory because the Final Report concluded that the average amount to be assigned to a rate to cover other than the out-of-pocket labor costs was 38 per cent and that on certain commodities it ran as high as 50 per cent.

There are set forth below basic costs incurred in handling a few of the commodities covered by the exhibit, the basic costs expanded 13.9 per cent to reflect wage increases and thereafter 30 per cent to cover other than direct labor costs, the present rates and the proposed rates.

Costs and rates are shown in cents per 2,000 pounds

Commodity	Basic Cost	Basic Cost Expanded 13.9% then 30%	Proposed Rate	Present Rate
		CARLOADING		
Canned Goods	47.2	70	62	56
Copra	82.7	122	59	53
Dessert Preparations	93.7	139	89	80
Hemp	80.6	119	94	85
Fish Meal	56.3	83	74	67
Crude Rubber	53.7	80	71	64
Tea	149.8	222	135	122
		CAR UNLOADING		
Bottles	110.0	163	77	69
Canned Goods	42.8	64	59	53
Furniture	114.0	168	89	80
Merchandise, N.O.S.	80.3	119	89	80
Dried Fruit	46.8	70	59	53
Sugar	38.1	56	48	43
Sheet Steel	80.1	119	53	48

The witness also compared the present and proposed carloading and car unloading rates on 25 commodities, which in volume handled were said to approximate 80 per cent of applicants' business

during the months of August, September and October, 1941, with rates published by public utility carloaders at Los Angeles and Seattle. In twelve instances the Los Angeles rates were lower than those proposed by applicants. However, in only two instances was the difference more than 2 cents.[15] The rates at Seattle were, generally speaking, higher than those charged at Los Angeles. He said that while it was not intended to leave the impression that labor costs, volume of traffic and the like either were or were not comparable at these ports, the basic wages paid dock labor are the same.

The witness stated that the applicants are in competition with the Port of Oakland and a large group of carloaders who are members of the San Francisco Bay Carloading Conference; that it was his understanding that the San Francisco Bay Carloading Conference proposed to seek increases in their carloading and unloading rates to the volume here proposed; and that should their request for such increased rates be denied the applicants herein for competitive reasons would probably not publish the proposed increased rates should they be granted.

To substantiate the contention that the revenues from applicants' wharfinger operations are insufficient, applicants' tariff agent submitted a statement showing (1) the combined operating results of Encinal Terminals and Howard Terminal for the 1941 calendar year and for the first three months in 1942; (2) the operating and expense figures adjusted to show what would have resulted had the rates here sought and the labor costs which obtained prior to the granting of a wage increase of 7.89 per cent on June 1, 1942, been in effect throughout the two periods considered; and (3) the

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[15] With reference to these instances the rates on fish meal and on compressed cotton are 5 and 19 cents, respectively, lower at Los Angeles than the proposed rates. The witness stated that on compressed cotton there has always been a very low rate because of the cotton compress located at San Pedro and the volume of cotton moving through that port.

extent by which their actual operations and operations under the increased rates fall short of earning a return of 7 per cent upon their fixed capital investment.[16] The witness explained that the statement is intended to deal only with the emergency over-all revenue problem and in this respect concerns primarily the terminals whose operating experiences are considered therein and Parr-Richmond Terminal Corporation.[17] Encinal Terminals and Howard Terminal were chosen because they were considered by the witness to be the representative general cargo terminals. He said that of the three East Bay terminals, Encinal Terminals and Howard Terminal handle over two-thirds of the total general cargo tonnage. In addition, they assertedly are the lowest cost general cargo terminals, space considered; have the highest volume of tonnage, capacity considered; and have the lowest square foot valuation.[18] According to the exhibit the combined rate of return earned by Encinal Terminals and Howard Terminal during 1941 was 0.76 per cent on their fixed capital investment. Had the increased rates been in effect a return of 5.2 per cent would have been realized. The essential parts of the exhibit are set forth below:

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16 The witness explained that a 7 per cent rate of return was used because a similar return was taken in the Final Report in Case No. 4090 as a reasonable return on investment.

17 As heretofore explained the interest of Golden Gate Terminals and State Terminal Company, Ltd. in this application is in the car and truck loading and unloading and cargo handling rates.

18 Parr-Richmond Terminal Corporation was not considered to be a representative general cargo terminal because a large part of its business was said to consist of the handling of a limited number of bulk liquid commodities through pipe line, rates for which it was said are not involved in this proceeding, rather than of general commodities.

	CALENDAR YEAR 1941		FIRST THREE MONTHS 1942	
	Actual	Adjusted	Actual	Adjusted
Gross Revenues	$1,094,155.56	$1,279,387.76	$314,030.23	$355,887.39
Gross Expenses	1,075,394.67	1,150,642.70	331,970.38	336,423.26
Net Operating Revenues	18,760.89	128,745.06		19,464.13
Net Operating Loss			17,940.15	
Fixed Capital --	2,473,945.16			
Rate of Return	0.76%	5.2%		3.16%
Amount necessary to return 7% on Fixed Capital	173,176.16		43,294.03	
Revenue Deficiency	154,415.27	44,431.10	61,234.18	23,829.90
Deficiency per ton in cents	15.54*	4.47*	31.8**	12.4**

* Based on 993,952 tons handled.
** Based on 192,435 tons handled.

The witness explained that the operating revenue, expense, fixed capital and tonnage figures for the separate operations were supplied by the individual terminals pursuant to his request for "lump sum" figures covering these items. The revenue and expense figures were said to include the wharfinger business of Howard Terminal and the wharfinger and warehouse business of Encinal Terminals.[19] It was not stated whether the fixed capital figure included or excluded the value of property utilized in Encinal Terminals' warehouse operation. On cross-examination he admitted that he had no knowledge of the elements entering into the compilation of these figures. For example, he did not know whether the fixed capital figure upon which the rates of return were based represented the depreciated or undepreciated fixed capital investment. He admitted that if the basic figures were incorrect the figures in the consolidated statement would likewise be incorrect.

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[19] The warehouse operation of Encinal Terminals, he said, was conducted within the structure utilized in its wharfinger business. He did not know to what extent this applicant engaged in warehouse operations.

The Secretary of Encinal Terminals testified that the 1941 figures for that company, were prepared on the basis of the annual report to the Railroad Commission; that the gross revenue and expense figures shown for the first three months of 1942 were taken from the books; that the fixed capital investment of $1,409,245.46 used was the undepreciated capital investment; that the straight line method of depreciation was used; and that the depreciation reserve shown in the 1941 annual report is $906,725.75. It was explained, however, that there was no depreciation fund set up to offset the depreciation reserve entry. The witness contended that the rate of return should be allowed on the undepreciated rather than the depreciated capital investment. He stated that during the twelve-year period he was in charge of the accounting department Encinal Terminals failed to earn a 7 per cent return on its undepreciated investment. The rate of return on the depreciated rate base was not given although it was developed on cross-examination that in 1940 Encinal Terminals would have earned a return of approximately 10 per cent on its depreciated investment, based on annual report figures.

The traffic manager for Howard Terminal testified that the gross revenue and expense figures submitted to applicants' tariff agent include all revenues and expenses accruing to its wharfinger business.[20] The fixed capital figure submitted was $1,064,699.70, based on the actual value of the buildings and equipment dedicated to wharfinger operations and on a land valuation of $1.00 per square

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[19] The warehouse operation of Encinal Terminals, he said, was conducted within the structure utilized in its wharfinger business. He did not know to what extent this applicant engages in warehouse operations.

[20] Howard Terminal also operates as a public utility warehouseman.

foot.[21] The witness said that this fixed capital figure was undepreciated and that he did not have the reserve for depreciation amount segregated as between wharfinger and warehouse investment. The unsegregated figure shown in the 1941 annual report is $492,723.44.

With reference to the difficulties encountered in handling government freight over its terminal, the traffic manager stated the freight it was receiving was not as "complicated or quite as detailed" as the freight Encinal Terminals was handling and that the movement of this freight did not commence at its terminal until 1942. He stated that notwithstanding the fact that it had handled normal cargo throughout 1941, its revenues during that period were far short of the amount necessary to yield a proper return. Howard Terminal, he said, did not earn a 7 per cent rate of return during the period following the Commission's Decision No. 29171, supra.

The record also contains testimony pertaining to the propriety of the sought rate adjustment without reference to a fair rate of return on the proper rate base. Applicants' tariff agent contended that this is an emergency revenue proceeding and that the rate adjustment involved should be considered in that light. He said that the wharfage and wharf demurrage rates are proposed to be increased because they are the only rates which are likewise assessed by all of the public terminal operators. He contended that service and dockage charges could not be increased in view of the competitive situation hereinbefore discussed. He stated, moreover, that aside from the competitive feature, while he had made no study with respect to the situation in 1942, it would not have been reasonable to propose increases in dockage and service charges under the conditions

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[21] It was stated that the land valuation of $1 per square foot was used in the Final Report in Case No. 4090. The land value on this basis was $405,876. The original land, consisting of mud flats, when purchased in 1900 cost $111,040.12.

existing theretofore. In this regard he pointed out that the dockage and service charges prescribed by Decision No. 29171, supra, were established without delay and that they have since been increased by about 21 or 23 per cent. However, he admitted that while the labor factor is nominal in dockage and wharfage it is a substantial item in performing the operations which are covered by service charges.

The proposed increased wharf demurrage rates and shorter free-time periods are necessary, the witness stated, to hasten the movement of cargo from the terminals. This was said to be especially desirable under present conditions. He expressed the opinion that the increased demurrage rates would not yield additional revenues under existing conditions.

With respect to the proposal to provide a basis of monthly storage rates, the witness explained that they were intended to attract cargo storage in instances where storage space is available. He said that these rates do not include handling to or from vehicle tailgate, whereas warehouse rates in this area include service from or to the tailgate. This, he stated, probably reflects the difference between the storage rates proposed and an "out and out warehouse rate."

Most of the rules proposed to be added or amended pertain to the application of the wharf demurrage and storage rates. In this regard, considerable interest was manifested in the proposal to assess wharf demurrage rates against the cargo in lieu of the vessel as at present in instances when a vessel, the sailing date of which has been announced by the terminal operator, fails to arrive within the free-time period or within an extended period of 10 days from the announced sailing date. The witness stated that this change was proposed because as a practical matter it is very difficult to collect the additional demurrage from the vessels, whereas it can be billed

against the cargo. He stated that for the purpose of collecting tariff rates the terminal operator has a lien against the cargo but not against the vessel. He explained that under normal conditions the terminal operator advertises the sailing dates based upon information supplied by the vessel operators and that the terminal operator is not at fault in instances where demurrage charges accrue because of vessel delay. He contended further that if the cargo owner is injured his recourse is against the party responsible for the delay which party, he said, was the vessel operator not the wharfinger. He added that under normal conditions the delay would rarely be greater than 10 days and that he had no personal knowledge of the situation ever arising where it was impossible to collect demurrage charges from the vessel.

The American Potash and Chemical Corporation, the California Oil and Gas Association, the Aircraft Traffic Association, the Pacific Coast Cement Institute and the Tide Water Associated Oil Company appeared in opposition to the granting of the increase proposal in whole or in part. The objections of some were compelled in varying degrees by the fact that the public port bodies supporting the application propose a similar adjustment at their respective ports, through which the products of these shippers move.[22] With the exception of the Tide Water Associated Oil Company, these parties appear to base their objections in large measure upon the reason that as a result of the Office of Price Administration's order fixing prices at the level

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[22] Thus, the American Potash and Chemical Corporation, manufacturers of muriate and sulphate of potash, borax, boric acid, soda ash, sodium sulphate and salt cake, objected to the application in so far as the proposals therein contained would be likewise established at Los Angeles and Long Beach Harbors. Its traffic manager stated that its commodities constitute 10 per cent of the total tonnage moving through Los Angeles-Long Beach Harbors and that under the proposal the American Potash and Chemical Corporation is called upon to pay an undue portion of the alleged over-all increased costs.

in effect in May, 1942, they cannot pass on the increased charges involved to the consumer and that as to some the increased charges allegedly cannot be absorbed.[23]

In addition, the traffic manager for American Potash and Chemical Corporation testified that because competing manufacturers shipping through the gulf and eastern coast ports would not be required to pay these charges those manufacturers would have an advantage in competing for world markets.[24] He contended that inasmuch as this application is for the purpose of securing additional revenue, cognizance should be taken of the fact that all traffic of whatever nature and all those using the port facilities of applicants and the publicly owned port bodies are not called upon to contribute towards securing the alleged needed revenues under the increase proposal. With respect to the proposed wharfage rates on offshore cargo, the witness pointed out that while his commodities, as well as all others taking the merchandise N.O.S. rates, are proposed to be increased 60 per cent, certain commodities are not proposed to be increased at all and others are proposed to be increased by lesser amounts. He contended that this proposal requiring low grade commodities to pay the same charge as high grade commodities fails to give recognition to the ability of the traffic to move and pay the charge and to the value of the service rendered.

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[23] A representative of the California Oil and Gas Association pointed out that the California oil industry has experienced decreased revenues because the rubber shortage and gasoline rationing has restricted automobile use and that in addition increased transportation costs have arisen due, in a large part, to the necessity of utilizing rail transportation instead of tank vessels. The witness for Aircraft Traffic Association pointed out that because its members have contracts, probably requiring an additional year to complete, which were consummated many months ago any increases in port charges must be absorbed by them.

[24] Witness for the Pacific Coast Cement Institute pointed out that eastern cement manufacturers are not required to pay any terminal charges on shipments moving out of New York Harbor and that any increase in port charges which western manufacturers must assume would place them at a greater disadvantage in competing for foreign markets.

The traffic manager for Tide Water Associated Oil Company opposed the proposed increase in wharfage rates from 5 to 8 cents per 2,000 pounds on bunker fuel for use of the vessel to which delivered in so far as it is applicable in connection with fuel oil deliveries to such vessels by tank barges which lie alongside during the bunker operation. He contended that the alleged increased operating costs enter very slightly, if at all, into this operation. In this operation, he pointed out, the fuel oil is pumped directly from the barges to the vessel and does not interrupt work simultaneously taking place on the terminal. He also pointed out that no increase is proposed on petroleum products or other liquid commodities when moving through pipe lines. It was his belief that this operation is more comparable to a dockage than to a wharfage operation.

Applicants' tariff agent and witnesses for each of the applicants operating in the East Bay were questioned regarding this proposal. They stated that no substantial amount of bunkering operations of the nature here in issue is performed by them.[25] It was their belief that while there is no tangible direct labor cost involved in the operation, there is a portion of increased overhead expenses and such direct expenses as dredging which would be properly assignable thereto. They stated, moreover, that the amount of the increase proposed in this instance is consistent with the amount which is proposed on the other commodities. However, the president of Parr-Richmond Terminal Corporation expressed his opinion that there was no justification for according different rate treatment to the bunker fuel operation in question than is accorded petroleum products moving through a pipe line.

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[25] It was the shipper's contention in this regard that such bunkering operations are numerous in connection with vessels calling at San Francisco and that this proposal was primarily for the purpose of enabling the public operators to increase their charge.

With regard to the question concerning whether or not this operation should more properly be considered a dockage operation, the witness for Howard Terminal said that it has in past years been considered one of wharfage and that it is so treated in connection with bunker coal and oil when handled to vessels from rail cars.

Representatives for the San Francisco Chamber of Commerce and the Oakland Chamber of Commerce requested that any increase which the Commission might grant applicants be limited to the duration of the war and a reasonable period thereafter to afford the opportunity for further examination of the whole matter after conditions have approached a somewhat normal basis.

The San Francisco Chamber of Commerce representative also requested that the sought wharfage charges and wharf demurrage and storage rates, if granted, should be permitted to be published by applicants only at such times and to such degree as they are adopted, charged and collected at Los Angeles, Long Beach and San Diego Harbors.

The representative for the Los Angeles Chamber of Commerce urged that the disposition of this matter should be predicated exclusively on needs in the San Francisco Bay area and not upon any needs which may be shown to exist at southern California ports.

The public port bodies introduced evidence confirming the testimony of applicants' tariff agent with respect to their approval of the basis of increased rates here involved and their intention to publish these rates if and when the public utility wharfingers are authorized to do so.[26] The record indicates that unlike the other

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[26] Witnesses for the Los Angeles Harbor Department and the Port of San Diego stated, however, that they did not believe that the recommended free-time periods would be carried out in their entirety on foreign cargo.

port authorities, excluding the Port of Stockton, the Board of Harbor Commissioners of the City of Los Angeles cannot make effective the rates it approves unless the City Council of Los Angeles authorizes their establishment. In this regard, the general manager of the Los Angeles Harbor Department stated that in the past the City Council has supported fairly uniformly the recommendations of their experts in these matters. The position of the Port of Stockton with respect to whether or not it has full authority to change its rates was not disclosed. The traffic manager for the Harbor Commissioners of the City of Long Beach stated that while they were prepared to publish the rates as approved by them they would, for competitive reasons, publish them only to the extent that they are established at Los Angeles Harbor. The public port bodies also confirmed the testimony of applicants' tariff agent that competition between the public ports on San Francisco Bay and the applicants, and between the central California ports on the one hand and southern California ports on the other, requires rate uniformity.

The reasons advanced by the public port bodies for seeking to increase their rates were that past and present revenues were and are insufficient to cover the costs of their operations and to make needed repairs on their terminals. In this respect, the Board of State Harbor Commissioners for San Francisco Harbor declared that from 1930 to 1940 there was a substantial loss of tonnage at San Francisco Harbor due to world conditions and local economic changes; that no increase in rates was made during that period until 1939; and that the revenue therefrom was insufficient to pay for the proper maintenance of its facilities with the result that much of this work was deferred.

A special consulting accountant for the Port of Oakland prepared a summary statement showing the revenues and expenses

experienced in its wharfinger operations and in all operations other than those of its airport for the fiscal year ended June 30, 1941, and for the first nine months of the fiscal year ending June 30, 1942. The statement shows substantial net losses from its wharfinger operations and a net income from all operations other than those of the airport, during these two periods.

The general manager of the Los Angeles Harbor Department stated that after studying the Proposed Report in Case No. 4090, supra, Los Angeles established wharfage charges similar to those prescribed for the public wharfingers operating on San Francisco Bay;[27] that since the date of the Proposed Report labor, material and equipment costs have advanced steadily and that since September, 1939, cargo movements have been steadily decreasing. With respect to the decrease in the amount of tonnage handled, he stated that the revenues received from steamship operations would be some three-quarters of a million dollars less than they were two years ago and some half a million dollars less than they were last year. He attributed this to war conditions in Europe before our entrance into the war. He stated that recently labor costs in maintaining and reconditioning of facilities have advanced from 30 to 50 per cent, and that material costs have gone up substantially. He said, moreover, that they have been required to spend thousands of dollars in extra precautionary measures in the nature of lighting facilities, fencing, equipment for safety and precautionary measures and extra guards for the facilities. He testified that while the various revenue sources such as land rentals, oil, franchises, harbor operations, etc. were not segregated on the books, his personal opinion was that their terminal harbor operations were probably operated at a loss during

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[27] Testimony of record indicates that the wharfage rates were made effective in 1938 or early 1939.

all of the period from July 1, 1937, up to and including the present time. This witness said that to meet the decreasing revenues and rising costs the Los Angeles Harbor Commission has had under serious consideration for many months the matter of increasing its wharfage rates and that it proposes to take the necessary steps in the immediate future to establish the wharfage charges sought by applicants. He stated that in order that discriminatory competitive conditions between terminal operators may not be created, the Los Angeles Harbor Department is supporting the application in so far as it relates to rates for the services provided by both the applicants and the Los Angeles Harbor Department.

The traffic manager for the Harbor Administration of the City of San Diego testified that at the present time its dock facilities are used by the United States Government. He said that the manner of payment for use of the docks has not yet been determined and that if payment is determined on the tariff rates as at Los Angeles and other ports the increased wharfinger charges sought would, of course, be reflected in the revenues they would receive. He testified, moreover, that 1939 was a fairly normal year when compared with operations during the years previous thereto and that in that year the expenditures for the operation of its piers exceeded its receipts by $15,000.[28] He said that operations since that time are not considered normal and gave no operating results for the period following 1939.

As has been indicated, the traffic handled by these applicants is approximately 3 per cent of the total upon which comparable increases are contemplated. The 97 per cent is handled by public operators. These latter operators were invited to present evidence

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[28] The gross revenue was $55,456.46.

upon which a definite finding could be made respecting the reasonableness of the proposed rates as applied to them. They elected, however, to confine their participation to the making of general statements unsupported by that detail which is indispensable to such a finding. While this does not affect the weight to be given the showing made by the applicants, it is clear that where the consideration given such a small portion of the traffic will equally affect the whole the public interest requires that the matter be investigated and decided with careful consideration. The situation would be somewhat different if the rates here in issue were already in effect at the public ports and if it were shown that uniformity in rates is necessary and desirable. In this respect it should be pointed out that the record is not clear with regard to the extent that uniformity has existed in the past or exists at this time.

While the public terminal companies are not under this Commission's jurisdiction, there are, in addition to applicants, numerous carloaders and car unloaders who heretofore informally sought increases in carloading and car unloading charges similar to those sought by applicants. All of these informal applications were denied for want of sufficient showing. To date these other operators have not brought the matter before the Commission formally, yet they are competitive with applicants and it was the witnesses' opinion that rate equality was necessary. Thus, unless the Commission later authorizes increases in the rates of these competing carloaders who have not as yet made a showing, the value of the authority here sought is questionable.

A review of Exhibit No. 1 indicates eleven instances where the carloading or car unloading basic costs experienced are substantially higher than the proposed rates. For example, the basic labor cost of unloading bottles is 110 cents per 2,000 pounds, whereas the sought

rate is only 77 cents. The basic labor cost expanded to include wage increases and overhead expense is 163 cents per 2,000 pounds, or more than double the proposed rate. Moreover, the spread between the costs and the rates sought vary considerably. Thus, while the basic labor cost of loading copra is 82.7 cents and of unloading canned goods is 42.8 cents the rate proposed in each instance is 59 cents. The reasons for not seeking rates more closely related to costs and for failing to provide for some uniformity in the differential between the costs and the proposed rates were not explained. Also, the basic costs under present conditions more properly should have been shown rather than the basic costs obtaining during August, September and October, 1941. Nevertheless the rates sought are in every case so far below what the record shows would be necessary to return the full costs of performing the service that they should be granted.

There is nothing in the record to enable us to determine the additional gross revenue that the rate increase on car and truck loading and unloading will produce on an annual basis. The record shows, however, that the revenue from this class of business for Howard Terminal and Encinal Terminals, whose operations are reflected in the consolidated statement heretofore referred to, amounted to approximately 15 per cent of their total business in 1941. Indications are that this percentage will be greater in 1942. The increases authorized will come to between 10 and 11 per cent and on this basis the additional revenue produced for these two operators would be in the neighborhood of $19,000 per year.

But turning from the operators not under the Commission's jurisdiction, and the carloading and car unloading, we have here an application filed on behalf of not more than five companies and a showing made primarily upon the experience of two. It is stated

that these two are the most economically operated and the most representative general cargo terminals. The facts of record supporting this conclusion are meager and it is not clear why it is presumed to be impracticable to make a showing as to all.[29] Where the number of applicants is large, a showing based on a cross section properly supported may be necessary but where such a course is adopted when there are but five parties involved the reason therefor should be very apparent.

Nor is the theory upon which applicants founded this proceeding clear. The conflict shown on the record with respect to the circumstances which induced applicants to seek increased rates has already been referred to. Moreover, while strongly contending throughout that this was a revenue and not a rate proceeding, it is a fact that increases are not sought in all classes of service, nor in all phases of the services falling within the same general class, nor are the increases in the same class, where made, in all instances similar in percentage or amount.[30]

It is also a fact that the application involves proposals which in no way contribute revenue under present conditions. For example, a basis of monthly storage rates, rules and regulations designed to attract cargo is sought despite the fact that applicants' witness expressed the opinion that the increased demurrage rates would not contribute additional revenue. Moreover, both Encinal Terminals and Howard Terminal are public utility warehousemen with tariffs on file. It was not explained wherein the storage operations

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[29] As heretofore recited, applicants' tariff agent testified that of the three East Bay terminals, Encinal Terminals and Howard Terminal handle over two-thirds of the total general cargo tonnage. From this it appears that Parr-Richmond Terminal Corporation, whose operating figures and need for increased revenue were not shown, handles the balance or approximately one-third of the total general cargo.

[30] For example, no increases whatsoever are sought in that entire class of charges referred to as dockage and service charges, nor in that portion of the wharfage charges which applies to inland traffic and on bulk liquid commodities handled through pipe lines. The increases in wharf demurrage rates vary from 14 to 100 per cent.

proposed to be conducted under the monthly storage rates here sought will differ from their public utility storage operations or why a different schedule of rates is needed.

Again applicants' proposal that demurrage charges should be assessed against the cargo instead of the vessel where a vessel, the sailing date of which was advertised by the terminal, is delayed beyond the extended free-time period provided under such circumstances goes to the reasonableness of the existing rule and has no place in a true revenue proceeding. Considering the propriety of the rule itself, the record indicates that it was proposed because applicants felt that demurrage charges can be collected more readily from the shipper than from the vessel owner. This justification is insufficient to support the change.

Turning now to the evidence as it pertains to the showing of Howard Terminal and Encinal Terminals, we find that the 1941 revenue and expense figures appearing in the consolidated statement include the revenues and expenses incurred in Encinal Terminals' public utility warehouse operation and that the relative importance of this operation was not disclosed. Also, it was not explained whether the fixed capital figure includes or excludes the property dedicated by Encinal Terminals to its public utility warehouse operations. The operating expense of depreciation is accrued on the straight line basis, while the returns are calculated on the undepreciated investment, although the record shows that the properties used and useful in the terminal operations are to an undetermined extent depreciated. The depreciation reserve figure given by the Howard Terminal witness was not segregated as between its terminal and warehouse operations. The record shows that based on its 1940 annual report Encinal Terminals realized a rate of return of approximately 10 per cent on its depreciated investment.

Upon consideration of all the facts of record, I am of the opinion and find that the proposed rate increases in so far as they pertain to carloading and unloading should be granted and that in all other respects they have not been justified and should be denied.

I recommend the following form of order:

O R D E R

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

IT IS HEREBY ORDERED that applicants, through H.C.Cantelow their tariff publishing agent, be and they are hereby authorized to establish on not less than five (5) days' notice to the Commission and to the public increased car and truck loading and unloading rates in the manner set forth in Exhibit "A" of the application.

IT IS HEREBY FURTHER ORDERED that in all other respects Application No. 24999 be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that the rates authorized herein may be published without regard to the provisions of Tariff Circular No. 2, to the extent necessary to carry out the effect of the order herein.

The authority herein granted is void unless exercised within ninety (90) days from the date hereof.

The effective date of this order shall be ten (10) 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 Los Angeles, California, this 29th day of July, 1942.

Justus F. Craemer

Ray L. Riley

Richard Mitchell

Frank R. Havenner

Commissioners.

CERTIFIED AS A TRUE COPY

Secretary, Railroad Commission
of the State of California