

ORIGINAL

Decision No. 40339

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
into the rates, rules, regulations,)
charges, allowances and practices)
of all common carriers, highway)
carriers and city carriers relat-)
ing to the transportation of)
property.)

Case No. 4808

Appearances

John L. Amos, Jr., John E. Hennessy, Berne Levy,
J. E. Lyons, W. H. McCune, William Meinhold,
and J. M. Souby, Jr., for various rail lines
and connecting highway carriers and vessel
lines.

Edward M. Berol and Arlo D. Poe, for highway
carrier associations.

George S. Beach, Lester A. Bey, L. E. Binsacca,
B. F. Bolling, William Casselman, K. L. Corwin,
A. T. Eche, E. J. Forman, R. H. Fortune, Harold
F. Gulde, George R. Groth, James E. Harris,
R. T. Hunt, R. J. Jones, Leonard A. Keith, A.
Larsson, F. F. Morgan, Malcolm Myer, W. O. Narry,
W. G. O'Barr, J. A. O'Connell, W. E. Paul, F. H.
Powers, Walter A. Rohde, J. L. Roney, J. C.
Sommers, W. G. Stone, A. H. Van Slyke, R. L.
Whitehead, and L. H. Wolters, for shippers and
shipper organizations.

SUPPLEMENTAL OPINION

State-wide minimum rates for the transportation of general
commodities by highway carriers are set forth in Highway Carriers'
Tariff No. 2.¹ The rates now in effect are the increased class and
commodity rates established, effective March 31, 1947, by Decision
No. 39945 in this proceeding. Common carriers, exclusive of rail-
roads, vessel carriers and Railway Express Agency, Inc., were con-
currently authorized and directed to make like increases in their
rates. The rail lines and highway and vessel carriers participat-
ing with them in joint rate arrangements seek authority to make, on

¹ This tariff, issued by the Commission, is Appendix "D" to Deci-
sion No. 31606 (41 C.R.C. 671), as amended.

an interim basis, corresponding increases in class rates and in designated commodity rates.² They request permission to establish these increases on one day's notice.

Public hearings were had at San Francisco, on March 18, 1947, and at Los Angeles, on March 26, 1947.

Highway Carriers' Tariff No. 2 provides five scales of less-truckload class rates. They are an "any quantity" scale and four lower scales subject to minimum weights of 2,000, 4,000, 10,000 and 20,000 pounds. A scale of truckload class rates is also provided. In addition, there are various less-truckload and truckload commodity rates. The less-truckload rates, except the 20,000-pound rates, are now some 33 per cent higher than the bases prescribed by the Commission effective August 7, 1939.³ In the "any quantity" rates, 3 cents per 100 pounds has been added to the percentage increase. The 20,000-pound less-truckload rates and the truckload rates are approximately 28 per cent higher than the August-1939⁴ bases.

For less-carload rail traffic the Commission established, in connection with the August-1939 rate adjustment, the same minimum

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The rates proposed to be increased are those published in Pacific Freight Tariff Bureau Tariff No. 255-D, Cal.P.U.C. No. 130 of J.F. Haynes, Agent. Petitioners pointed out that the highway carrier rates were adjusted on an interim basis. They stated that their proposals for "permanent" rate adjustments had not yet been prepared.

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The 1939 rate levels were established by Decision No. 31606, supra. They were increased, generally, by 6 per cent on April 24, 1942, by Decision No. 35271 (44 C.R.C. 145). The resulting rates were further increased by 12 per cent, effective June 10, 1946, by Decision No. 39004 (46 C.R.C. 486). These rates in turn were subjected to another 12 per cent increase on March 31, 1947, by Decision No. 39945.

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The March-1947 increase in these rates, 8 per cent as contrasted with the 12 per cent increase in other rates, accounts for the difference in the over-all percentage increases.

rates as those it prescribed for less-truckload highway carrier transportation. The rail lines, however, adopted the highway carrier class rate pattern and minimum rate levels. In so doing they not only raised their "any quantity" less-carload rates to the required basis but also voluntarily established reduced carload and quantity-lot less-carload rates. Commodity rates were not similarly adjusted. The class rate parity resulting from the rail lines' action in 1939 no longer prevails. Rail rates, class and commodity, are now generally 20 per cent higher than the August-1939 bases as contrasted with the 33- and 28-per cent increases in highway carrier rates. These rail rate levels were established, effective January 1, 1947, pursuant to the authority contained in Decision No. 39785 of December 23, 1946, in Application No. 27446.⁵

As has hereinbefore been indicated, the rail lines and connecting highway and vessel carriers are here petitioning for authority to raise their class rates and certain less-carload commodity rates to the existing highway carrier levels. Petitioners claim that their present rates are subnormal; that for the most part these rates were voluntarily established to meet highway carrier competition; that this competition no longer requires

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As in the case of the highway carrier rates, the rail rates were increased, generally by 6 per cent, on April 24, 1942, under Decision No. 35271, supra. The rail increase was suspended on May 15, 1943, pursuant to Decision No. 36341 in Application No. 24670. This suspension was continued in effect by subsequent orders. On June 10, 1946, in connection with the further 12 per cent increase in highway carrier rates, less-carload rates 18.72 per cent higher than the August-1939 level were established under Decision No. 39004, supra. The 6 per cent increase was reinstated on carload traffic on July 1, 1946, under Decision No. 39154 in Application No. 24670. The 20 per cent general increase of January 1, 1947, was in place of, not in addition to, these increases. With exceptions not important here, this intrastate rail rate adjustment corresponds with the interstate rate adjustment concurrently made effective under authority granted by the Interstate Commerce Commission in Ex Parte Nos. 148 and 162, Increased Railway Rates, Fares and Charges, 1942 (reopened) and 1946.

rates as low as those now maintained; that even the sought rates are less than normal reasonable rail rates; that revenues produced by the existing rates are not adequate; that California traffic is not bearing a fair share of the transportation burden; and that the proposed rates would not produce excessive earnings.

The freight traffic manager of Southern Pacific Company, one of the petitioning rail lines, who holds a like position with its wholly owned highway carrier subsidiary, Pacific Motor Trucking Company, testified with respect to the history of the rates involved. January 1930, he said, was the latest period when the general class rates had not been adjusted against highway carrier competition. The traffic manager called attention to the fact that the railroad class rate structure then in effect was based to a large extent upon rates prescribed by this Commission and the Interstate Commerce Commission. Between points not affected by regulatory action, he said, the January-1930 rate structure contained numerous instances of depressed rates established to meet vessel carrier competition. The less-carload rates in effect in January 1930, the witness pointed out, were station-to-station rates and did not include pickup and delivery service. At that time, he said, scheduled service for less-carload traffic had not been inaugurated and, except between major stations, arrivals of that freight were indefinite and uncertain. The reduced carload and quantity-lot less-carload rates voluntarily established in August 1939, the witness testified, were published to meet highway carrier competition.

The freight traffic manager submitted a statement of class rates between various points in which he contrasted the rates here proposed with those which would have been applicable had the rail

lines not elected, in August 193⁶9, to establish highway carrier minimum rates for rail movement. In this statement the January-1930 rates have been increased first by 10 and then by 20 per cent. The 10 per cent increase is the general increase authorized by Decision No. 30784 (41 C.R.C. 215) and made effective April 15, 1938, following a like adjustment of interstate rates filed pursuant to the Interstate Commerce Commission's decision in Ex Parte No. 123, Increased Railway Rates, Fares and Charges, 1937-8. The 20 per cent increase is the January-1947 adjustment hereinbefore referred to.

In connection with carload rates, the statement shows that the proposed rates would be higher than the January-1930 rates adjusted for subsequent general increases in only 4 of the 210 rate comparisons. In two of these cases the difference is only 1 cent per 100 pounds; in the other two the difference is 8 cents.⁷ All of the other carload rate comparisons show the proposed rates as the same as or lower than the 1930 rates as adjusted to reflect the general increases in 1938 and 1947. To a large extent the proposed rates are substantially lower. Between Los Angeles and Bakersfield, for example, the rates proposed range from 25 cents for Class A freight to 15 cents for Class E freight, while the compared rates

⁶ In this statement rates are shown for transportation between San Francisco, Sacramento and Los Angeles, on the one hand, and Stockton, Truckee, Marysville, Redding, Weed, Fresno, Bakersfield, Los Angeles, El Centro, Salinas, Santa Barbara and Eureka, on the other.

⁷ These rates are the Class E rates between San Francisco and Stockton, where the proposed rate is 12 cents and the compared rate 11 cents; the fifth class rate between Los Angeles and Marysville, where the rates are 51 and 50 cents, respectively; and the fifth class and Class A rates between Sacramento and Santa Barbara proposed as 58 and 64 cents and compared with 50 and 56-cent rates.

range from 67 to 24 cents for the same classes.

With respect to the less-carload rates, the 1930-basis was a single scale for all less-carload freight. Lower rates for specified minimum quantities were not provided as is the case under the present rate pattern. The 20,000-pound less-carload scale now proposed is in all cases lower than the adjusted 1930 rates, except in those instances where the 50-cent minimum rate authorized by Decision No. 39785, supra, and made effective January 1, 1947, is applicable. With few exceptions this is likewise true in regard to the 10,000 and 4,000-pound scales. In the "any-quantity" bracket, the proposed rates are frequently higher and in some cases substantially higher while in other instances the situation is reversed and the proposed rates are lower.

The traffic manager stressed the fact that the 1930 rates were station-to-station rates, that the proposed rates include pickup and delivery service and that the 1930 rates as adjusted do not make provision for the expense necessarily incurred in providing service beyond rail depots. The expense of providing pickup and delivery service, he said, has increased materially since that service was inaugurated. Studies made by Southern Pacific Company, the witness testified, show that the weighted average cost to that company of handling pickup and delivery service by employing contract draymen increased from 8.67 to 11.52 cents per 100 pounds in the period from January 1941 to January 1947. For like service handled by its subsidiary, Pacific Motor Trucking Company, the witness stated the increase was from 12.73 to 15.55 cents per 100 pounds during the same period. He explained that the subsidiary provided service at points where costs exceeded the average of points where the work was done under contract. He also explained that these figures were for one service, pickup or delivery, and that they must, there-

fore, be doubled to arrive at the expense incurred in providing both services. Average pickup and delivery expense for both contract drayman and subsidiary operations, he said, amounted to 25.94 cents per 100 pounds. The witness also testified that the company's Bureau of Transportation Research had estimated clerical expense incident to handling less-carload freight as 16.4 cents per 100 pounds in 1946.

A study of platform labor costs of Southern Pacific Company at San Francisco, Oakland, Los Angeles, San Jose and Fresno during four months in 1946 (January, April, July and October), the traffic manager testified, showed that this expense amounted to \$3.52, \$2.63, \$3.56, \$1.94 per ton, respectively. The three cost factors of pickup and delivery, clerical and platform expense are such, the witness said, that existing rates do not return out-of-pocket cost of transportation in many instances. He pointed out, for example, that on the basis of the company's figures less-carload shipments between San Francisco and San Jose involved expenditures amounting to 66.94 cents per 100 pounds (25.94 cents for pickup and delivery, 16.4 cents for clerical expense and 24.6 cents for platform labor). These figures, he said, make no provision for switching, line-haul operations or general supervision. The first class "any-quantity" rate between these points is 65 cents per 100 pounds. Lower rates prevail for other classifications and under the 4,000-pound and greater minimum weight brackets.

A witness for The Atchison, Topeka and Santa Fe Railway submitted a study of platform labor costs experienced by that company. The study shows that during January 1946, the cost of handling less-carload freight through six assertedly representative stations ranged from \$1.00 per ton at Oakland to \$3.33 per ton at Los Angeles. In February 1939, the corresponding figures were \$.76 and

\$1.20 per ton, respectively. On a percentage basis, the increases in this cost were 31.6 per cent at Oakland and 177.5 per cent at Los Angeles. Freight handlers were paid 55 cents per hour in 1941 and are now paid 92½ cents an increase of 68.2 per cent. The witness also testified that his company's average cost for pickup or delivery service by contract drayman was 13.7 cents in February 1947 as contrasted with 9.4 cents in February 1939.

With respect to operating results, Southern Pacific Company's Assistant General Auditor submitted a statement showing the operating income of its Pacific Lines (extending from Portland, Oregon to Ogden, Utah, El Paso, Texas and Tucumcari, New Mexico) for the year 1946. The statement discloses a deficit of \$11,278,812 in net railway operating income before federal income taxes and a net income of \$26,607,502 after such taxes. The witness called attention to the fact that the statement shows an excess profits tax credit of \$48,741,915 and that without this credit 1946 operations would have resulted in a substantial loss. This excess profits tax "carry-back," he testified, is a nonrecurring item limited to 1946. The company's book value at the close of the year is shown on the statement as \$1,326,227,918 and the rate of return, after federal taxes, indicated thereon is 2.01 per cent.

The auditor testified that no segregation or allocation of revenues and expenses for California intrastate traffic had been made, that such figures for California operations unsegregated, however, as to interstate and intrastate expenses were in the course of preparation, and that he had no preliminary figures which would indicate whether or not California results would be materially different from the over-all Southern Pacific (Pacific Lines) results. No financial statements were submitted by the other petitioners.

With respect to Southern Pacific's 1946 operating results, its freight traffic manager stressed the fact that although it

enjoyed the heaviest peacetime business in the history of the railroad it would have operated at a loss had it not been for the \$48,741,915 tax "carry-back." This, he claimed, was due largely to inadequate earnings on California intrastate traffic. The California business, the witness asserted, is a large percentage of the company's total traffic. It is transported, he claimed, at rate levels averaging lower than those for the balance of the system.

In regard to his general testimony, Southern Pacific's freight traffic manager said that, while he had referred particularly to the situation as it affected his company because he was more familiar with it, this testimony also applied to other petitioners. He explained that except in areas of sparse traffic the other rail lines operate parallel to Southern Pacific Company and that whatever affects one affects all.

According to the traffic manager, it is not practicable to estimate the additional revenue which would result from establishment of the proposed increased rates. The traffic principally affected, he said, is less-carload freight. He explained that there is no segregation of less-carload revenue by states and no segregation of that revenue between intrastate and interstate traffic. Similarly, he said, carload revenues are not segregated as between class-rate and commodity-rate traffic. He claimed, however, that the added revenue would not produce excessive earnings and that California traffic would still be bearing less of a burden than other traffic in the same general territory. The California rates, the witness said, are at the lowest levels prevailing throughout the entire territory served by Southern Pacific's Pacific Lines.

Truck Owners Association of California and Motor Truck Association of Southern California support the granting of the petition. They urge that the highway carriers require the additional revenues from the increased rates prescribed by Decision No.

39945, supra, in their entirety; that these rates cannot be maintained in the face of railroad competition at lower rates; that the substantial majority of the traffic handled by highway carriers is between points served by the rail lines; that the Commission has heretofore found that in the less-truckload and less-carload field the highway carrier is the rate-making carrier and established the highway carrier rate level as minimum for both classes of carriers; that the rate uniformity resulting from this action prevailed for several years until interrupted under wartime conditions; and that restoration of such parity would be in the public interest.

Through examination of petitioners' rate witness, counsel for the Truck Owners Association brought out that the witness considered the less-carload rail service much the same as the less-truckload highway service and that under such circumstances the bulk of the traffic would gravitate to the carriers with the lower rate level. The witness also stated, in response to this line of questioning, that in view of the present relationship of rail lines costs and rates added less-carload traffic would tend to impair rather than improve petitioners' operating results. The increases, he said, were not sought to help out the trucks but to bring the rail rates up to at least out-of-pocket cost levels.

Shippers represented by the Los Angeles Traffic Managers Conference oppose the granting of the petition on the grounds (1) that no emergency has been shown in justification of the short notice publication of the sought increases; (2) that no adequate factual showing has been made of a need for additional revenue on such notice; (3) that if the rail lines are not satisfied with the proposed rate scales as a "permanent" adjustment they can specifically ask the Commission for a "permanent" class rate structure; and (4) that no showing, actual or estimated, has been made of the additional revenues which will accrue to petitioners as a result of the increased rates established, effective January 1, 1947, pursuant to the decisions of the Interstate Commerce Commission in Ex Parte 162 and of this Commission in Application No. 27446. In the case of Southern Pacific Company, the Conference's executive secretary estimated that, based on 1946 traffic, the additional revenues would amount to some \$34,000,000.

The Conference suggests that the proposed revisions, and other rate adjustments as well, be deferred until the Commission's staff can make a complete study of the rate situation under prevailing conditions. It further suggests that all rates prescribed or authorized by the Commission be required to be maintained for at least one year during which period carriers and shippers could determine the need for any further revision.

The executive secretary of the Conference testified that shippers are greatly concerned about the rate instability produced by the frequent authorization of rate adjustments. This situation, he claimed, discourages the purchase of materials in advance of actual need and makes future sales commitments almost impossible. The witness asserted that reasonable permanency of transportation rates is also required to justify expenditures by shippers in investments and improvements.

The Conference, the Los Angeles and San Francisco Chambers of Commerce and other shipper organizations and individual shippers object to increases for the sake of rate uniformity. They contend that each class of carriers should have its own rate level. Otherwise, they argue, shippers are denied advantages from using the most economical form of transportation. Various shipper representatives stressed the sharp increases resulting from the authorization of a 50-cent minimum rate by Decision No. 39785, supra. Some of them referring to the petitioners' avowed intention of maintaining the 50-cent rate claimed that this was inconsistent with their position with respect to competitive influences said to require rate uniformity. Others stated that questions had arisen as to the rates to be applied for depot service between points where the 50-cent minimum rate applies to pickup and delivery operations. They urged that the tariff

provisions involved be clarified. One shipper representative recommended that in the event the highway carrier rate levels are found proper for rail transportation the 50-cent minimum rate be required to be canceled. Certain of the shippers asked that consideration be given to the propriety of the allowance of 5 cents per 100 pounds for nonperformance of pickup or delivery service on the ground that increased costs for these operations when performed by the carriers justified greater allowances.

The record shows that in August 1939 the rail lines voluntarily adopted the highway carrier minimum class rate structure in an endeavor to meet truck competition, that the rail rates so established have not been subsequently increased to the same extent as the corresponding highway carrier rates, and that rail rates generally higher than the sought increased rates would now be applicable had the rail lines not elected in 1939 to reduce their class rates to the then prevailing highway carrier levels.

There is little or no question on this record that the rail rates here proposed to be increased are lower than maximum reasonable rates and lower than the rates necessary to meet the competitive charges of highway carriers under existing conditions. Section 13 $\frac{1}{2}$ of the Public Utilities Act provides that common carriers may not establish rates less than maximum reasonable rates for the purpose of meeting the charges of other carriers which are less than the charges of the competing carriers except upon a showing and a finding of the Commission that such rates are justified by transportation conditions. Section 32 $\frac{1}{2}$ provides that

⁸ Section 13 $\frac{1}{2}$ follows: "Nothing herein contained shall be construed to prohibit any common carrier from establishing and charging a lower than a maximum reasonable rate for the transportation of property when the needs of commerce or public interest require. However, no common carrier subject to the jurisdiction of the California Railroad Commission may establish a rate less than a maximum reasonable rate

(Continued)

rates lower than reasonable and sufficient rates and not justified by rates of competing carriers shall be superseded by "such rates as will provide an equality of transportation rates" between competing transportation agencies.⁹ It is clear that the rail rates in issue here are unreasonably low and insufficient and that the increases sought are necessary to provide equality of rates between competing carriers. It is apparent, moreover, that rail rates generally higher than the current highway carrier minimum rates would result if rail rates were now to be established without regard to truck competition. Petitioners do not request, and under Section 32(d) of the Public Utilities Act we could not require that this be done.¹⁰ Accordingly objections raised by shippers to increases for the sake of rate uniformity are not well-grounded. Under the circumstances here, ship-

8 (Concluded)

for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which shall be less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as may be required by the commission and a finding by it that said rate is justified by transportation conditions; but in determining the extent of said competition the commission shall make due and reasonable allowance for added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency of transportation."

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Section 32½ reads: "Whenever the commission, after a hearing had upon its own motion or complaint, shall find that any rate or toll for the transportation of property is lower than a reasonable or sufficient rate and that said rate is not justified by actual competition transportation rates of competing carriers, or the cost of other means of transportation, the commission shall prescribe such rates as will provide an equality of transportation rates for the transportation of property between all such competing agencies of transportation.****"

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This section provides: "In any rate proceeding where more than one type or class of carrier, as defined in this act or in the Highway Carriers' Act, is involved, the commission shall consider all such types or classes of carriers, and, pursuant to the provisions of this act or the Highway Carriers' Act, fix as minimum rates applicable to all such types or classes of carriers the lowest of the lawful rates so determined for any such type or class of carrier.****"

pers would not be denied any advantages from using the most economical form of transportation.

The record shows that additional revenues under the proposed increased rates would be derived principally from less-carload traffic and that in the handling of this traffic petitioners, like the highway carriers, have experienced sharply higher costs since the basic rates were established. In the proceeding on which the 20 per cent rail rate increase was authorized (Application No. 27446, supra), three of the largest California rail lines estimated that even under rates some 5 per cent higher than those approved their rate of return would be 2.5 per cent. It is reasonably clear that the further increases here sought would not result in excessive earnings.

In regard to the recommendations of Los Angeles Traffic Managers Conference that all rate adjustments be deferred until a staff study can be completed and that any adjusted rates be required to be maintained for at least a one-year period, it seems sufficient to say that this would exceed the bounds of administrative discretion and, in addition, would be impracticable.

The questions raised with respect to the 50-cent minimum rate authorized by Decision No. 39785, supra, and with respect to the propriety of allowances for nonperformance of pickup or delivery service are matters on which this record affords no proper basis for disposition. They may be brought to our attention by making appropriate filings seeking such changes as may be deemed to be necessary or desirable.

Upon consideration of all the facts of record we are of the opinion and find that the proposed increased rates are justified but that ten days' notice to the Commission and to the public should

be required instead of the one day's notice sought by petitioners.

ORDER

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that petitioners be and they are hereby authorized to increase the rates published in Pacific Freight Tariff Bureau Tariff No. 255-D, Cal. P.U.C. No. 130 of J. P. Haynes, Agent, by establishing, within sixty (60) days from the effective date of this order and on not less than ten (10) days' notice to the Commission and to the public, rates not higher than those developed by applying the highway carrier rate increases authorized by Decisions Nos. 35271 of April 14, 1942, 39004 of May 21, 1946, and 39945 of February 4, 1947 to the corresponding rates maintained by petitioners on April 23, 1942 in tariffs superseded by Agent Haynes' Tariff Cal. P.U.C. No. 130.

IT IS HEREBY FURTHER ORDERED that petitioners 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 exercise the authority herein granted.

In all other respects the petition of the rail lines and their connecting carriers filed March 4, 1947, as amended, be and it is hereby denied.

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

Dated at San Francisco, California, this 27th day of May, 1947.

Harold P. Kula
Justice J. Callahan
Robert H. Farrell
R. F. Morrison
Herbert Potter
 Commissioners