

Decision No. 46572

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )	
of certain railroads, and connect- )	
ing highway common carriers and )	Application No. 32219
water lines, for authority to )	
increase local and joint freight )	
rates and charges (1951). )	

Appearances

Charles W. Burkett, Otis J. Gibson, James E. Lyons, Clair MacLeod, F. G. Pfrommer, Edward C. Renwick, and E. L. Van Dellen, for applicants.

H. F. Alvin, J. A. Barbeau, L. E. Binsacca, Eugene R. Booker, C. R. Boyer, Matt Clarke, Jack Clodfelter, J. R. Copeland, Phillip D. Cozad, Harry W. Dimond, Wallace K. Downey, Joseph T. Enright, H. G. Feraud, James A. Fitzsimmons, Waldo A. Gillette, W. A. Gough, J. W. Huff, Rudolph Illing, N. E. Keller, Vincent D. Kennedy, Walter F. Kiesler, Charles Knight, P. W. Kujachich, P. Steele Labagh, A. Larsson, H. A. Lincoln, Frank L. Merwin, F. F. Miller, S. A. Moore, John E. Meyers, Robert C. Neill, W. G. O'Barr, John A. O'Connell, L. E. Osborne, Frank J. Rebhan, Walter A. Rohde, A. F. Schumacher, Lowe P. Siddons, R. F. Walker, Louis H. Wolters, Clifford L. Worth and J. N. Zeyen, for various shippers and shipper organizations.

Daniel W. Baker, Edward M. Berol, Frank Chandler, Larry M. Fites and Bertram S. Silver, for certain highway carrier organizations.

Earl S. Williams, for the California Department of Finance.

T. H. Grinstead, for the Board of State Harbor Commissioners.

Boris H. Lakusta, for the staff of the Commission.

O P I N I O N

By this application, as amended, California rail lines and their connecting highway and water carriers seek authority to establish increased freight rates and charges.

Public hearing was held at San Francisco on September 26, 27 and 28, and on October 1, 1951, before Commissioner Huls and Examiner Mulgrew.

The general level of the rail rates was last adjusted pursuant to the authority granted by Decision No. 43816, 49 Cal.P.U.C.

361 (1950). That decision permitted a general increase of 8 percent in the rate level, with certain exceptions and particularly with maximum increase limitations. The 8-percent increase superseded a 4-percent interim increase theretofore authorized by Decision No. 42715, 48 Cal.P.U.C. 633 (1949).

The rate adjustment applicants now seek is a further general increase of 6 percent. A like increase was authorized by the Interstate Commerce Commission on August 2, 1951, for interstate traffic in western and southern territories and interterritorially. (Ex Parte No. 175, Increased Freight Rates, 1951.)

Within eastern territory, a 9-percent increase was authorized by that Commission. The rail lines had sought a uniform increase of 15 percent. The lesser interstate adjustments authorized also were made subject to designated exceptions and to maximum increase limitations. The authority to maintain them provides that they shall be collected as surcharges and that they shall expire February 28, 1953, unless sooner modified or terminated. The higher rate levels thus established for interstate traffic were made effective August 28, 1951. The 6-percent and 9-percent increases superseded the 2-percent and 4-percent increases made effective on April 4, 1951, under an interim order. The interim increase of 2 percent in western territory was not made effective on California intrastate traffic.

Applicants propose that the 6-percent increase now sought be made subject to the same exceptions, limitations and other provisions as those involved in the corresponding interstate adjustment in western territory. They do not intend to apply the sought increase to class rates, to certain less-carload commodity rates, or to carload commodity rates for refined petroleum products in bulk in tank cars. However, they do not want the proposed

intrastate authority so restricted. On like interstate rates between California points, applicants have not exercised their authority to establish the 6-percent interstate increase. The principal rate witness for applicants said that the exception of this traffic, interstate and intrastate, was required in order to maintain rate parity with their highway carrier competitors. He also said that other situations probably would arise where applicants' net revenue position would be improved by likewise excepting rates for particular traffic from the proposed 6-percent increase, but that further study would be necessary to determine any such exceptions.

Applicants submitted estimates of intrastate tonnages and revenues for the year 1951. These estimates cover fifteen of the California rail lines.<sup>1</sup> The forecasts were based, for the most part, on actual experience for the first seven months and on applicants' estimates of tonnages and revenues for the remaining five months. Some of them included eight months' actual experience. Aggregate 1951 California intrastate traffic for the fifteen lines was estimated as 39,601,159 tons. Revenue from this tonnage was estimated as \$79,263,403 at the existing intrastate rate level, as \$80,933,657 had intrastate adjustments corresponding with the interstate increases been made effective on April 4, 1951 and on August 28, 1951, and as \$84,001,162 had the 6-percent increase been in effect for the entire year. Applicants anticipate the same volume of traffic for 1952. They thus appraise the effect of the increased rates here sought as amounting to \$4,737,759 in

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<sup>1</sup> The lines are: The Atchison, Topeka and Santa Fe Railway Company, California Western Railroad, Great Northern Railway Company, Holton Inter-Urban Railway Company, McCloud River Railroad Company, Northwestern Pacific Railroad Company, Pacific Electric Railway Company, Petaluma and Santa Rosa Railroad Company, San Diego & Arizona Eastern Railway Company, Santa Maria Valley Railroad Company, Southern Pacific Company, Sunset Railway Company, Union Pacific Railroad Company, Visalia Electric Railroad Company and Western Pacific Railroad Company.

annual revenue.

As hereinbefore stated, applicants do not intend to increase class rates, certain less-carload commodity rates or carload bulk petroleum commodity rates. An estimate of the intrastate revenue from the traffic handled under these rates was submitted only by the Southern Pacific Company. That company's California traffic is shown as amounting to 20,992,484 tons of the aggregate 39,601,159 tons for the fifteen lines. Southern Pacific's estimate of annual additional revenue under the sought 6-percent increase basis, applied to all rates, is \$2,794,686. With the exception of the traffic on which it is not intended to increase the rates this revenue figure is reduced to \$2,441,880. This \$352,806 difference decreases the over-all estimate of additional annual revenue of the fifteen lines from \$4,737,759 to \$4,384,953. The effect the exceptions would have on the estimates of the lines other than Southern Pacific is not disclosed.

Six of the fifteen lines submitting the intrastate tonnage and revenue estimates account for 94 percent of the total tonnage and for 97 percent of the revenue. Their estimates are shown in Table 1, which follows:

TABLE 1

Tonnage and Revenue Estimates for 1952 for California  
Intrastate Traffic of Six Principal Lines and Totals

<u>Line</u>	<u>Tons</u>	<u>Revenue</u>		
		<u>Existing Rates</u>	<u>Proposed Rates</u>	<u>Additional</u>
Southern Pacific	20,992,484	\$46,578,103	\$49,372,789	\$2,794,686
Santa Fe	6,465,089	14,781,076	15,667,941	886,865
Pacific Electric	3,559,762	3,538,400	3,733,400	195,000
Northwestern Pacific	3,141,052	7,726,323	8,189,902	463,579
Union Pacific	1,650,844	2,162,605	2,292,305	129,700
Western Pacific	1,513,400	2,144,000	2,272,000	128,000
Other 9 Lines	2,278,528	2,332,896	2,472,825	139,929
Totals	39,601,159	\$79,263,403	\$84,001,162	\$4,737,759

None of the applicants submitted estimates of the expenses incurred in handling California intrastate traffic. In their annual reports they show operating expenses within the State, and covering both interstate and intrastate traffic, on the basis of train mileage. This is done under directions from the Commission issued on June 15, 1910. Applicants' witnesses testified that information essential to determination of the expense of handling California intrastate traffic was not available and could not be developed with reasonable accuracy. They claimed that their trains were composite units of interstate and intrastate traffic and of empty cars which were not directly associated with either class of traffic; that operating costs could not be allocated except on an arbitrary synthetic basis; and that such allocations would produce unreliable, misleading and worthless results.

Applicants' expenses are disclosed only on an over-all basis. They submitted operating results based on revenues and expenses for all traffic-freight and passenger-interstate and intrastate for the years 1949 and 1950. They also submitted estimated over-all operating results for 1951 and 1952. The 1952 revenue estimates make provision for the application of the 6-percent increase basis to all of the freight rates, interstate and intrastate. The corresponding 1952 expense figures reflect the levels of wages, materials, fuel and income taxes prevailing at the time the hearing was held. These operating results and forecasts for

the six principal California lines are depicted in the following table:

TABLE 2

Over-all Operating Results of  
Six Principal Lines and Totals

<u>Line</u>		<u>Revenues</u>	<u>Expenses</u>	<u>Net Operating Income</u>
Southern Pacific	1949	\$418,444,561	\$390,444,396	\$28,000,165
	1950	470,229,623	422,693,114	47,536,509
	1951	500,339,000	459,729,000	40,610,000
	1952	514,358,000	468,870,000	45,488,000
Santa Fe	1949	482,754,000	427,105,000	55,649,000
	1950	522,676,000	441,463,000	81,213,000
	1951	559,791,000	508,731,000	51,060,000
	1952	572,399,000	518,118,000	54,281,000
Pacific Electric	1949	31,027,937	31,056,690	(28,753)
	1950	29,629,648	29,072,746	556,902
	1951	30,995,800	29,916,312	1,079,488
	1952	31,445,800	29,916,312	1,529,488
Northwestern Pacific	1949	8,444,495	8,418,516	25,979
	1950	10,358,390	9,855,086	503,304
	1951	11,313,000	11,127,900	185,100
	1952	11,677,000	11,378,900	298,100
Union Pacific	1949	398,823,082	377,115,645	21,707,437
	1950	465,283,516	421,154,595	44,128,921
	1951	493,600,000	471,077,000	22,523,000
	1952	502,600,000	478,064,000	24,536,000
Western Pacific	1949	40,881,793	36,336,730	4,545,063
	1950	49,348,111	39,964,048	9,384,063
	1951	52,977,000	46,511,000	6,466,000
	1952	54,312,000	47,342,000	6,970,000
Totals - Six Lines	1949	\$1,380,375,868	\$1,270,476,977	\$109,898,891
	1950	1,547,525,288	1,364,202,589	183,322,699
	1951	1,649,015,800	1,527,092,212	121,923,588
	1952	1,686,791,800	1,553,689,212	133,102,588

( ) - Indicates Loss

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As shown in Table 1, the remaining nine lines of the fifteen involved account for only 2,278,528 tons of the total estimated intrastate traffic of 39,601,159 tons and for only \$139,929 of the total estimated additional revenue from the proposed intrastate increase of \$4,737,759.

Operating results and forecasts were submitted on an over-all basis by California Western, McCloud River and Santa Maria Valley. The aggregate revenues, expenses and net operating income for these three lines follow:

<u>Year</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Net Operating Income</u>
1949	\$1,724,471	\$1,544,453	\$180,018
1950	1,871,796	1,663,021	208,775
1951	1,976,346	1,850,894	125,452
1952	2,048,829	1,878,998	169,831

California Western, McCloud River and Santa Maria Valley account for 1,152,625 of the 2,278,528 aggregate tons for the nine lines and for \$57,245 of the aggregate \$139,929 of estimated additional intrastate revenue.

As in the case of the expenses, applicants claimed that the amounts of their total investments which should be allocated to California intrastate freight traffic could not be ascertained. They said that their properties were used for all classes of traffic, interstate and intrastate, freight and passenger. They also said that arbitrary allocations would be misleading and could not produce sound results. However, they submitted their over-all property investments, including materials, supplies and cash, less accrued depreciation and amortization. These figures are shown at the close of the years 1949 and 1950. The estimated bases at the close of the year 1951 were also employed in applicants' 1952 estimates. Using their net operating income figures as shown in Table 2 hereof, they calculated rates of return for the years covered by the studies. The investment figures and the rates of

return based thereon for the six principal lines are shown on the table which follows:<sup>3</sup>

TABLE 3

Investment, Net Operating Income and Rate of Return  
of Six Principal Lines and Totals

<u>Line</u>		<u>Investment.</u>	<u>Net Operating Income</u>	<u>Rate of Return</u>
Southern Pacific	1949	\$1,145,637,347	\$ 28,000,165	2.44%
	1950	1,184,353,534	47,536,509	4.01
	1951	1,285,555,000	40,610,000	3.16
	1952	1,285,555,000	45,488,000	3.54
Santa Fe	1949	1,113,939,000	55,649,000	5.00
	1950	1,143,305,000	81,213,000	7.10
	1951	1,185,828,000	51,060,000	4.31
	1952	1,185,828,000	54,281,000	4.58
Pacific Electric	1949	81,731,539	(28,753)	--
	1950	76,533,482	556,902	0.73
	1951	70,700,000	1,079,488	1.53
	1952	70,700,000	1,529,488	2.16
Northwestern Pacific	1949	58,346,456	25,979	0.04
	1950	59,499,661	503,304	0.85
	1951	58,034,400	185,100	0.32
	1952	58,034,400	298,100	0.51
Union Pacific	1949	981,175,527	21,707,437	2.21
	1950	1,026,500,730	44,128,921	4.30
	1951	1,033,492,000	22,523,000	2.18
	1952	1,033,492,000	24,536,000	2.37
Western Pacific	1949	121,853,514	4,545,063	3.73
	1950	131,063,730	9,384,063	7.16
	1951	135,400,000	6,466,000	4.78
	1952	135,400,000	6,970,000	5.15
Totals	1949	\$3,502,683,383	\$109,898,891	3.14%
	1950	3,621,256,137	183,322,699	5.06
	1951	3,769,009,400	121,923,588	3.23
	1952	3,769,009,400	133,102,588	3.53

( ) - Indicates loss

<sup>3</sup> Investment, operating income and rate of return figures also were submitted by California Western, McCloud River and Santa Maria Valley. Their estimates for 1952 were investment \$2,118,677, income \$36,888 and rate of return 1.74 percent for California Western; investment \$2,503,000, income \$102,177 and rate of return 4.08 percent for McCloud River; and investment \$1,017,325, income \$30,766 and rate of return 3.02 percent for Santa Maria Valley.



Examination of applicants' witnesses developed that, in the investment figures presented for Southern Pacific, Santa Fe, Union Pacific and Western Pacific, the property values used in determining aggregate investments differed from the valuations of the property involved made by the Interstate Commerce Commission's Bureau of Valuation. These applicants were permitted to submit "late-filed" exhibits showing the bureau's valuations. According to these exhibits the bureau's latest figures are as of January 1, 1950.

Southern Pacific showed the value assigned to its line as \$867,920,932 as of January 1, 1950. It estimated the net change which it assumed the bureau would make to bring the value down to December 31, 1950, as an increase of \$41,492,572 and thus developed a value on that date of \$909,413,504. This latter sum is \$274,940,030 less than the corresponding company figure of \$1,184,353,534. The company's valuation as of December 31, 1951, \$1,285,555,000, discloses an increase of \$101,201,466 for the year. Whether the I.C.C. value should be similarly changed to the extent of any corresponding adjustment cannot be determined from the information supplied.

Similarly, Santa Fe showed I.C.C. values of \$1,014,607,865 as of January 1, 1950 and of \$1,040,957,842 as of December 31, 1950 as contrasted with company values of \$1,113,939,000 and \$1,143,305,000, respectively. These differences are \$99,331,135 and \$102,347,158. No explanation was supplied of the variation in the differences. Santa Fe also showed an increase in the company's valuation of from \$1,143,305,000 to \$1,185,828,000 or \$42,523,000 for the year 1951. No estimate was supplied of the 1951 adjustment which might be made by the I.C.C.

Union Pacific, in its "late-filed" exhibit, showed I.C.C. values of \$993,854,759 for 1949 (January 1, 1950), and estimated I.C.C. values of \$1,023,438,602 for 1950 and \$1,056,891,602 for 1951.

Western Pacific showed the value of January 1, 1950, as \$104,184,057 as contrasted with the company value on that date of \$121,853,514.

The foregoing investment figures include provision for additions and betterments, for accrued or estimated depreciation and amortization, and for materials, supplies and working capital.

The following table depicts the effect on applicants' estimated rates of return for 1952 of using I.C.C. valuation figures.

TABLE 4

Investments Company and ICC Bases and Estimated Rates of Return for Four Principal Lines

		<u>Investment</u>	<u>Net Operating Income (From Table 3)</u>	<u>Rate of Return</u>
<b>Southern Pacific</b>				
Company Basis	12/31/51	\$1,285,555,000	\$45,488,000	3.54%
ICC Basis	1/1/50	867,920,932	45,488,000	5.24
*ICC Basis	12/31/50	909,413,504	45,488,000	5.00
#ICC Basis	12/31/51	1,010,614,970	45,488,000	4.50
<b>Santa Fe</b>				
Company Basis	12/31/51	1,185,828,000	54,281,000	4.58
ICC Basis	1/1/50	1,014,607,865	54,281,000	5.35
*ICC Basis	12/31/50	1,040,957,842	54,281,000	5.21
#ICC Basis	12/31/51	1,083,480,842	54,281,000	5.01
<b>Union Pacific</b>				
Company Basis	12/31/51	1,033,492,000	24,536,000	2.37
ICC Basis	1/1/50	993,854,759	24,536,000	2.47
*ICC Basis	12/31/50	1,023,438,602	24,536,000	2.40
*ICC Basis	12/31/51	1,056,891,602	24,536,000	2.32
<b>Western Pacific</b>				
Company Basis	12/31/51	135,400,000	6,970,000	5.15
ICC Basis	1/1/50	104,184,507	6,970,000	6.69
#ICC Basis	12/31/50	113,394,723	6,970,000	6.15
#ICC Basis	12/31/51	117,730,993	6,970,000	5.92

\* January 1, 1950 figure of ICC Bureau of Valuation adjusted by applicant for subsequent changes.

# ICC Bureau of Valuation figure adjusted by adding the same amount to that valuation as applicant added to its own valuation figure.

Examination of applicants' witnesses also developed that the federal income taxes charged to railway tax accruals, in the case of the four lines treated in Table 4, take into account taxes resulting from income derived from other sources. The applicants were permitted to cover the necessary adjustments by "late-filed" exhibits. An answer by American Crystal Sugar Company and Holly Sugar Corporation to these exhibits pointed out that the adjusted income tax figures so presented failed to make provision for deducting interest paid by the applicants on their bonds and equipment obligations. Moreover, these presentations do not give effect to the higher income tax basis subsequently enacted by Congress and of which we take official notice. With the necessary further adjustments for interest credits and for increased taxes, the indicated adjusted operating income and rates of return for 1952 on the adjusted company and I.C.C. estimated investment bases as of December 31, 1951, are set forth in the table which follows:

TABLE 5

Estimated Rates of Return for 1952 for  
Four Principal Lines After Income  
Tax Adjustments

	<u>Investment</u>	<u>Adjusted Net Operating Income</u>	<u>Rate of Return</u>
Southern Pacific			
Company Basis	\$1,285,555,000	\$44,457,500	3.46%
ICC Basis	1,010,614,970	44,457,500	4.40
Santa Fe			
Company Basis	1,185,828,000	51,511,620	4.34
ICC Basis	1,083,480,842	51,511,620	4.75
Union Pacific			
Company Basis	1,033,492,000	38,943,333	3.77
ICC Basis	1,056,891,602	38,943,333	3.68
Western Pacific			
Company Basis	135,400,000	7,252,140	5.36
ICC Basis	117,730,993	7,252,140	6.16

Applicants pointed out that their estimates of revenues and of operating results were based on the handling of substantially greater volumes of traffic than were actually handled in 1949 and 1950. Aggregate revenue ton miles, interstate and intrastate, for the four principal lines in 1949 were shown as 24,940,915,000 for Southern Pacific, 28,083,070,000 for Santa Fe, 25,918,615,000 for Union Pacific, and 3,134,799,000 for Western Pacific. In 1950 the corresponding revenue ton miles handled increased to 28,329,181,000, 29,816,323,000, 30,255,786,000, and 3,642,223,000, respectively. For 1951 and 1952, applicants estimated that the traffic volume would be at the following somewhat higher levels than 1950, 29,627,721,000 for Southern Pacific, 31,718,400,000 for Santa Fe, 33,510,850,000 for Union Pacific, and 3,797,000,000 for Western Pacific. Revenue estimates of the other lines similarly have provided for increased traffic volume.

Applicants claimed, however, that the beneficial effect of the prospective heavier volume of traffic would be more than offset by higher costs experienced for wages, materials and supplies and by higher taxes. They submitted studies consisting of estimates of increased wages and payroll taxes showing that these increases would raise their wage and payroll tax payments for 1951 by \$27,273,099 in the case of Southern Pacific, \$30,280,000 in the case of Santa Fe, \$24,682,050 in the case of Union Pacific, and \$2,660,187 in the case of Western Pacific. They also submitted studies showing that the prices for major items of materials and supplies were at higher levels on August 1, 1951, than the levels prevailing in 1949 and 1950. Other applicants made like showings with respect to their increased costs.

Increases experienced in wages for services rendered and in prices for materials supplied, applicants contended, had fallen with

at least equal weight on their costs for handling California traffic. In certain respects, they asserted, the impact of the higher costs had been greater on that traffic than on interstate traffic. They explained that intrastate traffic was generally handled on through trains to a lesser extent than interstate traffic with attending relatively higher operating costs for the intrastate traffic. They explained further that in intrastate operations terminal costs were ordinarily a greater proportion of total costs than in interstate movements. The sought increase in the rates for the intrastate traffic, they asserted, also was necessary in order to avoid the undue discrimination against interstate traffic which they asserted would be occasioned by the intrastate traffic not bearing its fair share of applicants' higher cost burdens.

Shipper representatives, on the other hand, insisted that applicants' justification was fatally defective because separated expenses had not been supplied for the traffic involved. They said that without such information the Commission had no firm basis for a finding that the sought increases should be granted.

Some of the shippers also claimed that the establishment of the increased rates would be self-defeating in that sufficient traffic would be lost to competing means of transportation to create a more adverse result than continuation of the present rates. In rebuttal, applicants admitted that they expected the loss of some traffic, but asserted that, as had proved to be the case in other general rate increase proceedings, their over-all earning position would be improved. They reiterated that it was their intention to except certain operations from the proposed increase and that further study might show the advisability of excepting or adjusting rates for other service.

Still other shippers asked that applicants be requested to state specifically what exceptions they intended to make so that the competitive effect could be analyzed and objections raised where shipper interests would be jeopardized on the permissive increase basis sought by applicant by the discrimination which might be created in establishing the full increases in some cases, partial increases in other cases and by not exercising the authority granted at all in still other cases.

The force of applicants' showing in support of the sought increase is seriously impaired by their failure to develop specific estimates of operating results from the intrastate traffic under consideration. In some circumstances this deficiency in a showing in support of a general intrastate increase would require that the application be denied. Here, however, it has been demonstrated that applicants have been subjected to higher costs for wages, materials and supplies and to higher taxes and that these greater costs are necessarily incurred in handling all of their traffic. It has also been indicated on this record that the increases in costs are at least as great for intrastate traffic as for interstate traffic. The record also shows that applicants' over-all earnings under the sought California intrastate increase and the corresponding adjustment of interstate and other intrastate rates would not be excessive. Moreover, aside from the traffic proposed to be excepted from the sought intrastate increase, the general rate relationships and the relative levels of intrastate and interstate rates have prevailed for many years. In the circumstances applicants' showing is sufficient to justify the sought increases with the exceptions hereinafter set forth.

In this connection, we must point out that applicants have not presented in evidence separations of property and expenses, showing intrastate operative property and expenses. Applicants have presented evidence on intrastate tonnage and revenues but such showing does not meet the standard that intrastate rates should be prescribed upon a showing reflecting intrastate property, revenues and expenses.

In light of this general rule, we hereby place these applicants upon notice that this Commission will take action with a view to promulgating rules as to separations of property, revenues and expenses where interstate and intrastate operations are involved and require compliance with such rules when established.

While not asserting that this proceeding is an exceptional one, nevertheless, we are of the opinion that there is sufficient evidence to justify the finding and conclusion that the relief requested by applicants, with the exceptions hereinafter stated, is justified.

The rates which applicants have determined they will except from the sought increases, namely the class rates, certain related less-carload commodity rates and carload commodity rates on bulk refined petroleum products, have been considered and adjusted in proceedings involving highway carrier rates as well as rail rates. Applicants have not justified the granting of permissive authority to establish the sought increases in these rates. Permissive authority similar to that now sought with respect to class rates was denied by Decision No. 43816, supra.

The question of potential loss of traffic was likewise considered in Decisions Nos. 42715 and 43816, supra. The Commission held that the extent to which commercial and traffic conditions might

require rail rate adjustments could not be disposed of on the record made, that the sought increases should not be withheld for that reason and that such conclusions were without prejudice to those which might be reached in any subsequent proceeding involving this question. The record here made supports like conclusions.

With respect to the possibility of discrimination arising from the full or partial exercise of permissive authority or the non-exercise of the authority, applicants are admonished that in taking any such action they must see that the rates so established are non-discriminatory as required by statute. Applicants have requested that they be authorized to establish the sought increases on one day's notice to the Commission and to the public. Such short notice does not appear justified. Instead they will be authorized to make the tariff filings on not less than twenty days' notice. Any interested shipper believing that discrimination would result from applicants' treatment of their permissive authority will thus have an opportunity to bring the matter to the Commission's attention.

Upon careful consideration of all the facts and circumstances of record we are of the opinion and hereby find:

1. That the proposed increased rates, with the exceptions hereinafter enumerated, are required and have been justified.
2. That, as to the class rates, the related less-carload commodity rates and the carload commodity rates for bulk refined petroleum products which applicants stated they did not intend to adjust if the sought permissive authority is granted, such authority has not been justified.
3. That applicants have justified the establishment of the proposed increases, with the above-stated exceptions, on not less than twenty days' notice to the Commission and to the public.



4. That, to the extent above indicated, the application, as amended, should be granted; and, that in other respects, it should be denied.

In authorizing the above-described increases we do not make any finding of fact as to the reasonableness of any particular rate or charge.

#### ORDER

Public hearing having been held in the above-entitled application, as amended, and based on the evidence of record and on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that, excepting as to class rates, less-carload commodity rates published in Pacific Southcoast Freight Bureau Tariff No. 255, Cal.P.U.C. No. 159, of J. P. Haynes, Agent, and carload commodity rates for refined petroleum products in bulk, the increases involved in the above-entitled application, as amended, be and they are hereby granted; and that the increases herein authorized may be established on not less than twenty (20) days' notice to the Commission and to the public.

IT IS HEREBY FURTHER ORDERED that applicants be and they are hereby authorized to depart from the provisions of Article XII Section 21, of the Constitution of the State of California and of Section 460 of the Public Utilities Code to the extent necessary to effect the increases herein authorized.

IT IS HEREBY FURTHER ORDERED that applicants be and they are hereby authorized to publish the increased rates and charges in the same form as that authorized by the Interstate Commerce

Commission. To the extent departure from the terms and rules of Tariff Circular No. 2 of this Commission is required to accomplish such publication, authority for such departure be and it is hereby granted.

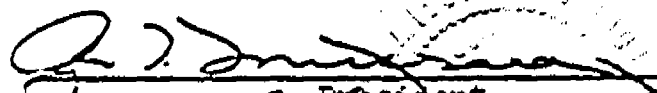

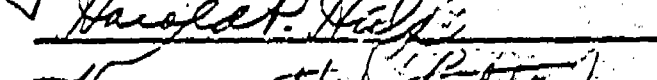
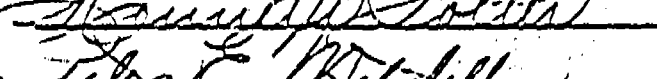
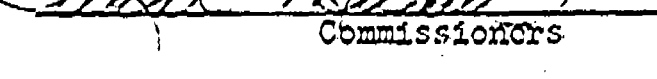
IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the express condition that applicants will never urge before this Commission in any proceeding under Section 734 of the Public Utilities Code, or in any other proceeding, that the opinion and order herein constitute a finding of fact of the reasonableness of any particular rate or charge, and that the filing of rates and charges pursuant to the authority herein granted will be construed as consent to this condition.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall expire unless exercised within sixty (60) days after the effective date of this order.

IT IS HEREBY FURTHER ORDERED that in all other respects the above-entitled application, as amended, be and it is hereby denied.

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

Dated at San Francisco, California, this 18<sup>th</sup> day of December, 1951.

  
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President  
  
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Commissioners