

Decision No. 49290

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
certain railroads and connecting)
highway common carriers and water)
lines for authority to increase)
local and joint freight rates and)
charges (1951).)

Application No. 32219
(First Supplemental)

SUPPLEMENTAL OPINION AND ORDER

California railroads applied for increases in their intrastate freight rates.¹ A 6 percent increase was authorized by the Interstate Commerce Commission in interstate rates and on a nationwide basis in Ex Parte 175, Increased Freight Rates, 1951, and then in California intrastate rates by Decision No. 46572, 51 Cal. P.U.C. 341 (1951). Subsequently the Interstate Commerce Commission granted a 15 percent increase in lieu of the 6 percent increase. Applicants thereupon sought the same upward adjustment in their California intrastate rates. This proposed adjustment was found not justified and denied by Decision No. 48107, 52 Cal. P.U.C. 336 (1952).

Following the denial of the sought further intrastate increase, applicants asked the Interstate Commerce Commission to investigate the California intrastate rates in an application filed under Section 13 (4) and other sections of the Interstate Commerce Act. Section 13 (4) provides:

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Also involved are some joint rates maintained by the rail lines and their highway carrier and water line connections.

"Whenever in any such investigation (intrastate investigation) the Commission, after full hearings, finds that any such (intrastate) rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

The rail lines' application to the Interstate Commerce Commission was docketed as No. 31219, California Intrastate Railroad Freight Rates and Charges. That Commission held public hearings followed by oral argument in bank. In addition to evidence similar to that submitted in the California proceeding, other evidence was supplied the Interstate Commerce Commission. It has now issued its report in Docket No. 31219 finding that the sought further increase in California intrastate rates is justified. The report points out that in Florida v. United States, 282 U.S. 194, 211, the United States Supreme Court said:

"The authority granted under section 13(4) is *** to be considered in the light of the affirmative duty of the Commission (Interstate Commerce Commission) to fix rates and to take other important steps to maintain an adequate national railway system.

"As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it."

In its report the Interstate Commerce Commission also found, among other things, that the present California intrastate rates are

abnormally low and fail to produce a fair share of the revenues necessary to accomplish the purposes of the national transportation policy as declared by Congress. The national transportation policy is stated in the Interstate Commerce Act as follows:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; -- all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy."

The Interstate Commerce Commission's report specifically states that it will order the California intrastate increases involved unless it is notified within 30 days from the date of service of its report that the California Commission will permit the increases to go into effect.

We take official notice of the provisions of the Interstate Commerce Act affecting intrastate transportation, of the Interstate Commerce Commission proceedings identified as its Docket No. 31219 and of its report in that docket finding that the sought further increase in intrastate rates is justified and would be established by its order unless permitted by the California Commission within 30 days.

In the circumstances, we are of the opinion and find that the further increase sought in this proceeding is justified. In view of the length of time that this matter has been under consideration and in view of the Interstate Commerce Commission's time limit,

applicants will be authorized to publish the increased rates on five days' notice and the order which follows will be made effective ten days after the date thereof. Inasmuch as some of the rates here involved are published under authorizations to depart from the long and short haul provisions of the State Constitution and the Public Utilities Code, necessary further authority to make departures from these provisions will be granted here. Sought relief from tariff circular rules likewise appears warranted and will be granted.

The Interstate Commerce Commission's findings and conclusions are without prejudice to the right of the authorities of the State of California, or of any other interested party, to apply for modification thereof as to any individual intrastate rate or charge affected thereby, on the ground that such rate or charge is not related to the interstate rates and charges on like traffic in such a way as to contravene the provisions of the Interstate Commerce Act. Similarly, in authorizing the increase here we do not make any finding of fact as to the reasonableness of any particular rate or charge.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that the increases involved in the above-entitled application be and they are hereby granted and that they may be established, to expire with December 31, 1955, on not less than five 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 days after the effective date of this order.

This order shall become effective ten days after the date hereof.

Dated at San Francisco, California, this 3rd day of November, 1953.

R. B. [Signature]
President
Justus J. [Signature]
[Signature]
[Signature]
Commissioners