

ORIGINAL

Decision No. 55942

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of certain railroads and)
connecting highway common carriers for) Application No. 37697
authority to increase local and joint)
freight rates and charges (1956).)

Application of certain railroads and)
connecting highway common carriers)
for authority to increase local and) Application No. 38557
joint freight rates and charges.)

E. E. Bennett, Charles W. Burkett, Jr., Robert F. Garing, Clair MacLeod, R. L. McMichael, Frederick G. Pfommer, and E. L. Van Dellen; for applicants.

J. C. Kaspar and Arlo D. Poe, for California Trucking Associations; intervenor in support of applicants.

Sidnev H. Bierly, Eugene R. Booker, H. G. Feraud, R. P. McCarthy, F. F. Miller, L. E. Osborne, Mrs. Grace McDonald, and John H. Telfer; for various shipper and labor organizations, protestants.

Larry Ambrose, Frank E. Ashton, W. Y. Bell; Carl F. Breidenstein, Bert Buzzini; J. J. Deuel, W. R. Donovan, Wallace K. Downey, Joseph T. Enright, Gene Feise, E. R. Garcia, Waldo A. Gillette, William G. Higgins, Thomas B. Kircher, Harold A. Lincoln, T. A. L. Loretz, Joseph R. McNicoll, Charles C. Miller, F. F. Miller, S. A. Moore, W. G. O'Barr, O'Melveny & Myers, by Lauren M. Wright, A. E. Patton, Robert J. Puppo, Jim Quintrall, Eugene R. Rhodes, Harry H. Ross, Philip J. Ryan, James C. Uhler, J. G. Vollmar, and Reginald F. Walker; for various shippers and other interests, interested parties.

H. F. Wiggins, John L. Pearson and R. A. Lane; for the Commission's staff.

OPINION AND ORDER

By these applications, as amended, California railroads and certain connecting highway carriers seek authority to establish increased freight rates and charges.

Application No. 37697, which sought a general rate increase of 6 percent, with exceptions, was heard on various dates in 1956, and was denied by Decision No. 54215 dated December 11, 1956.

Application No. 38557, having been twice amended, now seeks an additional increase of 12 percent, with exceptions. No evidence has been received in Application No. 38557.

On December 13 and December 28, 1956, certain of the railroads serving California petitioned the Interstate Commerce Commission to institute an investigation of the California intrastate rates, alleging that the California rates are unlawful under Section 13(4) and other sections of the Interstate Commerce Act. Section 13(4) provides as follows:

"Whenever in any such investigation [intrastate investigation] the commission, after full hearing, 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 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."

Responsive to the railroad petitions, the Interstate Commerce Commission instituted investigations, held public hearings in San Francisco, released an Examiner's proposed report, received exceptions thereto, and, on November 29, 1957, served its decision (I.C.C. Dockets Nos. 32089 and 32089, Sub. No. 1).

In its decision the Interstate Commerce Commission concluded that unlawfulness did exist, and made the following ultimate finding among others:

"5. The undue, unreasonable, and unjust discrimination, and the undue and unreasonable advantage, preference, and prejudice herein found to exist should be removed by applying to the California intrastate rates and charges here in issue the same respective increases as are and for the future may be maintained by the respondents on like interstate traffic between points in California, and between points in California and points in adjoining States under the Commission's authorization in Ex Parte Nos. 196 (298 I.C.C. 279) and 206 (299 I.C.C. 429), except that increases may not be made to levels of rates or charges higher than the general level of interstate rates and charges for like hauls to, from, or within California, nor may the Ex Parte No. 196 increases be applied to the rates established under the terms of the order in Blue Diamond Corp., v. Atchison, T. & S. F. Ry. Co., supra."

The decision of the Interstate Commerce Commission does not contain an order, but concludes as follows:

"An order effectuating the foregoing ultimate findings and conclusions will be entered, unless this Commission is notified by the California Commission, within 30 days from the date of service of this report, that the increases required to remove the unlawfulness herein found to exist will be permitted to take 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 Dockets Nos. 32089 and 32089 (Sub. No. 1), and of the statement of that Commission that it will order the California intrastate rates increased unless it is notified that this Commission will permit the increases to go into effect.

If this Commission does not permit the increases, the Interstate Commerce Commission, under the terms of its decision, will order and require the railroads to increase their California intrastate rates and thereafter to maintain and apply the increased rates. Such an order by the Interstate Commerce Commission would make the railroad rates inflexible, inhibiting future reductions to meet the needs of California commerce as they might develop.

Presumably it is for the purpose of avoiding such a result that the Interstate Commerce Commission has withheld its order and suggested the alternative. That the alternative would permit but not require the railroads to remove the declared unlawfulness against interstate commerce is a matter which need not concern us herein.

Under the California Public Utilities Code, no railroad may raise any rate except upon a showing before the Commission and a finding by the Commission that such increase is justified (Section 454). This Commission does not have before it the evidence from which it can determine whether or not the contemplated increases are "justified" in the conventional sense.

Nevertheless, it clearly would be inimical to the interests and welfare of California industry and California railroads to have the rail rates made inflexible by a continuing order of the Interstate Commerce Commission. Upon careful consideration of all of the peculiar facts and circumstances of record and within our official knowledge as hereinbefore stated, the Commission now concludes that the rate increases found necessary by the Interstate Commerce Commission should be permitted and, therefore, are found to be justified.

The applicants will be authorized to publish the increased rates on five days' notice. Inasmuch as some of the rates herein 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. Relief from tariff circular rules likewise appears warranted and will be granted. In authorizing the rate increases herein, 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:

(1) That the applicants are hereby authorized to establish, on not less than five days' notice to the Commission and to the public, the same respective increases in their California intrastate rates and charges as are maintained by the applicants on like interstate traffic between points in California, and between points in California and points in adjoining states under the authorization of the Interstate Commerce Commission in Ex Parte Nos. 196 (298 I.C.C. 279) and 206 (299 I.C.C. 429), except that increases may not be made to levels of rates or charges higher than the general level of interstate rates and charges for like hauls to, from, or within California, nor may the Ex Parte No. 196 increases be applied to the rates established under the terms of the order of the Interstate Commerce Commission in Blue Diamond Corp. v. Atchison, T. & S. F. Ry. Co. (299 I.C.C. 549), and except further that no increases are herein authorized in any of the rates and charges designated in Appendix "A" which is attached hereto and by this reference is made a part hereof.

(2) 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.

(3) 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 for the interstate rates. 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 is hereby granted.

(4) That the authority herein granted shall expire unless exercised within sixty days after the effective date of this order.

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

Dated at San Francisco, California, this 10th day of December, 1957.

John E. Maxwell
President
Paula Ventremer
Michael Rosen
R. Hardy
E. L. Fox
Commissioners

APPENDIX "A"

CALIFORNIA INTRASTATE RATES NOT AUTHORIZED TO BE INCREASED

1. Class and commodity rates now in Pacific Southcoast, Freight Bureau Tariff No. 255-F, Agent J. P. Haynes' I.C.C. 1567.
2. The following rates, charges and provisions of Pacific Southcoast Freight Bureau Tariff No. 294, Agent J. P. Haynes' I.C.C. 1579.

Item 180, Paragraph (b) only;
Items 210, 270, 710, 735 and 765;
All class rates in Section 1 of said tariff;
Items 1700 to 1723, inclusive; 1725; 1730 to 1834, inclusive; 1840; 1850, 1860; 1870 to 1900 inclusive; 1920 to 1950, inclusive; 1955 (Column 1 rates only); 1970, except rate of 61-1/2 cents; 1980; 1990; 2010; 2030 to 2055, inclusive; 2060 except rate of 48-1/2 cents; 2070 to 2090, inclusive; 2095; 2100; 2110; 2120; 2130; and 2140.

3. A rate of 42 cents, minimum weight 30,000 pounds, on boracic acid and borax, named in Items 310, 320 and 330 series of Pacific Southcoast Freight Bureau Tariff No. 263-A, Agent J. P. Haynes' I.C.C. 1557.
4. The following carload rates in Pacific Southcoast Freight Bureau Tariff No. 300, Agent J. P. Haynes, I.C.C. 1439, which are flagged with "Z" and/or square dot reference in the following Items:

- (a) - Sugar, Items 945 to 975 and 4160 to 4225; inclusive;
- (b) - Boracic acid and borax, Item 1645 to 1660, inclusive; except only the rate of 42 cents in Item 1650, 1655, and 1660;
- (c) - Butter, cheese, and margarine, Items 3125 to 3146, inclusive;
- (d) - Infusorial earth, Item 3200;
- (e) - Canned Goods, Items 3455 to 3485, inclusive; 3525 to 3546, inclusive; 3550; 3580 to 3595, inclusive; 3605; 3635 to 3650, inclusive; 3655; 3685; 3690; 3695; 3715; 3760 and 3765; 3785, inclusive; and 3855 to 3885, inclusive.

NOTE: -Applies in connection with Items 3550, 3605, 3655 and 3695 only to rates flagged with both "Z" and square dot reference.

- (f) - Beverages, Items 5105 to 5116, inclusive; 5135 to 5142, inclusive;
 - (g) - Lard, lard substitutes and vegetable oil shortening, Items 6120 to 6140 inclusive;
 - (h) - Washing compounds, soap, and related articles, Items 6675 to 6691, inclusive.
5. Commodity rates on refined petroleum products in tank cars, taking Column 1-A rates in Pacific Southcoast Freight Bureau Tariff No. 252-D, Agent J. P. Haynes' I.C.C. 1570, and now referenced "(X)".