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ORIGINAL

Decision No. 70508

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of THE RIVER LINES, INC., for suspension of certain rates contained in Local Pipeline Tariff No. 6-B of SOUTHERN PACIFIC PIPE LINES, INC., a wholly owned subsidiary of Southern Pacific Company.	)	(I & S) Case No. 8191

John MacDonald Smith, for Southern Pacific Pipe Lines, Inc., respondent.
McCutchen, Doyle, Brown, Trautman & Enersen, by William W. Schwarzer, for The River Lines, Inc., petitioner.

O P I N I O N

This proceeding is an investigation into the lawfulness of certain reduced rates published for the transportation of refined petroleum products, in bulk, via pipeline from oil terminals and refineries in the San Francisco Bay Area to distribution terminals located at Stockton and Sacramento (Bradshaw Road on U. S. Highway 50, east of Sacramento).

The rates were published by Southern Pacific Pipe Lines, Inc. (SPPL), in its Local Pipeline Tariff No. 6-B, Cal. P.U.C. No. 18, effective June 17, 1965, and reduced the pipeline rates by 2 cents per barrel. Prior to such effective date the Commission received a Petition for Suspension from The River Lines, Inc. (River Lines). The petition alleged, among other things, that the proposed reduced rates were unlawful in that they were in violation of various provisions of the Public Utilities Code, primarily Sections 451, 452, 455, 726 and 727.

The effective date of the proposed reduced rates was suspended until April 15, 1966, unless otherwise ordered.

Public hearings were held before Examiner Gagnon at San Francisco on September 14, 15 and 16, 1965. The proceeding was submitted, subject to the filing of concurrent briefs on November 4, 1965. Oral argument was requested by River Lines. The issues having been clearly presented and thoroughly argued on brief, no useful purpose would be served by further argument before the Commission. The request is denied.

Respondent assumed the burden of justifying its reduced rates. Representatives from several of the major petroleum companies operating within California testified in support of respondent's position. River Lines presented evidence which it contends clearly demonstrates the unlawfulness of the rate reduction. Other competing water carriers or modes of transportation did not participate in the proceeding.

Respondent's Operations

Southern Pacific Pipe Lines, Inc., is a public utility pipeline corporation, as defined in Section 216 of the Public Utilities Code, operating as a common carrier in Texas, New Mexico, Arizona, California, Nevada and Oregon. It is a separately managed and operated, wholly owned subsidiary of Southern Pacific Company. Its main functions consist of the pipeline transportation of refined petroleum products for commercial and military accounts. An additional activity covers the so-called terminal warehousing of commercial petroleum products.

Respondent states that at present there are approximately 56,000 miles of common carrier pipelines for refined petroleum products in the Continental United States. Of this amount, about 47,200 miles are owned and operated by the petroleum industry. The remaining 8,800 miles of public pipelines are owned and operated by carriers independent of the petroleum industry. The SPPL

pipeline system of 1,871 miles represents approximately 21 percent of the so-called independent pipelines system.

Only that portion of respondent's California pipeline network commonly referred to as the "north line" is involved herein. It originates in the San Francisco Bay Area, in the vicinity of the Richmond-Oakland-Concord areas, extending southerly to San Jose from Concord; easterly from Concord to Stockton; thence northerly to Sacramento (Bradshaw Road terminal) and Roseville; thence northerly to Chico and northeasterly over the Sierra to Reno and Sparks, Nevada.[1]

Tariff Rates and Charges

The respondent's existing and suspended proposed rates are set forth below:[2]

TABLE I

From Richmond-Concord Stations	Rates in Cents (1) Per Barrel		Minimum Tender In Barrels
	Present	Proposed	
To:			
Stockton Station	8.5	6.5	5,000
Bradshaw Road Station	10.5	8.5	5,000

(1) Plus loss allowance of 1/4 of 1%.

Note: Present rates became effective as of December 12, 1963 (originally published to become effective February 12, 1963).

Decision No. 66695, dated January 21, 1964 (62 Cal. P.U.C. 238), found the existing rates to both Stockton and Bradshaw Road to be neither unreasonable, unjust nor insufficient. This decision was affirmed by the Supreme Court on January 21, 1965. (River Lines v. Pub. Ut. Comm., 62 Cal.2d 244.)

1 For a more detailed sketch of SPPL's north line, see Decision No. 66695, January 21, 1964 (62 Cal. P.U.C. 238, 248). Also SPPL Exhibits Nos. 2 and 3.

2 Tariff No. 6-B governing the application of respondent's rates is set forth in Exhibit No. 1.

A study conducted by respondent (Exhibit No. 9) indicates that the gross revenue from tariff loss allowances, applied against commercial traffic on SPPL's north line, amounts to an average of 1.3 cents per barrel; whereas the actual product loss was determined to be only 0.4 cents per barrel, which permitted SPPL to realize a net revenue accrual of 0.9 cents per barrel from tariff product loss allowances.

The River Lines competitive rates for the transportation by barge of refined petroleum products in bulk, from San Francisco Bay Area refineries and oil terminals to Stockton and Sacramento oil terminals, are named in its Local Freight Tariff No. 3-A (Exhibit No. 17), pertinent portions of which are set out below:

TABLE II

From San Francisco Bay Area	Rates In Cents (1) Per Barrel	Minimum Tender In Barrels
To: Stockton	8.5	24,000
	10.3	12,000
Sacramento	10.5	24,000
	12.6	12,000

(1) Plus loss allowance of:

a. 1/4 of 1% on gasolines, and
b. 1/10 of 1% on fuel oil.

While the above volume barge rates are designed to be competitive with the existing like rates of respondent, significant differences in the application of such rates are readily apparent from a review of the tariff rules and accessorial services applicable in connection therewith. Such differences reflect, of course, the inherent advantages or disadvantages, as the case may be, between pipeline or barge transportation.

The Position of Respondent

The record in this proceeding confirms the fact established in the prior proceeding (Decision No. 66695) that as of May 1963, SPPL was preoccupied with the development of its long-haul commercial traffic from San Francisco Bay Area to Chico and stations beyond. SPPL's policy at such time was assertedly not to solicit short-haul traffic to Stockton and Sacramento, served by River Lines and other competing carriers. Interest in the short-haul pipeline traffic did not decline, however, to the point where SPPL would ignore the needs of its long-haul customers confronted with a particular local distribution problem, such as experienced by Mobil Oil Company at Sacramento (Decision No. 66695, 62 Cal. P.U.C. 238, 249).

> "In August, 1962, the State of California advised the Mobil Oil Company that its Sacramento terminal ... was in the path of a new freeway ... Mobil sought to acquire other waterfront property but ... it considered the cost of river frontage in Sacramento to be too high. In September, 1962 Mobil approached Pipe Lines ... about service at Bradshaw Road. Mobil and Pipe Lines entered into an agreement ... to construct storage facilities ... at Bradshaw Road ...."

In the instant proceeding SPPL avers that, subsequent to the submission of Case No. 7539, et al. (Decision No. 66695) in May 1963, a series of events transpired which made it imperative that respondent lower its local rates in order to insure continued participation in the refined petroleum traffic via its north line:

1. Proprietary Competition. The president of SPPL explained that the paramount consideration which motivated respondent to reduce its rates to Stockton and Bradshaw Road was concern over the direct threat of proprietary pipeline competition. SPPL testimony indicates that in October 1963, Standard Oil Company announced plans

for modifying its proprietary barge operation and for laying its own private pipeline from its Richmond refinery to serve oil terminals at Avon, Sacramento, Stockton (Banta) and San Jose. In January 1964, SPPL states it was informed by Shell Oil Company that it also was studying the feasibility of constructing a proprietary pipeline system to serve Oakland, San Francisco and San Jose marketing areas. SPPL understood that this latter proposal was to be built either on a joint-venture basis with Tidewater Oil Company and Union Oil Company or exclusively by Shell Oil Company. In July 1964, SPPL was assertedly informed of Shell Oil Company's decision to construct its own private pipeline system. Again in April 1965, SPPL's president testified he was informed of Shell Oil Company's projected studies relative to the feasibility of expanding its pipeline to Sacramento and Stockton.

Finally, SPPL states that plans for construction of a new refinery in the Hercules-Rodeo area were announced in January 1965. This refinery, though independently operated as the Sequoia Refinery, will service the Wilshire (Gulf) Oil Company. Completion date for this refinery is to be January 1967, with storage facilities available during the summer of 1966 capable of receiving refined petroleum shipments via water carriers until such time as the refinery proper is completed.

SPPL avers that it made every effort to dissuade Standard Oil Company from going ahead with its plans to construct a proprietary pipeline, in lieu of its existing proprietary barge facilities, and alternatively to persuade it to use the commercial facilities of SPPL to Sacramento in the same manner as currently employed to Chico, Reno and other nonrelated military traffic. Respondent explains it offered Standard Oil Company reduced rates per barrel of 4 cents to Avon, 6 cents to San Jose, 7 cents to Sacramento and 6 cents to

Stockton, plus tariff loss allowance. This offer, according to SPPL testimony, was rejected by Standard Oil Company with the explanation that it could justify its own pipeline due to the substantial traffic volume and, by capitalizing on its lines, obtain a competitive advantage. Respondent states it countered the rejection of its initial suggested rate reduction with a proposal of still lower rates per barrel to San Jose and Stockton of 5 cents, and 6 cents to Sacramento. This second offer by SPPL was assertedly also rejected by Standard Oil Company with the explanation that its proprietary pipeline cost estimates were still lower. According to the record, like rate negotiations were conducted with Shell Oil Company and were similarly unsuccessful.

The present status of the aforementioned proprietary pipelines is, according to SPPL testimony, as follows:

A. Standard Oil Company proprietary pipeline is 100 percent complete (Exhibit No. 2). Terminal tankage and related facilities are virtually completed.

B. Shell Oil Company pipeline (Exhibit No. 2) is currently under construction, with date of completion estimated at early 1966. Shell Oil Company is using SPPL's San Jose terminal on an agreed interim basis.

C. Threat of a third joint-venture proprietary pipeline system by major oil companies, currently customers of SPPL, is of growing concern to SPPL.

2. Respondent's Sought Increase in Traffic. It is estimated that the challenged rates will result in an increase of SPPL commercial traffic to Stockton of 1,075,000 barrels and to Bradshaw Road of 2,072,800 barrels per year. Such traffic will be generated largely from a like diversion of barge transportation currently enjoyed by competing barge operators.[3]

[3] The Stockton traffic will be diverted to SPPL by Richfield Oil Corporation and Signal Oil and Gas Company. The Sacramento diversion to SPPL will be by Texaco, Inc., Wilshire (Gulf) Oil Company and Richfield Oil Corporation. SPPL is currently receiving approximately 50,000 barrels per month additional traffic to Chico from Shell Oil Co., recently diverted from River Lines.

3. Maximizing SPPL Operations. The record discloses that respondent's north line is not operating at maximum capacity. No substantial additional capital is deemed required to transport the anticipated increase in traffic volume. Since fixed and other general overhead expenses do not vary in direct ratio with changes in units of production (especially when unused plant capacity or facilities are available) SPPL concludes that the contemplated additional traffic will enable it to maximize its net revenue return on capital expenditure while, at the same time, sharing with its customers transportation cost savings realized from greater utilization of existing pipeline facilities.

4. Reasonableness of Suspended Rates. Respondent argues that its out-of-pocket (variable) costs are the relevant cost factors for rate determination rather than fully distributed costs. The resulting rates must, of course, be reasonable and sufficient. To this end, respondent presented factual evidence, with supporting testimony, relative to both the out-of-pocket and fully distributed expenses of SPPL under the suspended rates and anticipated increased traffic volume. A summary of this cost evidence is set forth below:

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TABLE III

SOUTHERN PACIFIC PIPE LINES, INC.,
Revenues and estimated out-of-pocket
and fully distributed expenses for
handling refined petroleum from
San Francisco Bay Area Refineries and
Oil Terminals to Stockton and Bradshaw Road

	To Stockton (In Cents Per Barrel)			To Bradshaw Road (In Cents Per Barrel)		
	(1)	(2)	(3)	(1)	(2)	(3)
Transportation Charges	8.5	6.5	6.5	10.5	8.5	8.5
Loss Allowance Revenue	1.3	1.3	1.3	1.3	1.3	1.3
Total Gross Revenue	9.8	7.8	7.8	11.8	9.8	9.8
Average Estimated Expenses	4.7	3.6	6.1	4.4	3.6	7.4
Contribution Above Expenses	5.1	4.2	1.7	7.4	6.2	2.4

(1) Revenues and estimated out-of-pocket costs under existing rates and traffic volume for 12 months ending June 1965.

(2) Revenues and estimated out-of-pocket costs under proposed rates and projected traffic volume.

(3) Revenues and estimated fully distributed expenses under proposed rates and projected traffic volume.

SPPL contends that the above cost development clearly demonstrates that its challenged rates are reasonable. In an effort to show that these rates were also sufficient, respondent developed the increased contribution to fixed and other overhead expenses, including the profit anticipated under the SPPL challenged rates. This is summarized in the following table:

TABLE IV

SOUTHERN PACIFIC PIPE LINES, INC.,
Contribution to overhead expenses and
profit under present and projected operations

	Stockton (In Cents	Bradshaw Road Per Barrel)	Total (In Dollars)
Present			
Tariff Rate Plus Loss Allowance	9.8	11.8	-
Out-of-Pocket Costs	4.7	4.4	-
Net	5.1	7.4	-
Volume (Barrels) of Traffic ..	845,413	780,649	-
Contribution to Overhead and Profit (In Dollars)	$ 43,116	$ 57,768	$100,884
Projected			
Tariff Rate Plus Loss Allowance	7.8	9.8	-
Out-of-Pocket Costs	3.6	3.6	-
Net	4.2	6.2	-
Volume (Barrels) of Traffic ..	1,920,413	2,853,449	-
Contribution to Overhead and Profit (In Dollars)	$ 80,657	$176,914	$257,571
Net Increased Contribution to Overhead and Profit ..	$ 37,541	$119,146	$156,687

Although the challenged rates were published primarily as a defensive measure against the imminent threat of proprietary competition, SPPL argues that its net revenue position will be significantly improved, as indicated in Table IV above, as a result of its efforts to maximize operations.

5. Industry Support for Suspended Rates. Several representatives of the petroleum industry, currently not affiliated with a proprietary pipeline system within the SPPL north line network, presented testimony in support of respondent's challenged rates.[4]

4 Testimony on behalf of respondent was presented by (1) Texaco, Inc.; (2) Richfield Oil Corporation; (3) Tidewater Oil Company; (4) Mobil Oil Company; (5) Union Oil Company; (6) Wilshire (Gulf) Oil Company.

Their collective testimony was assertedly based on similar circumstances, although not necessarily to the same degree in each instance. All were connected to SPPL's north line at San Jose, Chico and Reno, except Mobil Oil Co. (Stockton and Bradshaw Road) and Wilshire (Gulf) Oil Co. (Stockton). The Stockton and Sacramento terminals of these oil companies, except Mobil Oil Co. and Wilshire (Gulf) Oil Co., as indicated above, are presently served by barge carriers.

The oil companies expressed a keen interest in the possibility of lowering their distribution costs at Stockton and Sacramento. Their major concern was over the possibility that they were no longer competitive with Standard Oil Company's proprietary pipeline distribution system in the Stockton and Sacramento marketing areas. This apprehension was not predicated upon a factual knowledge of Standard Oil Company's pipeline distribution costs, but rather upon a managerial conclusion that a competing oil company would not divert substantial sums of its capital into a proprietary pipeline from an existing proprietary barge operation, unless a significant reduction in transportation and distribution costs was reasonably assured.

Certain of the oil companies presented testimony as to the necessity of relocating their present Sacramento waterfront terminals because they were being condemned by the State in order to make space available for projected highway construction. Other SPPL customers' testimony referred to an asserted inadequacy in their existing Sacramento waterfront terminals. Alternative waterfront sites were allegedly deemed less desirable than SPPL's Bradshaw Road station. In this connection, other oil company testimony explained that at times it was not possible to take advantage of the competitive volume barge rates due to the oil company's inability to meet

the minimum tender of 24,000 barrels; whereas via SPPL the same rates are subject to a minimum tender of only 5,000 barrels.

Shipper testimony in support of respondent's challenged rates also expressed the opinion that pipeline transportation, in addition to rendering excellent service, requires less terminal personnel.

Position of The River Lines, Inc.

River Lines is a common carrier transporting bulk petroleum products via barge, for both commercial and military accounts, on San Francisco Bay and the Sacramento and San Joaquin Rivers and their tributaries. The transportation of petroleum products assertedly amounts to approximately 70 percent of River Lines' total traffic. It also transports general commodities (dry cargo) and performs a towing service.

Since the existing pipeline rates of SPPL to Chico, Stockton and Sacramento became effective, River Lines contends that it has lost 4,331,579 barrels of petroleum traffic, including 1,602,538 barrels of military traffic, to the pipeline (Exhibit No. 35). Should the challenged pipeline rates be permitted to go into effect, the president of River Lines stated that competing water carriers will soon be driven out of business. River Lines further argues that SPPL's proposed rate reduction represents a predatory effort to eliminate respondent's principal competitor. The predatory nature of the reduced rates is allegedly established by the fact that the rates are below the level of fully distributed costs and limited to points served by River Lines.

In reply, respondent notes that, in contrast to the prior proceeding (Decision No. 66695) wherein three barge carriers protested the rates of SPPL, the instant rates are challenged only by River Lines. SPPL further argues that River Lines enjoys traffic

of several petroleum companies at Sacramento which, at this time, are not definitely committed to the utilization of SPPL pipeline service at Bradshaw Road. Such traffic, respondent avers, is not included in the estimate of increased traffic volume upon which the contested rates are premised.[5]

SPPL contends it has not singled out the market areas served by River Lines, but has endeavored to reduce rates to all markets considered to be within the competitive sphere of influence of Standard Oil Company's proprietary pipeline distribution centers at Sacramento and Stockton, which includes a 2 cents per barrel reduction in rates at Chico and 5 cents per barrel reduction in rates to Reno, Nevada.[6]

River Lines presented statistical and financial evidence relative to the effects upon its overall revenue position of (1) the diversion of Shell Oil Company traffic at Colusa to SPPL via the latter's terminal at Chico and (2) the anticipated revenue loss should River Lines elect to make a comparable 2-cent reduction in its oil barge rates in the event the challenged pipeline rates become effective. River Lines' financial projections are predicated upon the results of operations for the 12-month period ending December 31, 1964 and are summarized below:

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5 The record indicates that River Lines presently enjoys the traffic of Time Oil Co., Shell Oil Co., Tidewater Oil Co., Union Oil Co. and Signal Oil & Gas Co. at Sacramento (Tr. 277).

6 SPPL also avers that it has reduced its rates from El Paso, Texas and Los Angeles, California to Tucson and Phoenix, Arizona by 14 cents per barrel.

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TABLE V

THE RIVER LINES, INC.,
Income and Expense Statement
For Year Ended December 31, 1964

	Oil Barges	Dry Cargo Other	Total
Operating Revenues	$1,073,858	$470,418	$1,544,276
Operating Expenses	841,848	494,419	1,336,267
Operating Profit (Loss)	232,010	(24,001)	208,009
Other Income	-	-	80,183
Net Profit Before Taxes	-	-	288,192
Income Taxes	-	-	96,022
Net Income	-	-	192,170
Earned Surplus, Jan. 1, 1964	-	-	981,684
Net Income, 1964	-	192,170	
Miscellaneous Credits	-	51	
Less Cash Dividend	-	54,878	137,343
Earned Surplus, Dec. 31, 1964			1,119,027

The record shows that commencing with the fiscal period ending December 31, 1962, through the like fiscal period ending December 31, 1964, River Lines increased its earned surplus by $215,526, from $903,501 to $1,119,027 and net assets from $2,308,337 to $2,448,610. While respondent endeavored to show that River Lines actually improved its revenue position under existing reduced pipeline and oil barge volume rates to Sacramento and Stockton, River Lines countered with statistical evidence which indicates such revenue growth was at a decreasing rate, presumably due to pipeline competition.

River Lines also presented statistical evidence concerning the actual volume of refined petroleum products it transported for the years 1963 and 1964, including the first six months of 1965, which is allegedly affected by SPPL (Exhibit No. 36). For the year 1964 the exhibit indicates River Lines moved 7,148,332 barrels of

refined petroleum, all transported to the Sacramento commercial market area (including approximately 800,000 barrels destined to Colusa which since 1964 has been diverted to SPPL). In this connection, it is to be noted that the challenged rates of SPPL are expected to generate additional commercial traffic to Stockton and Sacramento (Bradshaw Road) of 1,075,000 and 2,072,800 barrels per year, respectively, which will be diverted from other barge carriers in addition to River Lines.

A summary of River Lines' results of operations for the year 1964, projected to reflect the effects of the Colusa diversion of traffic, cost increases and a 2 cents per barrel rate reduction at Sacramento to meet the competitive rates of respondent, is hereinafter set forth:

TABLE VI

THE RIVER LINES, INC.,
Projected results of operations
after giving effect to Colusa traffic
diversion, cost increases and a
competitive rate reduction at Sacramento

	Colusa Diversion at Present Rates	Colusa Diversion Meeting Reduced Sacramento Rate
Oil Barge Revenues	$923,209	$795,625
Oil Barge Expenses	768,398	768,398
Net Income, Oil Barges	154,811	27,227
Net Income (Loss), Dry Cargo	(24,001)	(24,001)
Increased Labor Costs, 1965		
Dry Cargo Operation	(9,500)	(9,500)
Net Income (Loss)	121,310	(6,274)
Income Taxes	53,500	-
Net After Taxes	67,810	(6,274)

Tables V and VI above indicate that River Lines anticipates a reduction in its net operating income from its oil barge operations from $232,010 in 1964 to a projected future income of only $27,227. In addition, estimated reduced oil barge net

operating income will not be sufficient to offset the asserted River Lines net operating deficit experienced from its dry cargo barge and other services.

Respondent argues on brief that the overall projected deficit calculations of River Lines are misleading for several reasons. First, River Lines' overall net operating deficit will be attributable solely to unprofitable dry cargo operations. Second, the net operating deficit of $24,001 from dry cargo and related operations includes the results of River Lines' general towing service, which the record discloses earned a net operating profit before taxes of approximately $28,000 for the year 1964 (Tr. 317). SPPL concludes, therefore, that the actual net loss from River Lines' dry cargo operations is in excess of $60,000. Third, SPPL further argues that the projected net income from the oil barge operations in Exhibit No. 39 is grossly understated, due to the fact that River Lines failed to give adequate recognition to the reduction in operating costs which will presumably come about by reason of its loss of approximately 800,000 barrels of commercial traffic to Colusa. River Lines' Exhibit No. 39 indicates an elimination of Colusa barge operating costs in the amount of $90,250. The record discloses, however, that this amount reflects only the cost of operating the barges on the upper river, north of Sacramento to Colusa. SPPL argues that if the operating expenses for the San Francisco Bay Area-Sacramento portion of the Colusa traffic were given recognition, the projected net income from River Lines' oil barge traffic would be approximately $90,000, not $27,227, and the overall net income position of the barge line depicted on Exhibit No. 40 would be in excess of $50,000, in lieu of a net loss before taxes of $6,274.

Discussion

Basically, the provisions of the Code primarily involved herein are contained in Sections 451, 452 and 726 and, together with the various other statutory provisions cited by River Lines, are interrelated.

Section 451 requires all common carrier rates to be just and reasonable. Except as provided in Section 452, common carriers may and should in the exercise of managerial discretion establish rates that lie within an elastic "zone of reasonableness." This expression "imports a rate which is confined in its maximum to a figure not so excessive as to be greater than the particular traffic will bear, and in its minimum not so low that it will be destructive of the business of the common carrier, or that it will not return to the carrier at least the actual cost of transportation." (S.P.Co. vs. Railroad Commission, 13 Cal. 2d 89, 96.) Abutting the two boundaries of the "zone of reasonableness" we have then, a "maximum" and a "minimum" reasonable rate.

There is no argument that the suspended rates are less than maximum reasonable rates. SPPL argues, however, that the reduced rates are reasonable and fully compensatory, in excess of both the out-of-pocket and fully distributed costs. The River Lines, argues that the suspended rates have not been shown to be within the zone of reasonableness since such rates, at current traffic volume, do not exceed fully distributed costs. Respondent concedes that rates were made on the assumption they would become fully compensatory by diverting additional traffic from barge carriers (Tr. 90). River Lines further argues that "where, as here, the oil companies have been marketing their products successfully, where traffic has been moving freely under existing rates and

consists of high-grade refined petroleum products able to pay their way and where .... the carrier has lost no traffic and is prosperous and successful, a rate is not reasonable unless it exceeds fully distributed costs. (Investigation of Rates on Petroleum, 40 C.R.C. 221) ...." The facts, however, do not support this argument of River Lines.

One answer to the question of whether the suspended rates are unreasonably low turns upon a determination of whether such rates will or will not burden other traffic. The only cost information on this was developed by the respondent and it clearly shows that the suspended rates are above out-of-pocket costs under present traffic volume, and that if the challenged rates become effective, respondent may reasonably anticipate an increase of some 3,000,000 barrels of refined petroleum traffic per year. The record further shows that whatever additional traffic SPPL receives, the challenged rates would return out-of-pocket costs plus a contribution toward fixed and overhead expenses. Should SPPL's estimates of increased traffic volume fully materialize--and the record strongly indicates such would be the case--the suspended rates would more than cover fully distributed costs. Under such circumstances, it cannot be said that the suspended rates will add to the burden borne by other traffic of respondent, but, on the contrary, they would tend to lighten the overall cost burden. (Investigation of Rates on Cement, 42 C.R.C. 92; Rates on Canned Goods, 49 Cal. P.U.C. 763.)

We now direct our attention to the question whether the suspended rates, being within a "zone of reasonableness" and lower than "maximum reasonable rates", comply with the additional requirements set forth in Section 452 of the Public Utilities Code.

Except under certain prescribed conditions, the practical effect of Section 452 is to prohibit the establishment by a common

carrier of any rate lower than the maximum reasonable rate. These conditions are (1) where the "needs of commerce or public interest require" a rate below the maximum level; (2) where such a rate is necessary to meet the competitive charges of other carriers or the cost of other means of transportation and the proposed rates are not less than the charges of competing carriers or the cost of transportation which might be incurred through other means; and (3) where such a rate is less than the charges of competing carriers or the cost of other means of transportation and is found by the Commission to be justified by transportation conditions. (Maximum-Minimum Rates--Carriers, 44 C.R.C. 108, 115-116 and Alcoholic Liquors, 43 C.R.C. 25.)

In Decision No. 66695 we stated that: "If Pipe Lines can attract business away from the barge lines with reasonable and sufficient rates which are lower than those of the barge lines, this may be an indication that the particular barge transportation involved has become outmoded and obsolete." The above statement stems from a similar reference contained in Southern Pacific v. Railroad Com. (13 Cal. 2d 89, 103-104), which reads as follows:

> "Rail carriers, truck carriers and water carriers now dominate and control the field of such business activity. Possibly within the comparatively near future another or other means of transportation may be evolved and developed, and in their respective operations the existence of the several agencies that represent present means of transportation may be seriously threatened or their destruction actually accomplished. They may be outmoded and become obsolete.... In other words, when the fact has been clearly established that by practical, efficient and satisfactory methods a financially reliable common carrier is not only ready, willing and able to lower the prevailing rate for freight transportation to a rate that is shown by the evidence to be not only within the limits of the 'zone of reasonableness', but also that the proposed rate will yield a net profit--in its zeal to perform its conceived duty in the premises, the concern of the commission should not extend to the limit of 'holding an umbrella' over either present or possibly future competitors, and thereupon, and by reason of its anxiety, in the interest of such competitors, deny the application to reduce the existing rate,

lest by reason of their inability to meet such rate the said competitors be eliminated from the field of transportation, to the seeming detriment of the public interest."

In the instant proceeding it is clear the needs of commerce require the suspended rates and that they will ultimately redound to the benefit of the general public. The challenged rates will enhance the quality of competitive opportunity between those oil companies, currently customers of SPPL and the barge operators, who expressed concern over the possible competitive advantage achieved by those petroleum companies operating proprietary pipelines. This is particularly true in wholesale marketing controlled by competitive bidding.

The question also arises as to whether the suspended rates should be found "justified by transportation conditions."

> "It is manifestly not the legislative intent that the Commission should 'hold an umbrella' over any form of transport--that it should prevent one form of transport from establishing 'the lowest lawful rates' merely because other forms of transport would suffer thereby." (Alcoholic Liquors, 43 C.R.C. 25.)

Respondent states that the suspended rates were not motivated by any desire to injure River Lines as a competitor, but rather resulted from (1) an imperative need to protect SPPL's present and future pipeline business; (2) a desire to improve its present and future net revenues; and (3) the urging of its petroleum customers.

We are persuaded that respondent's and its customers' concern over the proprietary pipeline competition is real and not a fancied or phantom fear as argued by River Lines. While carriers may not lawfully destroy competition by reducing rates to meet fancied competition which might never occur--"They are not, however,

forced to wait until competition is actually in operation and the traffic lost to them, perhaps permanently" (Cement Rates, 39 C.R.C. 498, 507-508). The facts simply do not support the argument that the asserted threat of proprietary pipeline competition is unreal or fancied.

River Lines' projected financial and statistical evidence clearly shows that it can meet the suspended rates of SPPL. It is not clear on the record, however, why River Lines with its profitable oil barge traffic sustains losses under its so-called dry cargo barge operations. In any event the testimony and financial data presented by River Lines relative to the operating profit and loss experienced under their towing services and so-called dry cargo barge traffic, respectively, while informative as to the overall results of operations of the barge carrier, is not determinative of the specific issues involved herein.

Respondent's evidence that its offer of rates lower than those here under suspension was repeatedly rejected by the oil companies, with the alleged explanation that their proprietary pipeline costs were still lower, implies that the suspended rates may be higher than the cost incurred through "other means of transportation." As previously indicated herein, under such circumstances Section 452 does not require a showing and a finding by the Commission that the suspended rates are "justified by transportation conditions." Even if we assume that the suspended rates are, without question, less than "the cost of transportation which might be incurred through other means of transportation", would the assailed rates still be "justified by transportation conditions"? It is clear from the record that an affirmative response is inescapable.

"Whether a proposed or an already established and maintained rate is 'justified by transportation conditions' is largely determinable by the existence of the preliminary fact of whether it will or does return to the carrier its costs of transportation." (Southern Pacific Co. v. Railroad Com. supra, at page 106.)

At the hearing the presiding Examiner limited the presentation of evidence relating to respondent's charges applicable to its military traffic and for so-called terminal services to the same extent found proper in the prior proceeding.[7] The Examiner's consistent ruling in the instant proceeding was also correct. However, River Lines now argues that the charges assessed by SPPL for its so-called terminal services should, under the provisions of Section 487 of the Code, be published in its tariffs. Respondent, on the other hand, contends that the storage and handling services it performs at Chico and Bradshaw Road are, in fact, warehousing specifically exempted from economic regulation by this Commission pursuant to Section 239(a). (Decision No.66695,62 Cal.P.U.C.238,249-250.) The record discloses that services are performed by both SPPL and River Lines, charges for which are not published in their tariffs. Whether such services are performed by SPPL and River Lines in the capacity of warehousemen, specifically exempted from regulation under Section 239(a), or as common carriers subject to the tariff filing requirements of Section 487, cannot be determined from the record in the instant proceeding. Moreover, it is not necessary to reach such a determination here in order to resolve the specific issues before us. Should the parties or the Commission subsequently

7 In Decision No. 66695 (64 Cal. P.U.C. 238, 255) the Commission found that "the services performed by Pipe Lines in connection with its military contracts are not comparable to the services furnished under Pipe Lines' commercial rates, and that comparisons between the two rates are not instructive."

deem it essential that the status of their so-called terminal services be clarified, ample procedural avenues are available to obtain such objective.

Pursuant to Section 726 of the Public Utilities Code, the Commission is required, in any rate proceeding involving the rates of more than one type or class of carrier, to fix as minimum rates applicable to all such types or classes of carriers, the lowest of such lawful rates determined for any such type or class of carrier. (Southern Pacific Co. v. Railroad Com., 13 Cal.2d 89, 100-101.) To the extent, therefore, that bulk refined petroleum rates lower than the existing rates are found to be lawful and authorized herein for common carrier pipeline service, similar permissive authority should be granted to competing common carriers by water for like barge transportation.

The evidence fails to establish that competing common carriers by water are entitled to relief under Section 727 of the Public Utilities Code. (River Lines v. Pub. Ut. Comm., 62 Cal.2d 244.)

Findings and Conclusions

The Commission finds that the Southern Pacific Pipe Lines, Inc. rates named in its Local Pipe Lines Tariff No. 6-B, currently under suspension, have been shown to be compensatory, will not burden other traffic, and are just, reasonable and sufficient rates justified by transportation conditions.

The Commission concludes that the suspension of rates ordered by the Commission on June 15, 1965, by Decision No. 69250, and extended by order dated October 5, 1965, should be vacated, and that competing common carriers by water should be authorized to establish the same rates.

C.8191 NB *

O R D E R

IT IS ORDERED that:

1. The order of suspension in this proceeding is hereby vacated.

2. In the establishment of the rates here involved, respondent shall file a vacating supplement to Southern Pacific Pipe Lines, Inc., Local Pipe Lines Tariff No. 6-B to make said rates effective not earlier than the effective date of this order.

3. The rates herein found to be lawful for transportation via common carrier pipeline are hereby also authorized to be established by competing common carriers by water, said rates to become effective not earlier than the effective date of this order.

4. The investigation in Case No. 8191 is hereby discontinued.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 24th day of MARCH, 1966.

Frederick B. Holoboff
President

George G. Grover

Augustus

William M. Bennett
Commissioners

I will file a dissent.
Peter E. Mitchell

COMMISSIONER PETER E. MITCHELL DISSENTING:

"If Pipe Lines can attract business away from the barge lines with reasonable and sufficient rates which are lower than those of the barge lines, this may be an indication that the particular barge transportation involved has become outmoded and obsolete."

The above citation has been advanced twice by the majority as its justification for the gradual extinguishment of common carrier waterborne transportation in the State of California (Decision No. 66695; Decision No. 70508). I suggest that if total competition is the goal and the lowest possible rate the index of achievement, the California Public Utilities Commission has isolated itself from regulation in transportation and substituted instead the law of the market place. Acceptance of the philosophy of the majority would presage the "survival of the fittest" of one common carrier in its class in the State of California. All other common carriers would necessarily be outmoded and obsolete.

In 1911, the people of the State of California voted to create the present Public Utilities Commission "to protect the people of the State from the consequences of destructive competition and monopoly in the public service industries." (Sale v. Railroad Commission 15 C2 & 612). The Legislature conferred additional powers on the Commission not inconsistent with the powers established by the Constitution. Specifically, the Legislature

has made known its preference for the protection of water carriers (Part 1, Article 1, Section 2). There can be no doubt that this Commission was designated a guardian for the protection of water carriers operating under regulation (Section 726, last part; 727; 731).

> Section 726 of the Public Utilities Act concludes:
> "This provision does not prevent the commission from granting to carriers by water such differentials in rates as are permitted under other provisions of law."
>
> Section 727 of the Public Utilities Act defines:
> "...... the policy of the State that the use of all waterways, parts, and harbors of this State shall be encouraged, and to that end the commission is directed in the establishment of rates for water carriers applying to business moving between points within this State to fix those rates at such a differential under the rates of competing land carriers that the water carriers shall be able fairly to compete for such business."
>
> Section 731 of the Public Utilities Act states:
> "When in the judgment of the commission a differential is necessary to preserve equality of competitive transportation conditions a reasonable differential between rates of common car-

riers by rail and water for the transportation of property may be maintained by such carriers and the commission may by order require the establishment of such rates."

Further confirmation of our mandate from the Legislature to affirm the rights of water carriers was echoed by the Supreme Court in a matter involving the same two litigants herein:

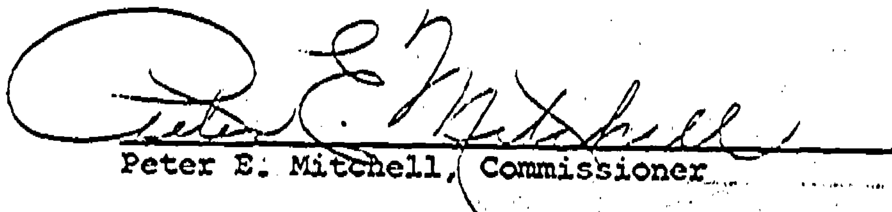
"Moreover, statutes are to be interpreted to give a reasonable result consistent with the legislative purpose (Kusior v. Silver (1960) 54 Cal 2d 603, 620) and in furtherance of the purpose of the sections to regulate competition, a pipe line should be subject to the statutory regulation when it competes with other carriers." (River Lines v. Pub. Ut. Comm. 62 Cal 2d 244)

Nor do the statutes intend a competitor to siphon away the business of a water carrier by destructive rate reductions.

When will the majority heed the voice of the Legislature and the Supreme Court? Southern Pacific Pipe Lines, Inc., has reduced its rates to where even it is unable to show a reasonable rate of return on its haul of petroleum products to Sacramento and to Stockton. Must The River Lines, Inc., become financially destitute and unable to maintain subnormal rates with its competitor before the majority grants relief? The River Lines, Inc., will then be forced to abandon its operations. And so, its competitor,

Southern Pacific Pipe Lines, Inc., may reverse the procedure and file for an increase in rates and receive out-of-pocket costs, overhead, and a reasonable rate of return.

It is interesting to observe that the Commission was content to have The River Lines, Inc., provide essential service to Sacramento and Stockton prior to the advent of Southern Pacific Pipe Lines, Inc. But now that its very existence is threatened by not one but two rate reductions of Southern Pacific Pipe Lines, Inc., all considerations except price are obliterated. The majority substitutes a mathematical calculation in lieu of the responsibility of regulation. Formulas and hypotheses are only instruments of a regulator to achieve the needs of the community. They are not the end in themselves.



Peter E. Mitchell, Commissioner

San Francisco, California

April 11, 1966