

BEM

Decision No. 73520

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application for authority to make effective increases in local and joint rail and joint rail-highway freight rates and charges.

Application No. 49493  
(Filed June 23, 1967,  
Amended August 14, 1967)

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432  
(Order Setting Hearing  
Dated August 29, 1967)

And related matters.

Cases Nos. 5330, 5433, 5435,  
5436, 5437, 5438, 5439, 5440,  
5441, 5603, 5604, 7857, 7858

(Appearances are listed in Appendix A)

O P I N I O N

These matters were heard September 15 and 18, 1967 before Examiner Thompson at San Francisco and were submitted. Copies of the application and notice of hearing were served in accordance with the Commission's procedural rules.

Pacific Southcoast Freight Bureau, on behalf of carriers participating in its tariffs, seeks authority to increase local and joint all-rail and joint rail-highway freight rates and charges applicable to California intrastate transportation, except those rates which have historically been maintained at levels of the minimum rates prescribed by the Commission for highway carriers. The amount of the sought increases are set forth in Exhibit 1 and

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are the same as those authorized by the Interstate Commerce Commission for the interstate transportation of property within Western Territory. They are commonly known as the Ex Parte 256 increases.

Protests were made to the proposed increases in rates on sugar and to the proposed increases in rates on rock, sand and gravel.

On August 29, 1967 the Commission ordered that hearing be held in the several minimum rate cases concurrently with hearings in Application No. 49493 for the purpose of determining whether common carriers maintaining, under outstanding authorizations permitting the alternative use of rail rates, rates below the specific minimum rate levels otherwise applicable should be authorized and directed to increase such rates to the level of the rail rates that may be authorized herein, or to the level of the specific minimum rates, whichever is the lower, and to cancel such rates in the event competitive rail rates are no longer published in rail tariffs.

The last general increase in California intrastate railroad rates was authorized February 7, 1961, by Decision No. 61440 (unreported) in Application No. 42837. The presentation by applicant is very much the same as that made by it in Application No. 42837 and in a prior general rate increase proceeding (Application No. 38557, 57 Cal. P.U.C. 117).

The four major railroads operating in California are: Southern Pacific Company (S.P.), The Atchison, Topeka and Santa Fe Railway Company (A.T.S.F.), Western Pacific Railroad Company (W.P.) and Union Pacific Railroad Company (U.P.). These four railroads and their subsidiaries received 97 percent of all California

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railroad intrastate freight revenues in 1966 (Exhibit 79). Applicant presented general balance sheet statements, profit and loss statements, and estimates of revenues, expenses and net railway operating income for California intrastate traffic for the year 1966 adjusted as of July 1, 1967, with allowance for application of the sought increases, for each of the four major lines and each of their respective subsidiaries. The estimates of California intrastate revenues and expenses were made pursuant to procedures described in Decision No. 61440 in Application No. 42837 (57 Cal. P.U.C. 117). To that extent said estimates are subject to the same infirmities mentioned in said decision. The estimated results of California intrastate freight operations of the major railroads and their subsidiaries are set forth in Table I below:

TABLE I  
 ESTIMATED FREIGHT REVENUES, EXPENSES  
 AND NET RAILWAY OPERATING INCOME 1/  
 ATTRIBUTABLE TO  
 CALIFORNIA INTRASTATE TRAFFIC FOR YEAR 1966  
 ADJUSTED TO JULY 1, 1967  
WITH ALLOWANCE FOR APPLICATION OF SOUGHT INCREASES

	<u>Revenues</u>	<u>Expenses <u>1/</u></u>	<u>Net Railway Operating Income <u>1/</u></u>
1. Southern Pacific Company	\$ 61,477,000	\$ 68,086,000	(\$ 6,609,000)
2. The Atchison, Topeka and Santa Fe Railway Company	18,271,000	19,674,000	( 1,403,000)
3. Northwestern Pacific Railroad Company	4,099,000	5,247,000	( 1,148,000)
4. Western Pacific Railroad Company	2,503,000	3,239,000	( 736,000)
5. Union Pacific Railroad Company	1,775,000	1,404,000	371,000
6. San Diego and Arizona Eastern Railway Company	1,030,000	907,000	123,000
7. Sacramento Northern Railway Company	423,000	617,000	( 194,000)
8. Sunset Railway Company	153,000	179,000	( 26,000)
9. Central California Traction Company	141,000	322,000	( 181,000)
10. Holton Inter-Urban Railway Company	125,000	135,000	( 10,000)
11. Tidewater Southern Railway Company	32,000	89,000	( 57,000)
12. Petaluma and Santa Rosa Railroad Company	28,000	28,000	-
13. Visalia Electric Railroad Company	2,000	1,000	1,000
Total	<u>\$ 90,059,000</u>	<u>\$ 99,928,000</u>	<u>(\$ 9,869,000)</u>

( ) - Indicates red figures.

1/ - Does not include State or Federal Taxes.

The principal increases in operating expenses have been in payroll, payroll taxes, employee benefits, fuel and material. Applicant presented estimates of those increases incurred by the four major railroads since 1960. Those estimates are shown in Table II below:

TABLE II  
 SUMMARY OF  
 ESTIMATED FUEL AND MATERIAL INCREASES,  
 PAYROLL, PAYROLL TAXES AND HEALTH AND  
 WELFARE BENEFIT INCREASES  
 APPLICABLE TO CALIFORNIA INTRASTATE FREIGHT TRAFFIC  
 (BASED ON JUNE 1967 EMPLOYMENT LEVEL)  
 FROM JUNE 1960 TO JUNE 1967

<u>Railroad</u>	<u>Increases in Expense</u>	
	<u>System</u>	<u>California Intrastate</u>
Southern Pacific Company	\$106,232,000	\$ 9,508,000
The Atchison Topeka & Santa Fe	89,995,000	2,847,000
Union Pacific Railroad	76,528,650	220,390
Western Pacific Railroad	<u>6,779,182</u>	<u>387,878</u>
Total	\$279,534,832	\$12,963,268

In addition to the foregoing, depreciation expense has been rising steadily as a result of the higher cost of additions and betterments and the resulting increased depreciation base. The railroads also have experienced increases in equipment rentals paid to companies other than railroads.

Protestants did not contend that increases in rates are not warranted. They were concerned with the form of the proposed increases on sugar and on sand, rock and gravel. The increases on sugar authorized for interstate commerce are 1 cent per 100 pounds on rates 30 cents per 100 pounds or less, 2 cents per 100 pounds on rates over 30 cents to and including 50 cents per 100 pounds, and

3 cents per 100 pounds on rates over 50 cents per 100 pounds, except that from, to and within Western Territory (which generally includes the area west of the Mississippi River) the increase shall be 3 cents per 100 pounds. According to protestants, the uniform increase of 3 cents was specified at their request so that the increase would not disrupt historical relationships of rates among the western manufacturers which, according to them, are necessary for marketing.

California & Hawaiian Sugar Co., American Crystal Sugar Co., Union Sugar Co., Holly Sugar Co., and Coca-Cola Company (a large consumer), contend that while the uniform increase of 3 cents per 100 pounds is appropriate for interstate movements because of the long hauls involved, it is too high for California intrastate movements where the highest rate between any points where sugar is moved by rail in volume is  $43\frac{1}{2}$  cents. They urge that a uniform increase not to exceed  $1\frac{1}{2}$  cents per 100 pounds be made applicable to California sugar traffic.

Spreckels Sugar Co. does not join with the other protestants. It urges that the increases be established in a form similar to those applicable in the United States other than Western Territory. It suggests a scale of increases per 100 pounds of  $1/2$  cent for rates not exceeding 20 cents, 1 cent for rates over 20 but not over 35 cents, 2 cents for rates over 35 but not over 50 cents, and 3 cents for rates over 50 cents. Spreckels contends that a uniform increase is not necessary for California intrastate sugar movements.

Granite Rock Company protests the graduated scale of increases proposed by applicant for sand, rock and gravel and urges that there be a uniform increase in rates per ton. The increases in cents per ton proposed by applicant are 3 cents on rates of \$1.00

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or less, 6 cents on rates over \$1.00 but not over \$2.00, 10 cents on rates over \$2.00 but not over \$3.50, 15 cents on rates over \$3.50 but not over \$5.00, and 20 cents on rates over \$5.00.

Protestant asserts that the graduated scale of increases would increase the differential in rates favoring its Livermore competitors by 3 cents per ton which could result in it being completely closed out of the San Francisco Bay area markets north of San Jose.

Granite's plant is located at Logan which is on the main line of the Southern Pacific Company between Gilroy and Watsonville. Its present rate to the Bay Area markets is \$1.30 per ton, and its Livermore competitors enjoy a rate of 80 cents per ton. The proposed scale of increases will result in increasing the differential in rates from 50 cents to 53 cents. According to protestant the differential in 1943 was 30 cents per ton.

Protestants presented somewhat convincing evidence and arguments to support their respective contentions; however, they only present one side. There is no assurance that the adoption of their proposals will not disrupt market competitive conditions greater than applicant's proposal. The sugar interests (except for Spreckels) assert that uniformity of increase is necessary to maintain existing marketing relationships. There are primary sugar producers located in Oregon and near Phoenix, Arizona, there are secondary processors at points near California, such as Reno, and there are undoubtedly receivers in places near this state that utilize quantities of sugar in manufacturing or processing. The effect of protestants' proposal upon such producers, processors and receivers is not known. The response of one of protestants' witnesses to a question concerning the result of the proposal if his plant was located in Arizona is significant. He stated, "If I

were located at Serape, Arizona, it would disturb me quite a bit. I definitely would then approach the Southern Pacific for a reduction to equalize shipments, what have taken place in California intrastate, and I am sure they will, too." If that took place might not the next nearest producer to Serape take similar action which could result in further chain reactions across the nation?

As we stated in Decision No. 58226,

"Since this is a revenue proceeding it is concerned with the over-all requirements of applicants. It is not an appropriate vehicle in which to determine the extent to which adjustments of commodity rates may be required to meet carrier or market competitive conditions. Authorization of the proposed increases should not be withheld for that reason."

We further point out that following general rate increases the railroads find it necessary to voluntarily adjust commodity rates in order to provide the reasonable and nondiscriminatory rates required to move the traffic. In increase proceedings of this type the Commission does not make specific findings regarding the reasonableness of any of the rates to be increased. To do so would vitiate the object of the proceeding which is to provide prompt relief in the form of increased revenues when it has been shown that such increase is justified. Protestants are in no way prejudiced in any future proceeding from attacking the reasonableness of any particular rate or charge that may be published as a result of the order herein. As a part of its request applicant proposes to place in its tariff a provision calling for the refunding of the difference between the increased rates and reduced rates that may later be established by the rail lines. In order to insure the protection of the shippers, however, the authority to increase rates will be made subject to the express condition that neither applicant nor any of its principals will ever urge the



authority to increase rates as a defense in any proceeding before the Commission involving the reasonableness of such increased rates.

We find that the general level of the rates and charges maintained by applicant is insufficient and that the increases proposed in this application, as amended and as clarified at the hearing, are justified.

Applicant requests authority to make the increases effective on five days' notice. Evidence of the losses being sustained by the rail lines together with the fact that the proposed increases are already effective on interstate commerce within California justifies the granting of such authority.

The proposed increases, now effective on interstate commerce, are presently set forth in tariff form (Exhibit 1). Applicant requests authority to depart from the requirements of General Order No. 125 to the extent necessary to make that publication applicable to California intrastate transportation. It is proposed that this be accomplished by the issuance of a supplement to "Tariff of Increased Rates and Charges X-256" (Exhibit 1). That tariff has had wide circulation among shippers in California and the suggested procedure is appropriate. Applicant proposes not to make the increases provided in that tariff applicable to certain California intrastate rates, particularly those rates that have historically been maintained at rate levels found by the Commission to be reasonable minimum rates for highway carriers. It will therefore be necessary for the supplement proposed by applicant to clearly and distinctly specify, either by tariff number, tariff item number or otherwise, the rates that will not be subject to the increases in the X-256 tariff. The authority sought will be granted.

Inherent in the application of the increases in rates and charges involved herein is the creating of new departures or changing of existing departures from the long- and short-haul prohibitions of Section 460 of the Public Utilities Code. Where the railroad presently maintains rates resulting in a greater compensation in the aggregate for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction under outstanding authorizations from the Commission, the said railroads should be authorized to charge the increased rates under the same circumstances. It is not known at this time the extent to which the application of the increased rates will result in departures not covered by outstanding authorizations. The urgency of the situation prevents an investigation of any such new departures at this time. The railroads should be authorized to establish the increases without delay and not be subjected to any penalties or forfeitures provided in the Public Utilities Code for the publication of the increases that result in new departures from Section 460. The rights of the shippers to redress from the charging by the railroads of unjust, unreasonable, preferential or unduly discriminatory rates, however, should be preserved. Applicant will be authorized to make such departures subject to the condition that it and its principals will never urge said authority as a defense in any action before the Commission involving reasonableness, unjust discrimination or undue prejudice with respect to the increased rates.

With respect to the issues in the Order Setting Hearing dated August 29, 1967, an associate transportation rate expert testified that the Commission has established minimum rates for transportation to be observed by common carriers and permitted

carriers and that the orders promulgating said minimum rates provide that under certain circumstances and conditions the rates of the railroads are the minimum rates. Many highway common carriers have published either the equivalent of the present rail rates or have published rates somewhat higher than the rail rates but lower than the otherwise applicable minimum rates. He also stated that in some cases highway common carriers maintain rates based upon railroad rates which have been canceled. He offered a suggested form of order, the intent of which is to require common carriers who have published rates which at the time of publication were equal to or higher than the rates then maintained by railroads, to increase such rates commensurate with increases made in rail rates, or to increase such rates to the level of the minimum rates prescribed by this Commission in the various minimum rate tariffs in the event the railroads cancel their rates.

The director of the Division of Economics of California Trucking Association testified that he has knowledge of many circumstances in which inadvertency or carelessness has resulted in the maintaining of rates by common carriers by truck beyond the changed levels of rates which subsequently became applicable to the rail transportation which was first considered. He stated that C.T.A. supports the intent of the staff's proposal, but is of the opinion that the language of the order suggested by the staff may not accomplish the intended result. He stated, ". . . some clarification of the language might be necessary, but we will leave that to the Commission's judgment." He testified that the trucking industry needs no more than 15 days after the effective date of the changes in rail rates that may be authorized by the Commission to make any necessary adjustments in their respective tariffs.

The situation described by the staff and C.T.A. is a serious one which affects not only the competitive relationships between individual railroads and highway common carriers but one that has an untoward effect upon the minimum rates established by the Commission for all highway carriers. The minimum rates are not applicable to transportation performed by railroads under carload commodity rates. Under Section 452 of the Public Utilities Code, and pursuant to the minimum rate orders of the Commission, many highway common carriers, in order to meet the railroad competition at the carload commodity rates, have published and are maintaining rates which are equal to or slightly higher than the railroad rates and which are below the rates found by the Commission to be reasonable for transportation by highway carriers. When the railroads increase their carload commodity rates or, as sometimes happens, cancel certain carload commodity rates, the competitive reasons for the highway common carriers' reduced rates no longer exist. The common carrier rates, however, are also the minimum rates to be observed by highway permit carriers by reason of provisions in the minimum rate tariffs authorizing the use of said common carrier rates when they are lower than the rates found by the Commission to be the just, reasonable and nondiscriminatory minimum rates for highway carriers. To the extent that said highway common carrier reduced rates are both below the level of the rates found by the Commission to be the just, reasonable and nondiscriminatory minimum rates for highway carriers and are below the level of the rates published and maintained by railroads for the same transportation, said reduced rates are insufficient, unreasonable and not justified by transportation conditions.

In summation, we find that:

1. Pacific Southcoast Freight Bureau has filed application seeking authority to increase California intrastate local and joint all-rail and joint rail-highway freight rates and charges, except those rates and charges which historically it has maintained at levels of the minimum rates, by the same amounts and subject to the same conditions, including refunding provisions, established by applicant in its Tariff of Increased Rates and Charges X-256 applicable to interstate commerce.

2. The proposed increases have been shown to be justified.

3. Applicant has not shown that any of the increased rates or charges are reasonable or nondiscriminatory; however, no such showing is required in this application.

4. A number of highway common carriers and other common carriers publish and maintain rates based on rail carload commodity rates, and to the extent that said rates are both lower than the increased rail rates and below the otherwise applicable minimum rates, said rates are insufficient, unreasonable, and not justified by transportation conditions.

We conclude that:

1. The application should be granted.

2. Common carriers maintaining rates based on rail rates should be authorized and directed to increase those rates to the level of the increased rail rates or to the level of the otherwise applicable minimum rates, whichever is the lower.

3. Common carriers maintaining rates based on rail rates which rail rates have been canceled or changed should be required to adjust such rates to conform to the changed rail rates or to the minimum rates otherwise applicable.

4. Applicant and common carriers should be authorized to depart from the provisions of Section 460 of the Public Utilities Code and from the terms and rules of General Orders Nos. 80-A and 125 to the extent necessary to establish the increased rates authorized or required herein.

O R D E R

IT IS ORDERED that:

1. Pacific Southcoast Freight Bureau, on behalf of the carriers listed in Application No. 49493, as amended, is authorized to establish the increases in rates proposed in said application provided, however, that the authority granted herein shall not extend to the increasing of any of the rates described in Appendix B, attached hereto and by this reference made a part hereof.

2. Tariff publications authorized to be made as a result of the authority granted in Paragraph 1, hereof, shall be filed not earlier than the effective date of this order and may be made effective not earlier than ten days after the effective date hereof on not less than ten days' notice to the Commission and to the public.

3. The carriers for whom applicant is agent are authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to effect the increases herein authorized.

4. Applicant is authorized to publish the increased rates and charges in its Tariff of Increased Rates and Charges X-256 by appropriate supplement thereto. To the extent that departure from the terms and rules of General Order No. 125 is required to accomplish such publication, authority for such departure is hereby granted.

5. The authorities granted hereinabove shall expire unless exercised within sixty days after the effective date of this order.

6. The authorities in Paragraph 1, to and including 4, above, are granted subject to the express condition that applicant and the carriers, on whose behalf it is participating herein, will never urge before the 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 pursuant to the authority herein granted constitutes an acceptance by applicant and said carriers as a consent to this condition.

7. Common carriers maintaining, under outstanding authorization permitting the alternative use of rail rates, rates below the specific minimum rate levels otherwise applicable, are authorized and directed to increase such rates to the level of the rail rates established pursuant to the authority granted in Paragraph 1 hereof or to the level of the otherwise applicable specific minimum rates, whichever is lower.

8. Tariff publications required or authorized to be made by common carriers as a result of the preceding ordering paragraph may be made effective not earlier than the tenth day after the publication by applicant made pursuant to the authority granted in Paragraph 1 hereof, on not less than ten days' notice to the Commission and to the public; such tariff publications as are required shall be made effective not later than thirty days after the effective date of the tariff publications made by applicant pursuant to the authority granted in Paragraph 1 hereof.

9. Common carriers maintaining, under outstanding authorizations permitting the alternative use of rail rates, rates based on rail rates which have been changed or canceled and which are below the specific minimum rate levels otherwise applicable, are hereby directed to increase such rates to applicable minimum rate levels, and to abstain from publishing or maintaining in their tariff rates, charges, rules, regulations and accessorial charges lower in volume or effect than those established in rail tariffs or the applicable minimum rates, whichever are lower.

10. Tariff publications required to be made by common carriers as a result of the preceding ordering paragraph may be made effective not earlier than the effective date of this order on not less than ten days' notice to the Commission and the public and shall be made effective not later than sixty days after the effective date of this order.

11. In making tariff publications authorized or required by Paragraphs 7 through 10, inclusive, common carriers are authorized to depart from the terms and rules of General Order No. 80-A, to the extent necessary to comply with said orders.

12. Common carriers, in establishing and maintaining the rates authorized hereinabove, are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to



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comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

The effective date of this order shall be twenty-five days from the date hereof.

Dated at San Francisco, California, this  
19<sup>th</sup> day of DECEMBER, 1967.

John E. DeLillo  
President

Stallman W. Bennett

Argator

William J. Jones

Paul P. Morrissey  
Commissioners

APPENDIX A

LIST OF APPEARANCES

APPLICANT: Charles W. Burkett, Gary S. Anderson, F. G. Pfrommer, Leland E. Butler and Marshall W. Vorkink.

PROTESTANTS: John P. Kempton, for Granite Rock Co.; Keith M. Brown and Thomas B. Kircher, for Spreckels Sugar Co.; Karl L. Mallard, for California & Hawaiian Sugar Co., American Crystal Sugar Co., and Union Sugar Co.; James E. Bilbo, for The Coco-Cola Company.

INTERESTED PARTIES: Gordon S. Raney, for DiSalvo Trucking Co.; W. N. Greenham and A. J. Konicki, for Pacific Motor Trucking Co.; James L. Roney, for Dart Transportation Service; Armand Karp, for Neilson Freight Lines; J. C. Kaspar, A. D. Poe and H. F. Kollmyer, for California Trucking Association; James M. Cooper, for San Francisco Chamber of Commerce; Jefferson H. Myers, for San Francisco Port Authority; John T. Reed, for California Manufacturers Association; Raymond E. Healy, for Cannery League of California; J. R. Copeland, for Holly Sugar Corporation; Gordon Larsen, for American Can Co.; John H. Vail, for California Portland Cement Co.; George B. Shannon, for Southwestern Portland Cement Co.; C. H. Costello, for Continental Can Co., Inc.; Joseph E. Frias, for Essick Manufacturing Company; W. Paul Tarter, for William Volker & Co.; J. P. Hellman, for Allied Chemical Corporation; John P. Rohrer, for Kaiser Cement & Gypsum Corp.; E. J. Bertana, for Pacific Cement & Aggregates; R. A. Morin and M. A. Walker, for Fibreboard Corp.; H. W. Timmerman and Gary J. Smith, for Zellerbach Paper Co.

COMMISSION STAFF: Dale R. Whitehead and Robert W. Stich.

APPENDIX B

EXCEPTIONS TO AUTHORITY TO INCREASE RATES

Increases do not apply to the rates and charges described below:

1. P.S.F.B. Tariff 255-G, rates and charges in:
  - (a) Item 13150-G.
2. P.S.F.B. Tariff 294-E, rates and charges in:
  - (a) Items 1, 280, 410 (Paragraphs A and B), 420, 510, 550 and 765.
  - (b) All Class Rates in Section 1.
  - (c) Item 3530-D rates of 67 cents, minimum 42,000 lbs. and 60 cents, minimum 45,000 lbs.
  - (d) Item 4180-D rate of 60 cents, minimum 42,000 lbs.
  - (e) Item 4140-E rate of 63 cents, minimum 42,000 lbs.
3. P.S.F.B. Tariff 1016, minimum charges in:
  - (a) Item 205 series for LCL shipments.
4. P.S.F.B. Tariff 300, rates and charges:
  - (a) In Item 2 pertaining to the San Francisco Bay Counties surcharges.
  - (b) Flagged with a square dot reference in the following items (commodities designated):
    - (1) (Sugar) Items 850, 855, 865 and 870 and 4160 to 4225, inclusive.
    - (2) (Liquors) Item 5107.
    - (3) (Packing House Products) Items 6122 to 6140, inclusive.
    - (4) (Dairy Products) Items 3125 to 3146, inclusive.
    - (5) (Infusorial Earth) Item 3205.