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ORIGINAL

Decision No. 74400

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFIC SOUTHCOAST FREIGHT BUREAU for authority to increase certain switching rates and charges.	Application No. 49758 (Filed October 27, 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, Decision No. 73777 of February 27, 1968)
And Related Matters.	Cases Nos. 5433, 5435, 5436, 5438, 5439, 5440, 5441, 5603, 5604 and 7857 (Order Setting Hearing, Decision No. 73777 of February 27, 1968)

Albert T. Suter, for Pacific Southcoast Freight Bureau, applicant in Application No. 49758 and interested party in Order Setting Hearing, Decision No. 73777.
Lynn M. Watwood, Jr., for Kaiser Cement and Gypsum Corporation, protestant in Application No. 49758 and interested party in Order Setting Hearing, Decision No. 73777.
John T. Reed, for California Manufacturers Association; James M. Cooper, for San Francisco Chamber of Commerce; Jefferson H. Myers, for San Francisco Port Authority; Fred H. Snyder, Jr., in propria persona; interested parties.
B. I. Shoda, for the Commission staff.

O P I N I O N

By Application No. 49758 Pacific Southcoast Freight Bureau seeks authority to establish increased switching charges on behalf of various railroads operating in California.

By Order Setting Hearing, Decision No. 73777 dated February 27, 1968, in Case No. 5432 and in other cases enumerated in the title hereof, the Commission scheduled a hearing to determine 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 established pursuant to decision in Application No. 49758, or to the level of the specific minimum rates, whichever is lower.

Public hearing of Application No. 49758 and Order Setting Hearing, Decision No. 73777, was held on a common record before Examiner Bishop at San Francisco on March 28, 1968. Evidence on behalf of applicant was presented through two officers of Southern Pacific Company, an assistant general freight agent and the assistant superintendent of transportation-car service. Testimony was also given by the traffic administrator of Kaiser Cement and Gypsum Corporation, protestant, and by the director of transportation and distribution for California Manufacturers Association, interested party.

The proposal involved herein relates solely to intrastate switching rates and charges which are published for application to intraplant, intraterminal and interterminal switching service.[1/] It is proposed to make such charges subject to a provision that they apply to shipments which are both loaded and unloaded within the same switching district only when loaded in or on "ordinary

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1/ The tariff provisions proposed to be amended are set forth in a tariff of Pacific Southcoast Tariff Bureau and in 13 tariffs of individual railroads, including those of all the major lines, as well as some others, operating in California. All of the tariffs are listed in Exhibit B, attached to the application.

equipment". The proposed modification would further provide that when switching service as above described is performed in other than "ordinary equipment", the presently published switching charges will be applicable, plus a charge of $25 per car.[2/] "Ordinary equipment", as used in the application, means:

> "1. Box cars not exceeding 52 feet in length, inside measurement, but not including box cars of any length which are cushioned underframe, insulated or equipped with any type of loading devices.
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> "2. Flat cars not exceeding 54 feet in length and having marked capacity not greater than 180,000 pounds, but not including flat cars of any length equipped with racks, frames, bulkheads, tie down devices, hoods or other appurtenances extending above the deck of the car, nor on special type flat cars with mechanical designations 'FD', 'FG', 'FW', 'FM', as listed under the heading of heavy capacity and special type flat cars in the official Railway Equipment Register, ICC RER 364.
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> "3. Gondola cars having marked capacity not greater than 180,000 pounds, but not including gondola cars of any length equipped with covers, hoods, containers or cradle floors.
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> "4. Open top hopper cars not exceeding 60 feet in length, inside measurement, or having marked capacity not exceeding 180,000 pounds.
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> "5. Cars other than described as ordinary equipment, in paragraphs 1 to 4 above, owned or leased by shipper or consignee."

The proposed $25 charge would be subject to the provisions of Tariff of Increased Rates and Charges No. X-256. The charge would not apply to shipments of coal, coke (the direct product of coal) or iron ore.

Examination of the list of equipment above shows that "ordinary equipment", as used in this application, does not include, for example, covered hopper cars, stock cars and tank cars. The term excludes, of course, many types of cars which have been developed during recent years for special uses.

2/ The published switching charge for a carload shipment originating and terminating in San Francisco Zone 1, for example, is 94 cents per ton of 2,000 pounds, subject to a minimum charge per car of $28.49.

The assistant general freight agent testified that the charge now sought to be established for switching movements in California intrastate commerce became effective nationwide as to interstate traffic on August 15, 1967; that similar relief was being sought or had been granted in other state jurisdictions; that specialized equipment, because of its high cost and the strong demand for it among shippers, was not intended to be used in purely switching service; that existing switching charges are considered to be low, having been increased in recent years only by the amounts provided in so-called "ex parte" horizontal rate increase authorizations.

The witness explained that the rail lines across the nation had been concerned about the use of specialized equipment in switching service. Switching, although involving only short distances, is time consuming. In the time required to accomplish a switching move, he said, a piece of specialized equipment could have carried a load a hundred miles in line-haul service, to the mutual benefit of carriers and shippers. The proposed charge, he stated, had been approved by the chief traffic officers of the respective freight rate jurisdictions throughout the country and had been the subject of a public hearing held in New York early in 1967. The purpose of the charge, the witness said, is to promote maximum utilization of specialized equipment owned by the railroads.

The witness pointed out that the proposed charge will not apply where a switching service is performed in connection with a line-haul movement. It will apply only in those instances where the shipment is both loaded and unloaded within the same switching district. He was of the opinion that there is some crosstown switching of special equipment in California metropolitan areas,

such as San Francisco and Los Angeles, which would be subject to the proposed charge. He believed, however, that the amount of such switching is small.

The assistant superintendent of transportation-car service testified that, as of January 1, 1968, Southern Pacific had 70,377 freight cars, of which 62 percent are so-called ordinary cars; that in recent years there has been a marked upward trend in the number of, and investment in, cars of larger capacities equipped with devices for lading protection, such as hydra-cushion units, bulkheads, load-restraining devices, insulation, heavy duty flooring, and special door arrangements; that other types of specialized equipment include covered hopper cars, bi- and tri-level auto-pack cars for transporting highway vehicles and specially fitted long flat cars for carrying highway trailers in so-called piggyback service. New commodities, packaging and trends in traffic, he stated, have sparked the need for such specialized equipment.

The special features included in the construction of these modern cars, this witness testified, have resulted in purchase costs which are as much as 21 percent higher than those of general service cars of the same basic types. It has been, and will continue to be, the general practice to withhold such specialized equipment, he said, from switching service and to confine the placement of such cars to long-haul traffic for which it was primarily designed and acquired.[3/] He stated that the demand for such equipment generally exceeds the available supply.

3/ The assistant general freight agent stated that the proposal herein will not deprive a shipper of the use of specialized equipment in purely switching service, but that if he uses such equipment for his own convenience he will be subject to the additional charge of $25 per car.

Kaiser Cement and Gypsum Corporation (Kaiser) protested the granting of the application. That company's traffic administrator testified that Kaiser would withdraw its protest if the definition of ordinary equipment, as set forth in the application, were to be amended to include the LO type covered hopper cars of the 70 ton, 2000 cubic feet capacity class, or if shipments of cement were exempted from the $25 charge, as is proposed for shipments of coal.[4/] The witness stated that Kaiser has two cement manufacturing plants in California, located at Cushenbury and Permanente, with distribution centers at Long Beach, Redwood City and Eureka; that practically all rail shipments of bulk cement are made in covered hopper cars, which are excluded from the proposed definition of ordinary equipment; and that his company is concerned with the application of the proposed $25 charge to certain possible intraplant switching movements.

It appears from the record that the movements in question would occur in connection with line-haul transportation into or out of a switching district, and, therefore, would not be subject to the proposed charge. The witness did not know, moreover, whether such switching movements actually take place at the Kaiser plants, as he was not in close touch with their day-to-day operation. In spite of these disclosures, Kaiser's protest still stands, the witness stated, since the company objects to the designation of covered hopper cars of the class hereinabove specified as other than "ordinary equipment", pointing out that such cars have been used in the transportation of cement since 1942. During the past four years, he said, Kaiser has shipped approximately 12,000 carloads of bulk cement by rail,

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4/ The record indicates that applicant was not prepared to amend the application in either of these respects.

virtually all of it having moved in the aforesaid class of covered hopper cars.

California Manufacturers Association (CMA), through the testimony of its director of transportation and distribution, expressed support of Kaiser's position. Additionally CMA indicated its belief that if the proposed switching charge is authorized and established it should not be made subject to the alternative rate provisions of the Commission's minimum rate tariffs.[5/] This witness expressed the view that there was no way by which a motor carrier could anticipate what type of rail equipment would be used for a particular shipment and that it would be almost impossible even to make a comparison of motor carrier equipment with rail equipment.

A rate expert from the Rate Branch staff of the Commission's Transportation Division assisted in the development of the record. In a closing statement he expressed the position of the staff that if Application No. 49758 is granted common carriers maintaining rates under the alternative provisions of the various minimum rate tariffs on the level of rail rates should be directed by Commission order to effect publication in their tariffs of rate increases comparable to those which may be authorized under said application.

It is to be observed, relative to the reasons advanced by the CMA director for opposing the observance of alternative rate application provisions in connection with the proposed charge, that

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5/ Section 3663 of the Public Utilities Code provides that in the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part I of Division 1 (of the Code) for the transportation of the same kind of property between the same points. These provisions have been implemented by the establishment of alternative common carrier rate provisions in Items Nos. 200-241, inclusive, of Minimum Rate Tariff No. 2 and in similar items in other minimum rate tariffs.

such reasoning amounts to a general attack on minimum rate provisions which were established in compliance with statutory provisions (See Footnote 5, hereinabove). The Commission has not made it the practice to condition the application of alternative rate provisions upon the type of rail equipment practicable for a comparable rail movement. The proper application of such provisions depends on the circumstances involved in the particular situation in which they are sought to be invoked.

We find that:

1. In recent years the rail lines have experienced an increasing demand for specialized types of equipment, including cars of substantially increased capacity, designed to provide more efficient transportation, with greater protection to lading, for particular commodities or groups of commodities.

2. The cost to the railroads of providing such specialized equipment is substantially greater than for the more ordinary rolling stock.

3. The demand among shippers for such specialized equipment for the transportation of their products is very heavy.

4. The specialized equipment was intended for transportation of commodities for considerable distances, and to be productive of revenues of the volume required by the heavy investment in said equipment.

5. The use of the specialized equipment in purely local switching service deprives the railroads and shippers alike of the use of it in the service for which it was designed.

6. The $25 additional charge herein proposed was designed by the executive traffic officers of the nation's railroads to

discourage the use of the specialized equipment in intraterminal switching and to increase its availability for line-haul movements.

7. Said charge, together with provisions proposed in this proceeding to govern its application, and subject to Tariff of Increased Rates and Charges No. X-256, is now in effect on interstate traffic throughout the nation.

8. Establishment of the proposed charge for California intrastate traffic will discourage the use of the specialized equipment in purely local switching service, to the extent that such use is made, and will tend to improve the availability of such equipment for line-haul service.

9. The proposed charge, as subjected to the provisions of Tariff of Increased Rates and Charges No. X-256, together with the provisions proposed to govern its application, is reasonable and justified.

10. The proposal of CMA that the alternative rate application provisions of the Commission's minimum rate tariffs be made inapplicable in connection with the proposed switching charge has not been justified.

11. 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 established pursuant to this decision, or to the level of the specific minimum rates, whichever is lower, and to cancel such rates in the event competitive rates are no longer published in rail tariffs.

12. The objection of Kaiser to the proposed designation of covered hopper cars of the class used by that company in the

transportation of cement as other than ordinary equipment, and Kaiser's alternate proposal to exempt cement from the application of the proposed switching charge, are not persuasive.

We conclude that the application, including the proposal to make the $25 charge subject to the provisions of Tariff of Increased Rates and Charges No. X-256, should be granted.

O R D E R

IT IS ORDERED that:

1. The common carrier railroads whose tariffs are listed in Exhibit B attached to Application No. 49758, and Pacific Southcoast Freight Bureau, on behalf of railroad parties to its Tariff No. 201-D, are authorized to establish the increased rates proposed in said application.

2. Tariff publications authorized to be made as a result of the order herein 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 authorities granted hereinabove shall expire unless exercised within ninety days after the effective date of this order.

4. Common carriers maintaining, under outstanding authorizations 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. To the extent such common carriers have maintained such rates at differentials above previously existing rail

rates, they are authorized to increase such rates by the amounts authorized in paragraph 1 hereof; provided, however, that such increased rates may not be lower than the rates established by the rail lines pursuant to the authority granted in paragraph 1 hereof, nor higher than the otherwise applicable minimum rates.

5. 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.

6. 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.

7. 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 ninety days after the effective date of this order.

8. In making tariff publications authorized or required by paragraphs 4 through 7, 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.

9. 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 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 days after the date hereof.

Dated at San Francisco, California, this 16th day of JULY, 1968.

William Symons Jr.
President
William M. Bennett
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.