

ORIGINALDecision No. 75627

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for authority to make }
 effective increases in local and }
 joint rail and rail-highway }
 freight rates and charges. }

Application No. 50445
 (Petition for Suspension
 filed February 26, 1969)

Additional Appearances

Robert O. Nagle, for Spreckels Sugar Company,
 Union Sugar Division of Consolidated Food
 Corporation, Holly Sugar Corporation and
 California Beet Growers Association, pro-
 testants.

Berol, Loughran and Geernaert, by Marshall
Berol and J. R. Cedarblade, for Rock, Sand
 and Gravel Producers Association of Northern
 California; William D. Mayer, for Cannery
 League of California; James L. Roney, for
 Dart Transportation Service; John P. Kempton,
 for Granite Rock Company; Eugene A. Feise,
 for Calaveras Cement Division of The Flint-
 kote Company; and Gordon S. Raney, for
 Di Salvo Trucking Company, interested parties.

(Other appearances are shown in Decision No. 75135)

ORDER ON PETITION FOR SUSPENSION OF
RATE INCREASE ON SUGAR BEETS

The Commission, in Decision No. 75301, dated February 11, 1969, denied the petition for rehearing of Decision No. 75135 in this proceeding filed by Spreckels Sugar Company, et al., and reopened the proceeding for further hearing with respect to carload rates and charges for the transportation of sugar beets. The rate increase authorized by Decision No. 75135 having become effective on January 19, 1969 as a result of tariff filings made pursuant to said decision, Spreckels Sugar Company, et al. filed on February 26, 1969, a petition seeking suspension of the increase in carload rates on sugar beets pending further determination by the Commission of

said increase in the reopened proceeding. Hearing on the petition was held on March 26, 1969, and the matter was submitted.

Evidence was presented by representatives of three sugar beet companies as to the anticipated movement of sugar beets in carloads in the period March through June of 1969. This evidence was offered to show that a substantial movement of sugar beets will occur during the scheduled period for further hearings in the reopened proceeding concerning sugar beets. Adjourned hearings were scheduled for April 17, 18, 30 and May 1 and 2, 1969. This evidence shows that the current movement of sugar beets from railside sugar beet loading dumps to sugar factories began on or about March 25 and is expected to run through November. The following table depicts the estimated tonnage to be moved by rail during the period March through June by the three beet sugar manufacturers having facilities in California.

<u>Company</u>	<u>Number of Tons</u>
Spreckels Sugar Company	571,300
Union Sugar Division	427,000
Holly Sugar Corporation	348,000
Total	<u>1,346,300</u>

Spreckels' witness testified that the entire movement is subject to an increase of 5 cents per ton under rates filed pursuant to Decision No. 75135. Therefore, based on the estimated number of tons shown above, additional freight charges would be \$67,315.

A witness for Southern Pacific Company (SP) testified in opposition to the removal of the increase on sugar beet traffic.¹ The witness stated that the same or higher increases are in effect on sugar beets on interstate traffic and on intrastate traffic in

¹ The record shows the entire movement to the sugar factories originates at SP points and terminates either on SP or on Santa Maria Valley Railroad (Betteravia plant of Union Sugar).

other western states. He testified that if the increase is rescinded SP cannot recoup the lost revenues; however, it is possible that such increases may be returned to shippers in the form of reparations should a complaint proceeding be filed. The witness testified that SP's California intrastate operations are being conducted at a loss; therefore, cancellation of the rate increase on sugar beets would increase SP's deficits on its California intrastate traffic.

Counsel for the sugar beet interests argued that the increase on sugar beets should be removed as a matter of equity, pending a final decision in the reopened proceeding. Counsel argued that in the circumstances where a timely filed petition for rehearing stays a Commission order and rehearing is granted, rates authorized in the order to which rehearing is granted generally do not become effective during the pendency of the rehearing.² Counsel urged that the sugar beet rates be placed in the same category as if a timely filed petition had stayed the effectiveness of Decision No. 75135. To accomplish this end, counsel requested that the rate increase on sugar beets granted in Decision No. 75135 be withdrawn, and that the finding in said decision that the rate increase is justified be rescinded. Counsel argued that the statutory authority

² An order to which a timely filed petition for rehearing has been filed is "suspended until the application [petition] is granted or denied." (Section 1733.) The suspension is automatically lifted when the Commission acts on the petition, unless the order granting rehearing stays the decision pending further Commission order.

under which such action can be taken is set forth in Sections 701 and 1708 of the Public Utilities Code.³

Counsel for applicant railroads argued as follows: There is no provision of the Public Utilities Code which permits the suspension of a rate which has become effective.⁴ The Commission may modify a decision, but except as to reparation, cannot retroactively erase the effect of a decision subsequent to the decision having become effective. Concerning Section 1708, Counsel argued that construction of the language reading: "... and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision ..." requires that, as in the case of complaints, there must be a showing that the rates involved herein are unjust or unreasonable or in violation of some provision of the Public Utilities Code. Counsel argued that no such showing has been made herein. Counsel also argued that the equities of the situation require the maintenance of the rates in question because the revenues which would be lost to the railroads if the rate increase is rescinded can never be recovered.

3 Section 701 reads: "The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."

Section 1708 reads: "The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as an original order or decision."

4 Section 455 authorizes the suspension of rates not resulting in an increase, prior to the effectiveness of such rates.

Discussion

The questions presented herein are: (1) whether the Commission has authority to rescind the authority granted in its prior order; and (2) if so, whether it has been presented a situation in which such authority should be exercised.

Concerning the first point we conclude that, as a matter of law, Section 1708 of the Public Utilities Code contains authority under which we can rescind, alter or amend any order or decision issued by us. We further find that two of the requisites in Section 1708 to the exercise of such authority, i. e., notice to the utility affected and the opportunity to be heard have been complied with. We further conclude that the construction which should be placed upon the portion of Section 1708 reading: "... and after opportunity to be heard as provided in the case of complaints, ..." requires that a showing be made, as in a complaint proceeding, that the assailed rates are unreasonable, excessive or otherwise unlawful before the Commission can exercise its authority under said section to modify a previous order authorizing a rate increase.

On the second question, the Commission's order reopening the proceeding with respect to rates on sugar beets indicated that the propriety of said increase is in question in the reopened proceeding. Petitioners asked at the hearing that the rate increase be rescinded but, in the event that their request is granted, waived any claim to reparation because of the assessment of the higher charges on traffic which may have moved under the higher rate. The decision by the Commission to reopen the proceeding with respect to sugar beets did not specifically negate or remove the finding that the rate increase on sugar beets was justified (Finding 2). In the original order, the Commission specifically refrained from making a

finding as to the reasonableness of any specific rate or charge. The portion of Finding 2 of Decision No. 75135 relating to sugar beets must stand. There is nothing in the record adduced at the hearing on March 26, 1969 to show that the existing rates on sugar beets are unreasonable or otherwise unlawful.

Findings and Conclusion

The Commission finds as follows:

1. The Commission's order reopening this proceeding was issued after increased rates on sugar beets became effective.
2. There was no evidence adduced to show that the existing carload rates on sugar beets are unreasonable, excessive or otherwise unlawful.

The Commission concludes that the Petition for Suspension filed by the sugar beet interests should be denied.

O R D E R

IT IS ORDERED that the Petition for Suspension filed by Spreckels Sugar Co., et al., on February 26, 1969, is hereby denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 29th day of APRIL, 1969.

William Symons, Jr.
President

Augustus

John P. Morrissey

W. H. HARRIS

Commissioners