

Decision No. 76181**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. 50445

In the Matter of the Investiga-  
tion 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, transporta-  
tion for which rates are provided  
in Minimum Rate Tariff No. 2).

Case No. 5432  
(Order Setting Hearing in  
Decision No. 74619  
dated August 27, 1968)

And related matters.

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

Additional Appearances

Berol, Loughran & Geernaert, by Edward J. Hegarty,  
for Leslie Foods, Incorporated; Geoffrey B.  
Fink, for the Dow Chemical Company; Alex B.  
Perry, for California Rock and Gravel Company;  
Donald P. Hewlett, for Rhodes and Jamieson,  
Limited; John P. Kempton, for Granite Rock  
Company; protestants.  
Joseph P. Enright, for Monolith Portland Cement  
Company; and James F. Gilsdorf, for Kaiser  
Sand and Gravel Division of Kaiser Industries  
Corporation; interested parties.

(Other appearances are shown in Decisions Nos.  
75135 and 75627 herein.)

O P I N I O N

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.

The original application filed July 30, 1968, in this proceeding sought authority to apply to specified California intrastate freight rates and charges those increases which became effective June 24, 1968, on interstate traffic, pursuant to the order of the Interstate Commerce Commission dated June 19, 1968, in Ex Parte No. 259, Increased Freight Rates, 1968. Hearings were held on that part of the application commencing September 16, 1968, and Decision No. 75135 dated December 20, 1968 found justified an increase of some 3 percent which became effective January 19, 1969.<sup>1/</sup>

The original application also sought authority to apply on intrastate rates such further increases as the Interstate Commerce Commission might subsequently authorize in Ex Parte No. 259 on interstate traffic. Decision No. 75135 granted the request of applicant that this proceeding be kept open pending the completion of the investigation by the Interstate Commerce Commission in Ex Parte No. 259.

The investigation by the Interstate Commerce Commission in Ex Parte No. 259 resulted in further increases on interstate traffic as authorized in its report of November 25, 1968, and its final report of January 23, 1969 (332 I.C.C. 714). In the Second Supplemental Application, filed February 27, 1969, applicant seeks

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<sup>1/</sup> The increase authorized on sugar beets was three percent, maximum 5 cents per ton, and on Portland cement was 1/4 cent per 100 pounds.

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authority to apply those increases in the place and stead of those authorized in Decision No. 75135. The increases so sought are set forth in Tariff of Increased Rates and Charges No. X-259-B and Supplements 6, 7, 10 and 11 thereto (Exhibits 23, 24, 25, 26 and 27). The only exception proposed in these increases is the minor exception of certain rates historically related to motor carrier minimum rates, set forth in Exhibit 28. Proposed increases in the latter rates are presently under submission to this Commission in Case No. 5432 and Application No. 50757.

Decision No. 75301, dated February 11, 1969, denied the petition for rehearing of Decision No. 75135 filed by protestant beet sugar refiners and sugar beet growers, and reopened the proceeding for further hearing with respect to carload rates and charges for the transportation of sugar beets. The sugar beet interests subsequently filed a petition seeking the suspension of the increases on sugar beet rates authorized in Decision No. 75135, which petition was denied by Decision No. 75627, dated April 29, 1969. Rehearing of Decision No. 75627, as requested by the sugar beet interests, was denied in Decision No. 75814, dated June 24, 1969.

Public hearing on the Second Supplemental Application and on the reopened proceeding with respect to sugar beets was held before Examiner Mallory at San Francisco on March 25 and 26, April 17, 18 and 30, and May 1, 2, 9, 13 through 16, and 22, 1969. The application and order setting hearing were submitted subject to the filing of concurrent briefs, which have been received. Briefs were filed by the applicant railroads, by protesting sugar refiners, by the California Beet Growers Association, and by Leslie Foods, Inc.

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The briefs contain statements of the material issues herein, proposed findings of fact, and conclusions of law.

Evidence was adduced in the current phase of the proceeding by nine witnesses for applicant railroads, ten witnesses for protestant sugar beet interests, four witnesses for protestant cement manufacturers, four witnesses for protestant sand and gravel companies, and two witnesses for protestant salt manufacturers.

#### Separations Study

In the initial phase of this proceeding, which culminated in Decision No. 75135, applicant railroads presented in evidence exhibits setting forth their revenues and expenses for California intrastate traffic based upon allocation procedures initially introduced in the proceeding in which Decision No. 58226 (57 Cal.P.U.C. 117) was issued. Decision No. 75135 states with respect to said procedures:

"Some of the underlying data used in the separation studies were predicated on traffic flow information for the year 1956. The use of such data was attacked by protestants as being outmoded and not reflective of current average weights per car and lengths of haul. The railroads countered by indicating that changes in traffic patterns are applicable uniformly to both intrastate and interstate traffic, thus causing no change in the relationship of intrastate to interstate traffic. The record herein indicates that some of the underlying factors used in the separations study may not be currently valid. However, the record does not show in what respect changes in such basic data affect the reliability of the separations study, or in what respect these procedures should be modified. The data in this record and in prior proceedings obviously has several impediments and the separations should be brought up-to-date."

In this phase of the proceeding, a witness testifying on behalf of Southern Pacific Company (SP) presented in evidence several exhibits which collectively constitute a new study separating intrastate and interstate freight revenues and expenses for

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the year 1968 for that carrier. The new study assertedly was developed in response to the comments on separation procedures contained in Decision No. 75135. The witness testified that a new separations study was made only for SP: because that carrier transports the preponderance of California intrastate rail traffic; because SP was in a position to computerize a portion of the study and thus complete the study within a relatively short time; and because the results of the SP study indicated that it was handling the same relative proportions of interstate and intrastate traffic in California, as in the earlier study, thus showing that the basic data in the earlier separations studies used for other major railroads are still valid.

The data presented by the SP witness attempted to separate the revenues and expenses for all traffic originating or terminating in California from system revenues and expenses. Revenues for California intrastate traffic and total revenues were determined from data set forth in SP's annual report to the Commission. Expenses were separated in the following manner: Out-of-pocket costs were determined for each shipment originating or terminating in California, based on formulae for computing such costs as developed by SP for general use in ICC or State Commission rate proceedings. Total out-of-pocket costs were accumulated for intrastate shipments and for all other shipments originating and terminating in California, and a ratio between these groups of costs was developed. A separate analysis was made to allocate, from system total expenses, the total expenses applicable to traffic originating and terminating in California. The aforementioned ratio of out-of-pocket costs was used to develop total intrastate expenses from total California expenses.

Some of the assumptions used by the SP cost witness in the new separations study were challenged by the parties. On the basis of representations of the Commission staff, an adjustment resulting in a reduction in out-of-pocket costs assigned to

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intrastate shipments was made to reflect a change in the method of allocating equipment rents. Also a revision resulting in a reduction of out-of-pocket costs assigned to intrastate traffic was made on representations of the sugar interests that certain out-of-pocket costs applicable to transited shipments were incorrectly assigned to California intrastate traffic which should have been assigned to interstate traffic. The sugar beet interests, in the testimony of their witnesses and in their brief, challenged this "transit" adjustment as not being based on fact. (Four days of hearing were devoted to this subject.) The sugar beet interests also contend that the validity of the entire study is in doubt because of the alleged misallocation of out-of-pocket costs for transited shipments and, therefore, such study is not adequate for the purposes of this proceeding.

The SP witness developed the following estimated California intrastate revenues and expenses as a result of his allocations study, including the adjustments described above (Exhibit 125):

TABLE I

Southern Pacific Company

Revenues, Expenses, and Net Railway Operating Income  
for California Intrastate Traffic for Year 1968,  
Adjusted to Reflect the Allowance for Full Increases  
Sought (Excluding Provision for Income Taxes)

Revenues

1968 Revenues	\$62,467,902
Full X-259 Increases	3,324,925
Adjusted 1968 Revenues	\$65,792,827

Expenses (Allocated)

\$70,443,982

Net Railway Operating Income

\$(4,651,155)

(Red Figure)

The witness also presented in evidence estimated 1968 operating results adjusted to reflect the increased revenues sought herein, for the five major California railroads (including SP) and their subsidiaries. The allocation methods used to develop

intrastate expenses used in prior proceedings were used by the witness for railroads other than SP. A summary of these data are set forth in the table which follows (Exhibit 125 for SP; Exhibit 73 for other railroads):

TABLE II  
ESTIMATED FREIGHT REVENUES, EXPENSES  
AND NET RAILWAY OPERATING INCOME 1/  
ATTRIBUTABLE TO  
CALIFORNIA INTRASTATE TRAFFIC FOR YEAR 1968  
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>
Southern Pacific Company ...	\$65,792,827	\$70,443,982	\$(4,651,155)
The Atchison, Topeka and Santa Fe Railway Company..	17,887,000	20,715,000	(2,828,000)
Northwestern Pacific Railroad Company .....	4,952,000	5,202,000	( 250,000)
Western Pacific Railroad Company .....	2,618,000	3,653,000	(1,035,000)
Union Pacific Railroad Company .....	1,512,000	1,004,000	508,000
San Diego and Arizona Eastern Railway Company .....	954,000	806,000	148,000
Sacramento Northern Railway Company .....	320,000	593,000	( 273,000)
Sunset Railway Company .....	193,000	142,000	51,000
Central California Traction Company .....	156,000	239,000	( 83,000)
Holton Inter-Urban Railway Company .....	95,000	112,000	( 17,000)
Tidewater Southern Railway Company .....	120,000	168,000	( 48,000)
Petaluma and Santa Rosa Railroad Company .....	31,000	27,000	4,000
Visalia Electric Railroad Company .....	-	1,000	( 1,000)
Total .....	\$94,630,827	\$103,105,982	\$(8,475,155)

( ) - Indicates red figures.

1/ - Does not include State or Federal Income Taxes.

Carrier Revenue Needs

An executive in SP's freight traffic department placed in evidence the proposed tariff supplements which will be filed if the authority requested herein is granted, and testified as to the background of the proposed rate increases. According to this witness, the railroads are in urgent need of additional revenue to offset increases in labor and other expenses. The witness asserted that additional revenues from the rate increases sought herein would not cause SP, nor the group of railroads shown in Table II, to operate at a profit in connection with their California intrastate freight services. The witness urged that the sought revenue increases are necessary to minimize losses incurred in the handling of intrastate traffic by California railroads.

Evidence Re Sugar Beets

In this phase of the proceeding applicant railroads seek an increase of 5 percent in carload sugar beet rates in lieu of the increase of 3 percent, maximum 5 cents per ton authorized in Decision No. 75135. The evidence of the sugar beet interests in this phase of the proceeding was presented through several officers and employees of beet sugar refiners operating in California and through an independent cost expert. Rebuttal testimony was presented by a cost expert and a traffic official of SP, and by an economist in the employ of Stanford Research Institute.

Evidence concerning the movement of sugar beets set forth in Decisions Nos. 75135 and 75627 need not be repeated in full herein. The following statements briefly describe the evidence concerning the transportation and marketing of sugar beets: Sugar beets are grown in each of the major agricultural areas in the



State. Sugar beets mature at different times of the year; the earliest crop matures in the Imperial Valley, and the latest crop matures in the upper Sacramento Valley. There are four beet sugar processing companies operating in the State, with ten plant locations.<sup>2/</sup> All refineries (except Betteravia) are located on SP. The entire rail beet sugar movement originates at SP points and, except for movements to Betteravia by Santa Maria Valley Railroad, no other railroad is involved in the rail movement. In 1968, SP transported 2,720,375 tons of sugar beets in California, on which freight charges of \$7,729,386 were assessed. Said freight charges amounted to 12.4 percent of SP's 1968 California intrastate freight revenues.

Refiners contract for sugar beet acreage with farmers before the beginning of the growing season. The contracts call for fixed prices per ton upon delivery of the beets.<sup>3/</sup> Imperial Valley sugar beets contracted for by Spreckels, Holly and Union sugar companies move to plants in Northern California for distances in excess of 300 miles. Other rail movements are shorter.<sup>4/</sup>

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<u>Factory</u>		<u>Daily Slicing Capacity (Tons)</u>
Clarksburg	Amer. Crystal Sugar Co.	2900
Hamilton City	Holly Sugar Co.	2200
Santa Ana (Dyer)	Holly Sugar Co.	1800
Tracy	Holly Sugar Co.	3300
Brawley	Holly Sugar Co.	6500
Spreckels	Spreckels Sugar Co.	6500
Manteca	Spreckels Sugar Co.	4200
Woodland	Spreckels Sugar Co.	3600
Mendota	Spreckels Sugar Co.	3800
Betteravia	Union Sugar Co.	4900

<sup>3/</sup> Said prices are adjusted at the end of the growing season based on the difference between the average market price of refined sugar and the refiner's costs of processing and marketing the year's crop. Rail transportation costs are paid by the processors.

<sup>4/</sup> Movements of 50 miles or less to refineries are by truck. Truck transportation costs are paid by the growers.

Some of the refiners recently have placed into effect (or plan to place in effect) clauses in their contracts with growers which call for growers to assume a portion of the freight costs on the longer hauls. This clause was applicable in the 1968 season with respect to movements of beets from Imperial Valley to Spreckel's Mendota factory, Union's Betteravia factory and Holly's Tracy factory.

The federal government provides a subsidy to sugar beet growers who comply with federal labor standards. Sugar beet production and marketing also are regulated by the federal government, by fixing prices for imported raw cane sugar, and by allocating domestic markets for imported and domestically grown cane and beet sugar. The world sugar market, and thus, the market in the United States, has been highly volatile in recent years, and there have been wide variations in the domestic acreage planted in sugar beets and in world sugar prices. Market prices for refined sugar in California are not greatly influenced by world prices, and have remained relatively stable over a period of years.

The sugar beet interests presented evidence through an independent cost witness designed to show that the current sugar beet rates in California exceed out-of-pocket costs by substantial amounts and also exceed fully distributed costs, thus indicating that such traffic is contributing more than its share of SP's intra-state revenue requirements. SP's rebuttal witness challenged the methods and cost formulae used by the sugar interests' witness in his cost studies and also the basis used to expand out-of-pocket costs to full costs as being based on industry averages not related to SP's operations.

An economist from Stanford Research Institute testified and presented documentary evidence on behalf of SP on the economics

of the sugar beet industry in California. His study assertedly shows that sugar beet growers and refineries are economically able to absorb the increase in freight rates sought herein. Evidence in rebuttal to the testimony of this witness was presented by the sugar beet interests. Said rebuttal testimony was designed to show that certain assumptions and data used by the SP witness were incorrect.

A traffic witness for SP and several witnesses for the sugar beet interests also testified as to the history of the rail carload sugar beet rates, and of recent informal negotiations between said parties concerning proposed adjustments of said rates.

The foregoing is a summary of the principal evidence introduced herein concerning sugar beet traffic; all or a major portion of five days of hearing related to this subject.

Evidence Re Portland Cement

Applicant railroads seek a flat increase of 1 cent per 100 pounds on Portland cement in bulk, in lieu of the increase of 1/4 cent per 100 pounds authorized in Decision No. 75135.

Witnesses for protestant cement mills opposed the granting of any further increase in cement rates. They testified that the sought increases in rates will be borne by the cement mills; that said freight rate increases cannot be passed on to their customers; and that profit margins are low and competition is keen between California mills; therefore, the cement mills cannot adjust prices to recoup any increases in transportation costs. The witnesses for the cement mills also presented evidence to show that the increases in freight rates on bulk cement authorized in a prior proceeding (Ex Parte 256) resulted in percentage increases greater than the average increase in rates sought by the railroads in that proceeding;

thus, the cumulative percentage increase for this proceeding (Ex Parte 259) and the prior proceeding (Ex Parte 256) exceeds the average revenue increases sought in the two proceedings. The witnesses for the cement mills indicated that they felt Portland cement would bear more than its fair share of the California intrastate revenue requirements of the railroads if the sought increase is granted. As pointed out by one witness, a flat increase (of any amount) results in a greater effective percentage of increase on short-haul traffic than on long-haul traffic. Therefore, the flat increase on cement, as sought herein, would produce a greater percentage increase on short-haul intrastate traffic than on long-haul interstate traffic. The witness alleged that the increases sought on bulk cement were designed to return the carriers' revenue needs on interstate traffic; therefore, they are too high for intrastate traffic.

A witness for the railroads testified that intrastate carload rates on bulk cement are depressed rates designed to meet truck competition, and have been recognized as such in prior decisions. The witness stated that rail bulk cement rates were found to be in the lower level of the zone of reasonableness, as they provide only a small margin of profit above out-of-pocket costs (Decision No. 45770, 50 Cal.P.U.C. 622). Said rates have been adjusted since their establishment only to reflect general increases authorized in Ex Parte proceedings.

Evidence Re Salt

The increases proposed on packaged salt are flat increases of 5 cents per 100 pounds on rates subject to carload minimum weights not exceeding 45,000 pounds, 4 cents per 100 pounds on rates

subject to carload minimum weights exceeding 45,000 pounds and not exceeding 60,000 pounds, and 3 cents per 100 pounds on rates subject to carload minimum weights exceeding 60,000 pounds. Said increases would replace the increase of 3 percent on packaged salt (subject to the foregoing flat percentage increases as maximum) authorized by Decision No. 75135. Leslie Foods, Inc. (Leslie) proposed that an increase of 6 percent on packaged salt be authorized, in place of the sought flat increases described above. Evidence in support of this request was presented by an independent traffic consultant employed by Leslie. His testimony was as follows: The flat increases proposed herein result in greater percentage increases on packaged salt than for any other food commodity. Salt is a low-valued commodity; other food products taking a lesser percentage of increase have higher retail values. The Interstate Commerce Commission, in approving flat increases on packaged salt in interstate commerce, indicated that said flat increases would be a contributing factor in keeping rates on salt at a level lower than for other commodities. This result does not apply to California intrastate traffic, as indicated by freight rate comparisons introduced by the witness. On movements made by Leslie, the proposed flat increases would result in carload revenue increases ranging from 9.7 percent to 37 percent, and averaging 20 percent. The proposed flat increases would produce either carload rates or revenues per car (for various selected distances) in excess of those for canned goods, malt liquors and fertilizer.

The witness for Leslie asserted that carload minimum weights applicable to current packaged salt rates should be adjusted upward to reflect the greater amounts actually loaded.

He requested that the 6 percent increase proposed by Leslie be authorized, and that producers of packaged salt and the railroads attempt informally to adjust current carload minimum weights and to establish appropriate carload rates in connection therewith.

The increase on bulk crude rock salt proposed herein is 5 percent, minimum 30 cents per net ton; said increase would be in lieu of the increase of 3 percent authorized in Decision No. 75135. A representative of Dow Chemical Company (Dow) testified in opposition to the proposed increase on this commodity, as follows: Dow maintains manufacturing facilities at Torrance, Fresno and Pittsburg. Its Pittsburg facility is totally dependent upon crude salt as a primary basic raw material in the manufacture of several chemicals. Dow's Pittsburg plant received crude salt from Newark-Baumberg by rail, in the amounts of 102,424 tons in 1967, and 88,776 tons in 1968. The witness testified that average car loadings of crude salt have increased from 120,000 pounds per car in 1959, to 210,000 pounds per car in 1969, which have increased the carriers' average revenues per car and reduced their total equipment needs. If freight rates drive upward the cost of crude salt produced in California, production of chemicals using crude salt as a raw material may be discontinued by Dow at Pittsburg and said chemicals will be transported to California from Dow's chemical plants in Texas and Louisiana. The minimum increase of 30 cents per net ton amounts to a 25 percent increase on Dow's movement from Newark-Baumberg to Pittsburg; whereas said increase amounts to only a 5 percent increase on the movement of crude salt by Dow's principal competitor, from Newark-Baumberg to Dominguez. The witness proposed an increase of 5 percent, eliminating the minimum increase of 30 cents per net ton.

The railroads' witness testified that the high percentage of increase resulting from the proposed 30 cents per net ton minimum, is merely a function of the very low rate of \$1.20 per ton now applicable to Pittsburg. The base rate to Dominguez of \$4.70 per net ton is substantially greater than to Pittsburg; thus the percentage of increase is less. The witness asserted that there was no showing made that the proposed rate was unlawful.

Evidence Re Rock, Sand and Gravel

The proposed increases on rock, sand and gravel in bulk in carloads is 6 percent, maximum 10 cents per net ton or 11 cents per gross ton, in lieu of the increase of 3 percent (subject to the same maximum increases) authorized in Decision No. 75135.

Witnesses for three producers of rock, sand and gravel with plants located in the San Francisco Bay Area opposed the proposed freight rate increases insofar as they would apply from specific producing points to specific plant locations in the greater San Francisco Bay Area. The witnesses stated that the proposed increased rates are approaching the levels of competing truck rates; that it costs receivers about 10 cents per ton to unload rail cars, while there is no cost to the receiver to unload trucks; that receivers pay transportation costs; and that certain receivers have informed the protestant producers that if the rail freight rates rise on rock, sand and gravel, said receivers will switch to truck transportation. The protesting producers have equipped their facilities for rail operations, and said producers would be required to modify their plants for truck operations should their receivers insist upon truck rather than rail delivery. These witnesses oppose the proposed increases only to the extent

their receivers may switch to truck delivery if the rates are increased.

It was the position of the railroad traffic witness that rates on rock, sand and gravel are very depressed rates, and in some instances said rates fall below out-of-pocket costs. The witness asserted that the railroads would rather forego the traffic than maintain rock, sand and gravel rates at their present levels.

Statement of Issues

The principal issues presented in this proceeding are the following:

1. What is the proper legal standard to be applied in a so-called "general revenue" proceeding in determining whether or not the sought increases have been justified?

2. Is a finding that the sought increases on the commodities described below will not be unreasonable, excessive, discriminatory, or otherwise unlawful, a necessary prerequisite to a finding that the sought increases in said rates are justified?

- (a) sugar beets
- (b) bulk cement
- (c) rock, sand and gravel
- (d) salt in packages
- (e) bulk salt.

3. Does the record contain sufficient evidence from which the Commission can make appropriate findings with respect to:

- (a) Applicant railroads' intrastate revenues and expenses?
- (b) Whether a general increase in rates has been justified?



Discussion Re Required Findings

In this proceeding applicant railroads seek to increase substantially all of their intrastate local and joint freight rates by the same percentages or amounts applicable to interstate traffic from, to, or within California, as authorized by the ICC in Ex Parte 259-B. The percentages and amounts vary as to different commodities; the increases in intrastate freight revenues which would result from the application herein fall between 5.3 and 6.3 percent above the revenues derived from rates in effect prior to Decision No. 75135, supra.<sup>5/</sup>

Freight service is the primary service offered by the railroads, both nationally and within California. It has been the objective of the ICC in Ex Parte proceedings to set freight rates at levels which will return sufficient revenues to cover the fully distributed costs of freight service and the expenses above out-of-pocket costs for passenger service, plus a profit.<sup>6/</sup> In recent years such objective has not been achieved with respect to California intrastate freight rates, as sought increases in rates have attempted only to reduce deficits, without producing sufficient revenues also to cover all expenses on freight service and expenses above out-of-pocket costs on passenger service and to provide a profit on local freight traffic.<sup>7/</sup> This same situation is involved in this

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<sup>5/</sup> According to railroad pleadings and testimony, the various percentage increases, hold-downs and flat increases sought in Ex Parte 259-B represent the Nation's railroads' estimates of the most equitable manner in which to recoup their collective revenue needs, with minimum disruption of present traffic patterns and competitive marketing situations, and with avoidance of loss of traffic to other carriers.

<sup>6/</sup> Ex Parte 259-B, supra. Both the ICC and this Commission have used out-of-pocket costs for the setting of commute passenger fares (City of San Carlos, et al. v. Southern Pacific Co., Decision No. 75981, dated July 29, 1969). Passenger fares for other services in California do not cover out-of-pocket expenses for the trains involved (Southern Pacific Company, Decision No. 75940, dated July 22, 1969, in Application No. 50670).

<sup>7/</sup> Decisions Nos. 73520 and 75135, supra.

proceeding; the increases sought herein are not designed to produce a profit for the California intrastate freight services of the railroads. For this reason it would be clearly improper to exclude any commodity or group of commodities from the increases sought herein, absent a compelling showing that a wholly unfair or an unlawful result would obtain if the increases were granted.

Section 454 of the Public Utilities Code provides that no public utility shall raise any rate as to result in any increase except upon a showing before the Commission and a finding by the Commission that such increase is justified.<sup>3/</sup>

Other sections of the Code require that all charges demanded or received by any public utility shall be just and reasonable (Section 451); and that no public utility shall establish or maintain any unreasonable differences in rates, either as between localities, or between classes of service (Section 453). Section 12, Article XII, of the State Constitution provides that no discrimination in charges for transportation shall be made by any railroad or other transportation company.

It is clear from the provisions of Section 454, and from conclusions in prior decisions, that the Commission has wide latitude in determining what showing must be made in support of a finding that a proposed rate increase is justified.

Decisions of this Commission in prior Ex Parte proceedings have stated that such proceedings were revenue proceedings and, as

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8/ Section 454 also provides, as follows:

"The commission may establish such rules as it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed increases, the form and manner of the presentation of such showing, and the procedure to be followed in the consideration thereof. ...."

such, were concerned with the overall revenue requirements of the applicants; thus, such proceedings were not appropriate vehicles in which to determine the extent to which adjustments of commodity rates may be required to meet carrier or market conditions; and authorization of proposed increases was not withheld for those reasons. (Decision No. 58226, dated April 7, 1959 (Ex Parte 196), 57 Cal.P.U.C. 117, at 129; and Decision No. 73520, dated December 7, 1967 in Application No. 49493 (Ex Parte 256) unreported.) Decision No. 73520 further states that in increase proceedings of this type the Commission does not make specific findings regarding the reasonableness of any of the rates to be increased. That decision found (1) that the general level of rates and charges maintained by applicant railroads was insufficient and that the proposed increases were justified; and (2) that no showing was required in that proceeding to indicate whether the proposed increased rates would be reasonable or nondiscriminatory. Decision No. 73520 also states that protestants in that proceeding did not contend that the proposed increases were not warranted; protestants were concerned only with the form of the proposed increases on certain commodities. Decision No. 75135 (the initial decision in this proceeding) found that, in the absence of special circumstances, all California intrastate traffic should bear a fair share of the railroads' additional revenue requirements.

It is the contention of the sugar beet interests in this proceeding that there are special circumstances surrounding the movement of sugar beets. They urge that the present rates on sugar beets are fully compensatory under current conditions; therefore, further increases in such rates would result in rates

which would exceed maximum reasonable rates. In prior proceedings, no protestant took the position that the challenged rates would exceed maximum reasonable rates; such protestants contended only that increased rates would cause reductions in rail traffic because of market competition between shippers or because of carrier competition. The sugar beet interests have attempted to show herein that the requested rate increases would result in excessive rates. Thus our prior conclusions, as expressed in Decision No. 73520 and prior proceedings, to the effect that the Commission does not make specific findings regarding the reasonableness of any rates to be increased in a general revenue proceeding should be modified to the extent necessary to indicate that such type of finding will be appropriate when the issue is raised as to whether specific increased rates or charges will be in excess of maximum reasonable rates or charges.

The sugar beet interests, in the course of the hearings, argued that specific findings of fact must be made in a general rate increase proceeding as to whether all increased rates will be just and reasonable. The railroads argue such requirement would present an insurmountable burden of proof, inasmuch as the railroads would need to furnish facts on each of the several thousand commodities handled by the railroads. It is clear that findings of fact as to the reasonableness of increased rates resulting from a general revenue proceeding would be inappropriate, for the reasons that the data required to support such findings could place an insurmountable evidentiary burden upon applicants, and because the Commission has consistently incorporated in its orders in this type of proceeding a "savings" clause, indicating that it has

specifically refrained from making such findings so that there will be no impediment to future complaint actions under Section 734 of the Public Utilities Act. In the instances where protestants raise the issue that proposed increased rates will result in reduced market competition or loss of traffic to other carriers, findings of fact concerning the reasonableness of said proposed increased rates should not be required to be made. Similar conclusions reached in prior proceedings are valid and should stand.

Therefore, we conclude that the proper legal standard to be applied in a so-called "general revenue" proceeding in determining whether or not the sought increases have been justified is the standard heretofore adopted by the Commission, as expressed in Decision No. 73520 and prior proceedings. In those proceedings we concluded that a showing must be made concerning the rail carriers' overall revenue requirements for their California intrastate freight services, and that increases should be authorized based upon these revenue requirements. We further conclude that, as a matter of law, it is not necessary nor appropriate to investigate, in a general revenue proceeding, the reasonableness of every increased rate or charge, nor to make findings of fact with respect thereto; the exception to this conclusion is the instance where a protestant raises the issue and adduces evidence as to whether the proposed increases will result in rates for particular commodities or services which will exceed maximum reasonable rates. In the latter instances, it will be necessary and appropriate to incorporate findings of fact concerning the reasonableness of the resulting rates. In this proceeding, findings of fact concerning the reasonableness of increased rates in sugar beet traffic should be

made as determinative of whether the proposed increases in said rates are justified. Findings of fact as to the reasonableness of the increased rates on commodities on which protests of a different nature were made are not required and need not be made as a prerequisite as to whether the increased rates on said commodities are justified.

Discussion Re Adequacy of Allocations Study

The sugar beet interests urged that the allocations studies presented herein are insufficient to serve as a basis for determining the intrastate revenues and expenses of the applicant railroads. Said protestants contend that the railroads' attempt to show a separation of their intrastate and interstate expenses and revenues is fatally defective. Protestants urge that errors in the exercise of judgment by SP's witnesses in two key areas so distort the final result of said studies so as to make such studies invalid. The first area is the manner in which transited shipments were assigned to intrastate or to interstate traffic. Initially, the cost witness assigned all transited shipments to intrastate traffic. Upon cross-examination by protestants' counsel the witness acknowledged that at least a portion of said shipments should have been assigned to interstate traffic. The witness indicated, however, that no records were readily available which would show which transited shipments were intrastate in character and which were interstate. Allocations of transited shipments to interstate or intrastate categories was then made through the exercise of the informed judgment of a senior traffic official of SP. Based on said judgment, adjustments to the allocations study were made by the SP cost witness resulting in the transfer of

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\$4,375,000 from intrastate to interstate expenses, and \$2,797,000 from intrastate to interstate revenues. Protestants contend this adjustment was done on the basis of sheer speculation and conjecture. Protestants presented a traffic consultant, assertedly an expert in the handling of transited shipments in the West, who offered a different opinion as to the manner in which it would be reasonable to assign transited shipments to intrastate or interstate traffic. His recommendations would assign a greater number of transited shipments to interstate traffic than was recommended by the SP traffic official.

Protestants urge that, not only was an incorrect reassignment made of transited shipments, but the costs used for readjustment of expenses on such shipments erroneously were based on average out-of-pocket costs for all shipments. Protestants contend that transited shipments are generally those commodities subject to out-of-pocket costs per car higher than the average of all intrastate traffic, and that by reassigning expenses using average costs, the reassigned expenses for transited shipments are understated.

Applicant railroads urge that, with respect to reassignment of expenses for transited shipments, it was necessary to use estimates based on expert judgment because of the impossibility of making such adjustments based on carriers' records within any reasonable time period. While this method is imperfect, it reflects the best efforts of its personnel experienced in traffic and cost matters. The railroads also urge that if transited shipments and their related costs were reassigned in the manner proposed by protestants' expert witness, the end result would be a net reduction of some \$500,000 in SP's California intrastate expenses; SP's intrastate expenses would still exceed its intrastate revenues by more than \$4,000,000.

The protestant sugar beet interests also argue that in the development of total expenses, assigned terminal costs are overstated on four groups of commodities, which assertedly constitute about 34 percent of the total number of carloads handled by SP in intrastate service. They assert that the proportion of total system freight expenses assigned to California is overstated, because such expenses were based on average per car expenses for all traffic. Protestants contend that in the development of out-of-pocket costs for the separations study substantially lower terminal costs were used for the heavy loading commodities, such as sugar beets, rock, sand and gravel, and ore, than were used for California traffic as a whole.

We have carefully considered the evidence and the arguments relating to the sufficiency of the allocations studies presented herein. Allocations studies must, of their very nature, rely upon assumptions based upon the informed judgment of expert witnesses. If it were possible to separate the joint costs incurred in the operations conducted by the railroads based solely upon data accumulated in the books and records of the railroads, that task would be relatively simple. However, that is not possible. In the absence of a simple method of allocating joint costs, many theories have been devised as to how such a task should be accomplished.<sup>9/</sup> Thus, any study attempting to allocate railroads' joint costs or expenses necessarily will lack the preciseness desired by protestants herein and will be based upon the expert judgment of its creator. We recognize that the SP's cost witness was required to readjust his study in two critical

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<sup>9/</sup> For example, the ICC's Rail Form A, which specifies methods for development of out-of-pocket and full costs using separation procedures.



areas, upon it being brought out by protestants and the staff that revisions in such areas were required. We will not, however, criticize the use of expert judgment in the development of the revision on transited shipments, as no less a degree of judgment was used in some other portions of said study.

The sugar beet interests have pointed out areas in the allocations study of SP wherein expert judgment is the sole basis for data used, and urge that the entire study be discarded for that reason. We conclude that such use of judgment should not destroy the value of the study as a whole.

The sugar beet interests also urge that the study is in error because it uses average terminal costs in the assignment of total expenses to California traffic, rather than attempting to assign such total expenses on the basis of the varying terminal expenses for various commodities indicated in the development of out-of-pocket costs. The separation of total expenses (in which said average terminal costs were used) was between system freight expenses and expenses for all carload freight traffic originated or terminated within California. The expenses allocated to the latter traffic were then assigned to intrastate traffic on the basis of the percentage relationship of intrastate out-of-pocket costs to total out-of-pocket costs for all traffic originating or terminating in California. Assignment of total expenses was based on averages in the absence of computerized cost formulae, such as were available and used for the development of out-of-pocket costs. Use of averages was utilized throughout the portion of the study dealing with assignment of total expenses. While it would have been preferable to have used more refined techniques in the

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development of said portion of the study, the use of averages therein does not destroy the end value of the study.

After careful consideration we conclude that the arguments raised by protestant sugar interests concerning the validity of the allocations study presented by SP are not persuasive, and that said study is reasonably accurate and suitable for the purposes of this proceeding.

#### Discussion Re Sugar Beets

Protestants' Exhibit 94 develops the out-of-pocket costs for handling sugar beets using the cost finding methods set forth in ICC Rail Form A. Said costs, when compared with revenues, show that for the year 1968 the sugar beet movement within California produced a ratio of revenues to out-of-pocket costs of 165 percent. Protestants assert that the ratio of the revenues sought herein to 1968 out-of-pocket costs on sugar beets would be 172.7 percent. They argue that said ratio is exorbitant for a farm product which has no value until it is processed. Protestants, in their Exhibit 95, also developed a ratio of revenues to fully distributed costs on sugar beets for 1968 of 102 percent.<sup>10/</sup>

Protestants' Exhibit 97 indicates that based upon a restatement of data in SP's exhibits, the average revenue to out-of-pocket cost ratio of all freight traffic in California was 101 percent in 1968 compared with 173 percent on sugar beets in that year. Protestants' position is that sugar beet rates already make a very substantial contribution to the railroads' revenue needs (173 percent) as compared with a much lower average contribution by all other commodities (101 percent) and, therefore, should not be burdened with any amount of increase.

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<sup>10/</sup> In the development of fully distributed costs, ICC Rail Form A includes a factor for a 4 percent rate of return after federal income taxes on all property dedicated to transportation service.

Protestants also argue that sugar beet traffic is unable to bear additional freight charges. On the other hand, they argue that the railroads have a monopoly on sugar beet traffic over 50 miles, that this traffic will move regardless of the level of rail freight charges, and that it is unjust to compel sugar beet traffic to pay freight rates which yield an exorbitant profit over cost, merely because such commodity can pay such rates and continue to move.

Protestants further argue that sugar beets have migrated away from the beet sugar factory areas due to urbanization, and high land values. Thus, sugar refiners have contracted for beets at great distances from their factories, based on grower participation in freight costs and an expectation that freight rates would be held to a maximum increase of 5 cents per ton in this proceeding. Apparently, rate negotiations between SP and refiners were conducted prior to this proceeding, based upon representations that a maximum increase of this amount would make it economically feasible for refiners to continue to buy sugar beets at growing points at a great distance from refineries.

SP argued that rate levels on sugar beets originally were established to give effect to the particular economies enjoyed by the railroads in handling this traffic; that in each general rate increase proceeding since the establishment of the current sugar beet rates, rate levels on sugar beets have not been increased as much as for all commodities; and that, contrary to the contentions of the protestants, the sugar beet industry has the ability to pay the sought increases.

SP also argued that fully distributed costs are not a proper test as to whether a particular level of rates exceeds a

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maximum reasonable level of rates; that some rates must exceed full costs, even by a substantial margin, if railroad operations are to be profitable; and that, in any event, the factor used by protestants' witness in developing SP's full costs from the corresponding out-of-pocket costs understates the full costs.

The railroads also contend that the proposed sugar beet rates are within the zone of reasonableness. Assertedly, the upper limits of that zone are represented by the level at which the rates would be above the value of the service, or be excessive. The railroads assert that because there were movements, several years past, at rate levels higher than the proposed rate levels on sugar beets, the proposed rates will not be excessive.

We have considered all of the evidence and arguments on sugar beets, although not all have been repeated herein. We are persuaded that the level of sugar beet rates authorized in Decision No. 75135 should continue in effect, and that rates any higher than said rates should not be approved herein. After weighing all the factors, it is our conclusion that that level of rates: will contribute needed additional revenues to the railroads; will permit the sugar beet traffic to continue to move without any appreciable disruption of current marketing conditions, particularly with respect to movements originating in growing areas more than 300 miles from the destination refineries; will not require substantially greater grower participation in freight rates than now occurs; and will be in line with past actions voluntarily taken by the railroads with respect to increases on sugar beets in prior general rate increase proceedings, and originally proposed herein.

The data introduced herein concerning the relationship of sugar beet rates to out-of-pocket and full costs indicate that

sugar beet rates make a contribution to the carriers' revenue needs to a greater extent than the average of all traffic handled intrastate in California. However, the average contribution of all traffic fails to cover all of the railroads' expenses in providing intrastate rail service in California. Some traffic necessarily is transported at rate levels barely exceeding out-of-pocket costs, or such traffic would not move (for example, rock, sand and gravel). Such traffic, to the extent that it exceeds out-of-pocket costs and makes some contribution to overhead expenses, bears a portion of the carrier revenue needs; therefore, rates on such traffic would not be unreasonably low. On the other hand, some traffic must exceed both out-of-pocket costs and full costs, in order that the railroads may earn a fair return.<sup>11/</sup> Therefore, rates which produce revenues above full costs are not excessive per se. Such rates may be excessive if they would tend to wither the traffic or even to prevent the free movement of the traffic.

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<sup>11/</sup> The following discussion appears in Decision No. 75873 of July 2, 1969, in General Telephone Company of California (mimeo pages 124 and 125) concerning the proposal of protestants to price Starlite Telephones at no more than full costs:

"Rate making is never a mathematical application of a theoretical principle. In the utility field there are always customers who are served at less than cost, and, if the overall return to the utility is reasonable, there are those who are served at more than cost. ....

"Realistically, one balancing factor to the charge of excessive pricing is the ability of the company to sell any of its services to the public. If the price for a specific item of equipment or a particular service is too high, the company will be unable to attract customers and will either withdraw the service or reduce the price. For this reason alone certain elements of the company's business will produce greater returns than other elements regardless of cost."

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We have carefully weighed the evidence on sugar beets; our conclusions are that the present and proposed rates are not or will not be excessive because they do or will exceed out-of-pocket or full costs in the amounts indicated in the record; present rates, including the three percent increase subject to a maximum increase of five cents per ton authorized in Decision No. 75135, do not prevent the free movement of sugar beet traffic within California; and the proposed rates, to the extent that such rates will exceed the present rates, may prevent the free movement of sugar beets, particularly for longer hauls.

Discussion Re Other Protests

Protests were made with respect to the sought increases on other commodities (Portland cement; salt; and rock, sand and gravel). As hereinbefore stated, specific findings are not required with respect to such protests. The record does not contain sufficient evidence to show that Portland cement and salt should not bear their share of the sought revenue increases. With respect to rock, sand and gravel, the record shows that rate levels are depressed; that terminal and switching costs are a large proportion of the total costs on these commodities; that said traffic moves for relatively short distances; that, generally, rates on short-haul rail traffic set at or above out-of-pocket costs exceed the cost of other means of transportation (i.e., sugar beets for 50 miles or less); and that if short-haul rates on rock, sand and gravel are not increased as proposed herein, said rates may be unreasonably low in that they may fail to cover out-of-pocket costs and, therefore, make no contribution to general revenue needs of the rail carriers.

Discussion Re Order Setting Hearing

As in prior proceedings of this type, highway common carriers which maintain rates on the level of the current rail rates and which are below the level of the specific minimum rates set by the Commission for truck transportation should be authorized to increase said alternatively applied rail rates to the level of the rates authorized herein or to the level of the minimum rates, whichever are lower. The justification for increases in these rates is explained in Decision No. 73520, supra.

Findings and Conclusions

The Commission finds that:

1. The several exhibits which collectively constitute the separation of SP's California intrastate revenues and expenses are reasonably adequate for the purposes of this proceeding, although the record indicates that such studies can be made more definitive in the future.
2. Based upon said allocation procedures, SP's California intrastate freight revenues, expenses and net operating loss for the year 1968 (exclusive of the increases heretofore authorized in this proceeding and the further increases sought herein) were, respectively, \$62,467,902, \$70,443,982 and \$7,967,080.
3. The total of the increases heretofore authorized herein and the further increases sought herein would amount to \$3,324,925 annually for SP, based upon traffic handled in 1968. Said increase in annual revenue, if in effect in 1968, would not have caused SP's California intrastate freight operations to be conducted at a profit.
4. SP and its principal subsidiary, Northwestern Pacific Railroad Company, earned, in 1968, \$70,744,827, or approximately 74 percent of the railroads' total California intrastate freight

revenues. New allocation studies were presented herein for SP and NWP. Allocation studies for the balance of railroads, for which revenues and expenses are set forth in Table II in the preceding opinion, were based upon factors developed in prior proceedings. Allocation studies for the latter group of railroads are reasonable and sufficient for the purposes of this proceeding.

5. Table II, contained in the preceding opinion, sets forth the reasonable estimates of revenues, expenses and net railway operating income (or loss) for the group of railroads involved in this proceeding. Said table indicates that, as a group, said railroads' operations for the year 1968 would have been conducted at a loss, if the increases sought herein were in effect in that period.

6. The applicant railroads' California intrastate freight revenues will be insufficient to cover their corresponding expenses under present rate levels, and revenues will continue to fall short of covering expenses if the further increase sought herein is granted.

7. Increases in freight revenues are necessary to the economic health of the railroad applicants.

8. In proceedings of this type the principal consideration is given to the carriers' overall revenue needs. No study is required of applicant railroads of each or of any of the individual rates or charges proposed to be increased, for the purpose of determining the reasonableness or lawfulness thereof. Except as to sugar beets, in authorizing applicant railroads to increase their present rates and charges, the Commission does not make a finding of fact of the reasonableness or lawfulness of any particular rate or charge.



9. Protestant sugar beet refiners and growers presented evidence concerning the costs of transporting sugar beets between points in California by SP. Said data, whether accepted as presented, or modified as proposed by SP, indicate that sugar beet revenues under present rates exceed out-of-pocket costs and full costs.

10. Rates which exceed full costs are not in excess of maximum reasonable rates, per se. It has not been shown, on the basis of that evidence, that present sugar beet rates (as established by Decision No. 75135) are excessive.

11. The entire movement of sugar beets from growing areas to refineries is by rail, for distances over about 50 miles, and no other economic substitute means of transportation is available.

12. Further increases, above those increases authorized by Decision No. 75135, may tend to prohibit the free movement of sugar beets from Imperial Valley points and points in the Kern County area to sugar refineries in Northern California, or may cause the growers to assume a greater portion of the rail freight charges now borne by the sugar refiners.

13. Sugar beet traffic, which as a whole contributes substantially more than the average of all commodities to the rail carriers' California intrastate revenue requirements, should not be subject to increases in rates which would prohibit the free movement of these commodities within the State.

14. The present carload rates on sugar beets established pursuant to Decision No. 75135 are just and reasonable, and further increases therein as a result of this proceeding are not justified.

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15. The increases in rates proposed, except those described in the preceding finding, are justified. On this record, the rate increases authorized herein will not be excessive.

16. The rates and charges of highway common carriers and other common carriers published and maintained on the level of the present rail carload rates, are insufficient, unreasonable and not justified by transportation conditions to the extent such rates and charges are both lower than the increased rates authorized herein and below the applicable minimum rates.

We conclude that:

1. The application should be granted to the extent provided by the order herein.

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.

5. All motions not heretofore ruled upon should be denied.

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O R D E R

IT IS ORDERED that:

1. Pacific Southcoast Freight Bureau, on behalf of the carriers listed in Application No. 50445, is authorized to establish the increases in rates proposed in the Second Supplemental Application herein provided:

- a. That the authority granted herein shall not extend to the increasing of any of the rates described in Appendix A, attached hereto and by this reference made a part hereof.
- b. That no increase shall be made in carload rates on sugar beets.

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-259-B 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.

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6. The authorities set forth 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. 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.

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

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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.

13. All motions heretofore not ruled upon are denied.

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

Dated at San Francisco, California, this  
16th day of SEPTEMBER, 1969.

William J. Lyons  
President

George J. ...

Thomas W. ...

James L. Sturges  
Commissioners

*I dissent*  
*J. B. ...*

Appendix A

EXCEPTIONS TO AUTHORITY TO INCREASE RATES

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

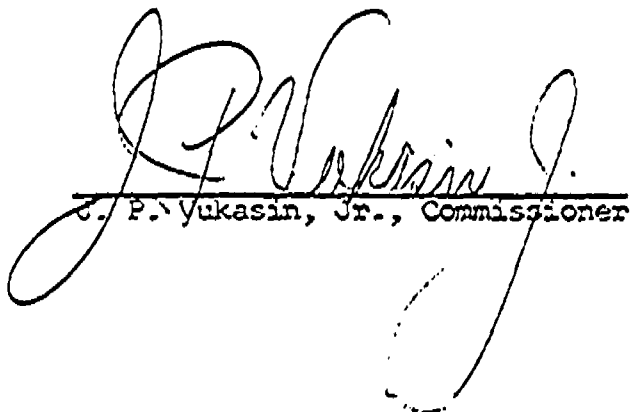
1. The following rates, charges and provisions of Pacific Southcoast Freight Bureau, Agent Tariff 294-E (ICC No. 1775):
  - (A) Items 1-B, 280-E, 410-C (Paragraphs A and B), 420-G, 510-H, 550-H and 765-B
  - (B) All Class Rates in Section 1
  - (C) Item 3530-F (Rates of 61 cents and 69 cents only); Items 4140-F and 4180-E
2. The following rates, charges and provisions of Pacific Southcoast Freight Bureau, Agent Tariff No. 300-A (ICC No. 1819):
  - (A) Carload rates on Sugar in following items which are flagged with a (510) reference:  
Items 3400-A to 3560-A, 10754-A, 10763-A, 10766-B to 10781-B, 10784-A and 10787-A, 10853-B, 10859-A to 10883-A, 10889-A to 10895-A, 10901-A, 10904-A, 10913-A to 10919-A, 10925-A, 10928-A, 10931-B, 10934-A, 10937-A, 10946-A to 10964-A, 10970-A
  - (B) Item 510-A
3. Minimum LCL charges in Item 205-I of Pacific Southcoast Freight Bureau, Agent Tariff 1016 (ICC No. 1590).

COMMISSIONER J. P. VUKASIN, JR., CONCURRING AND DISSENTING

I concur with the rate increases authorized on Portland Cement; salt; and rock, sand and gravel. I dissent to the denial of the proposed increases on sugar beets.

The Interstate Commerce Commission in 1968 fully authorized in interstate traffic the increases requested herein by the railroads for intrastate traffic. Our decision today on sugar beets is contrary to the action of the Interstate Commerce Commission.

The staff of the California Public Utilities Commission made no formal study and did not introduce any testimony in these hearings. Lacking such presentation the Commission is confronted by two conflicting studies by opposite parties, namely, the carriers and the sugar beet representatives. Nonetheless the evidence is uncontroverted that virtually every railroad operating in California is incurring losses in its intrastate freight traffic. (Cf. page 7 of Decision 76181) In arriving at a decision as to what constitutes a reasonable rate of return, a regulatory commission must consider the legal standards set forth in *Federal Power Comm. v. Hope Nat. Gas Co.*, 320 U.S. 591. Under the Hope doctrine we should allow the railroads an opportunity to earn a reasonable return on their investment.

  
J. P. Vukasin, Jr., Commissioner

San Francisco, California

September 16, 1969