

Decision No. 77184

ORIGINAL

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 (Ex Parte 262
Increases).

Application No. 51480
(Filed November 13, 1969)

In the Matter of the Investigation
into the rates, rules, regulations,
charges, allowances and practices of
all common carriers and highway
carriers relating to the transporta-
tion 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 No. 570,
Dated December 23, 1969)

And Related Matters.

Cases Nos.
5330, 5433, 5435, 5436,
5437, 5438, 5439, 5440,
5441, 5603, 5604, 7857,
7858 and 8808

(For appearances see Appendix B)

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 rail and joint rail-highway freight rates and charges applicable to California intrastate transportation, except certain rail rates which historically have been maintained at minimum rate levels prescribed by the Commission for highway carriers. On December 23,

A. 51480, C.5432(OSH 570) et al. ds

1969, the Commission ordered that hearings should be held in the several minimum rate investigation proceedings concurrently with the hearings in Application No. 51480 for the purpose of determining whether common carriers should also be authorized and directed to adjust their rates maintained at the level of rail rates pursuant to "alternative application of common carrier rates" provisions of the various minimum rate tariffs.

Public hearings on these matters were held before Examiner Gagnon at San Francisco on January 7 and 8, 1970. Protestant sugar beet growers and refiners presented a motion for dismissal of the application on the ground that applicant had assertedly failed to make a prima facie case. Shippers of Portland cement, while not opposing the applicant's rate proposal per se, requested that the sought increase be reflected in the cement rates as a flat upward adjustment of 1/2 cent per 100 pounds, in lieu of the proposed percentage increase. Submission of the proceeding was made subject to the receipt of late-filed exhibits and the subsequent filing of concurrent briefs which have been received.

The sought increases are set forth in Exhibits 1, 2, 3 and 4, and are the same as those authorized by the Interstate Commerce Commission (ICC) to apply, effective November 18, 1969, as interim increases in rates on interstate rail traffic, pending completion of a full investigation by the ICC as to the revenue needs of the rail lines in Ex Parte No. 262, Increased Freight Rates, 1969, dated November 17, 1969. The Ex Parte 262 interim increase is generally 6 percent. If the ICC should, after investigation, modify the Ex Parte 262 increase by either reducing or eliminating said increase with respect to any particular interstate rates, the applicant rail carriers will make refund of the difference between

the rates reflecting the authorized interim increases and the level of said rates after such reduction or elimination of the Ex Parte 262 increase, plus 4 percent interest. Similar refund provisions are proposed by applicant rail carriers in connection with California intrastate traffic.^{1/}

Ex Parte 262 - General

The last general increase in California intrastate freight rates was authorized by Decision No. 76181, dated September 16, 1969, in Application No. 50445. Said decision authorized the rail lines to apply and maintain, on California intrastate traffic, increases similar to those authorized by the Interstate Commerce Commission, on interstate traffic, in the latter's Orders of June 19, 1968, November 25, 1968 and January 23, 1969, in Ex Parte No. 259, Increased Freight Rates, 1968. Decision No. 76181, with certain exceptions, found justified an overall increase of some 5 percent (Ex Parte 259-B) which became effective on October 16, 1969, and was in lieu of the interim increase (Ex Parte 259-A) of 3 percent previously authorized by Decision No. 75135, dated December 20, 1968, in Application No. 50445. The Commission denied the applicant railroads' sought 5 percent increase in their intrastate carload sugar beet rates, thereby retaining the 3 percent, maximum 5 cents per net ton increase previously authorized by Decision No. 75135. The rails' sought increase in cement rates of 1 cent per 100 pounds was also authorized by Decision No. 76181, in lieu of the prior interim increase of 1/4 cent per 100 pounds authorized by Decision No. 75135. In the instant proceeding the rail carriers seek the full 6 percent Ex Parte 262

^{1/} Rule 13 of Tariff of Increased Rates and Charges No. X-262 (Exhibits 1, 2, 3 and 4).

increase in rates applicable to California intrastate carload movements of cement and sugar beets.

The Assistant Manager for the Bureau of Transportation Research of the Southern Pacific Transportation Company (SPT Co.) presented a statement (Exhibit 6) of the estimated freight operating revenues and expenses attributable to the California intrastate traffic of the four major railroads and their subsidiaries operating within the State.^{2/} The rail witness explained that the data contained in Exhibit 6 was initially extracted from Table II of Decision No. 76181. Said data was then adjusted to reflect the reduction in SPT Co.'s revenues resulting under the partial granting of the sought Ex Parte 259-B increase on sugar beets by Decision No. 76181. The rail cost witness then further revised the Ex Parte 259-B revenue and expense computations set forth in Exhibit 6 in order to reflect the estimated intrastate revenues and expenses resulting under the proposed 6 percent Ex Parte 262 increase and operating expenses at the December 31, 1969 level.^{3/} The latter projected revenue and expense estimates are set forth in Exhibit 7 and are reproduced in the table which follows:

^{2/} The four major railroads and their subsidiaries receive about 97 percent of the total California intrastate revenues.

^{3/} The allocation procedures employed by applicant railroads to develop estimates of their California intrastate freight revenues and expenses are predicated upon historical interstate-intrastate traffic flow separation studies used in prior proceedings. See Decision No. 58226 (57 Cal.P.U.C. 117) and Decision No. 76181, dated September 16, 1969, in Application No. 50445 for revised separation studies of the SPT Co.

TABLE I

ESTIMATED FREIGHT REVENUES, EXPENSES
AND NET RAILWAY OPERATING INCOME 1/
ATTRIBUTABLE TO
CALIFORNIA INTRASTATE TRAFFIC BASED ON THE YEAR 1968
WITH ALLOWANCE FOR APPLICATION OF SOUGHT INCREASES IN
EX PARTE 262 AND EXPENSES AT DECEMBER 31, 1969 LEVEL.

<u>Company</u>	<u>Revenues Incl. Sought Increases</u>	<u>Expenses at Dec. 31, 1969 Level <u>1/</u></u>	<u>Net Railway Operating <u>1/</u> Income</u>
Southern Pacific Company	\$69,357,000	\$74,649,000	(\$5,292,000)
The Atchison, Topeka and Santa Fe Railway Company	18,951,000	22,016,000	(3,065,000)
Northwestern Pacific Railroad Company	5,249,000	5,513,000	(264,000)
Western Pacific Railroad Company	2,772,000	3,881,000	(1,109,000)
Union Pacific Railroad Company	1,597,000	1,064,000	533,000
San Diego and Arizona Eastern Railway Company	1,011,000	854,000	157,000
Sacramento Northern Railway Company	339,000	630,000	(291,000)
Sunset Railway Company	205,000	151,000	54,000
Central California Traction Company	165,000	254,000	(89,000)
Holton Inter-Urban Railway Company	119,000	101,000	18,000
Tidewater Southern Railway Company	127,000	178,000	(51,000)
Petaluma and Santa Rosa Railroad Company	33,000	28,000	5,000
Visalia Electric Railroad Company	<u>-</u>	<u>1,000</u>	<u>(1,000)</u>
Total	\$99,925,000	\$109,320,000	(\$9,395,000)

() Indicates negative amount.

1/ Does not include State or Federal Income Taxes.

The rail witness explained that the increased revenues shown on Table I were determined by applying a straight 6 percent increase to the freight and switching portion of the revenues shown in Exhibit 6. Such percentage increase produces additional estimated revenues of \$5,524,000 per year for the railroads involved. The December 31, 1968 level of expenses shown in Exhibit 6 was also updated by the rail cost witness to reflect estimated expenses at the December 31, 1969 level, also shown in Table I above. Said increased expenses were determined for the four major California railroads and their subsidiaries by use of the following systemwide expense indices:

- | | |
|-----------------------------------------------------------------------------------------------------|-------|
| (1) Southern Pacific Transportation Co. and subsidiaries | 5.97% |
| (2) Western Pacific Railroad Co. and subsidiaries (including Central California Traction Co.) | 6.26% |
| (3) Union Pacific Railroad Co. | 5.98% |
| (4) The Atchison, Topeka and Santa Fe Railway Co. | 6.28% |

Since the last California intrastate Ex Parte 259-B increase, applicant rail carriers indicate that their expenses in California have increased, as of December 31, 1969, by some \$6,231,000. This amount exceeds the \$5,524,000 in additional revenues anticipated under the sought 6 percent Ex Parte 262 increase. From Table I it will also be noted that for California intrastate traffic a net railway operating deficit of about \$9,395,000 is expected under the sought increase. This net operating loss is \$707,000 greater than that anticipated under the prior Ex Parte 259-B increase authorized by Decision No. 76181.

The rail cost witness explained that the percentage increases in system expenses, computed for the four major California railroads and their subsidiaries, reflect upward adjustments in wage costs, payroll taxes, material and fuel. The wage portion of the system expense indices was developed by relating the straight time hourly rate of pay for 1968 to the hourly rate of pay as of September, 1969, for the various classes of employees in operating and nonoperating services. No increase in labor agreements occurred between the period September-December, 1969. On January 1, 1969, all rail employees covered by labor agreements received a 2 percent wage increase, and on July 1, 1969, said employees received a 3 percent increase in pay. The increase in labor, after adjustments for vacation allowances, amounts to 8.41 percent according to the testimony of the rail cost witness. He further stated that wages constitute approximately 55 percent of the rail carriers' total operating expenses. The rail cost witness explained that although the percentage increases used to adjust the California intrastate expenses were predicated upon increases in system expenses, such expense elements were equally applicable to the handling of California intrastate traffic. The various expense elements employed in the development of the composite percentage increases in the system expense of the respective four major California railroads and their subsidiaries were explained by the cost witness. This was accomplished by demonstrating the computations involved in the determination of SPT Co.'s 5.97 percent increase in its system expenses. Said computations indicate that, for the 12-month period ending December 31, 1969, an increase of about 4 percent in wages for SPT Co.'s freight operating and nonoperating employees constitutes a major portion of the increases in the system expenses for this applicant rail carrier.

The Freight Traffic Manager, Rates and Division, of the SPT Co. presented in evidence the effective tariff of Increased Rates and Charges, X-262 on file with the Interstate Commerce Commission and which is proposed to be filed with this Commission, with certain minor exceptions, if the authority requested herein is granted. The SPT Co. executive stated that the general 6 percent Ex Parte 262 increase was generated by the urgent need of the rail carriers of the nation for additional revenue to offset increased costs of operations. The freight traffic manager explained that the rail carriers' petition before the ICC for a general 6 percent increase was predicated upon the alleged representations that such increase in rates would produce approximately 600 million dollars in required additional revenues if applied on all interstate and intrastate traffic. The rail executive expressed the opinion that the sought increase on California intrastate traffic would not result in any significant diversion of rail traffic.

Ex Parte 262 - Cement

Four California cement mills advocated that any Ex Parte 262 increase which may be authorized in the California intrastate commodity rates on cement be expressed as a constant amount in cents per 100 pounds, in lieu of the sought percentage adjustment in rates.^{4/} The cement mills suggest a uniform increase of one-half cent per 100 pounds.

Representatives of the cement mills presented oral testimony in support of the alternative increase in cement rates. The main concern of the cement mills is over the possibility that the

^{4/} The four cement mills are Southwestern Portland Cement Company, Kaiser Cement and Gypsum Corporation, Riverside Division of American Cement Corporation, and Pacific Cement & Aggregates.

varying increase in rates, produced under the rails' percentage increase proposal, would have highly undesirable and disruptive effects upon the competitive marketing relationships presently enjoyed by the California cement mills.

The increase of one-half cent per 100 pounds proposed by the cement mills is the minimum increase in cement rates produced by the 6 percent Ex Parte 262 increase. Under said rail proposal the increase in cement rates ranges from one-half cent per 100 pounds to 3 cents per 100 pounds. No factual evidence was presented at the hearing by the cement mills in support of their alternative proposal. In order to afford the cement shippers further opportunity to develop factual information in support of a uniform increase in cents per 100 pounds for cement rates, they were granted leave to submit late-filed exhibits and the rail carriers to file reply exhibits thereto. Only Pacific Cement and Aggregates submitted a late-filed exhibit (Exhibit No. 10) which shows that, based on the 1969 intrastate shipments of bulk cement from Davenport, California, a weighted average increase of \$0.0063 per 100 pounds would result under the proposed 6 percent increase in cement rates.

In response to Exhibit 10, The Atchison, Topeka and Santa Fe Railway Co. (AT&SFRy) and the Southern Pacific Transportation Company filed reply Exhibits Nos. 15 and 16, respectively. Exhibit No. 15 shows that, for California intrastate shipments of cement originating on the AT&SFRy during the first 9 months of 1969, the proposed 6 percent increase would amount to an average increase of \$0.00998 cents per 100 pounds. The SPT Co. assertedly did not have a similar breakdown for movements of cement via its lines. This rail carrier notes that Exhibit 10 is limited to cement moving from

a single cement mill in northern California and, according to SPT Co.'s Exhibit 16, accounted for only 3.7 percent of said rail carrier's total projected California intrastate cement movements for 1969.

The applicant railroads also developed, through cross-examination of witnesses on behalf of the various cement mills, that said mills make extensive use of the services of for-hire highway carriers. To this end, the rails directed attention to the recent increase, effective January 1, 1970, in the minimum highway carrier cement rates named in the Commission's Minimum Rate Tariff No. 10.^{5/} It was noted by the rails that the increase in the minimum truck cement rates ranged from 2 cents to 2-1/2 cents per 100 pounds in Northern California Territory and 1-1/4 cents per 100 pounds in Southern California Territory.

While the evidence presented by the California cement mills is, to say the least, not impressive, their expressed concern and objections to any varying increases in cement rates is not without merit. The importance of minimizing the effects of any general adjustment in the rail cement rates upon the competitive status of the various California marketing areas for cement has been historically recognized by the Commission, the applicant railroads and the cement mills. An analysis of the factual information now before us indicates that a flat one cent increase in the established cement rates would sustain the major objective urged by the cement mills and at the same time reflect the rails' sought increase within reasonable limits.

^{5/} Decision No. 76480, dated November 25, 1969, in Case No. 5440 (Petitions for Modification Nos. 63 and 64).

Ex Parte 262 - Sugar Beets

The present rates on sugar beets were established January 19, 1969, pursuant to Decision No. 75135. Said decision authorized an Ex Parte 259 increase of 3 percent, maximum 5 cents per net ton, in lieu of the overall sought increase of 3 percent. In finding that no further increase on sugar beets was justified, the Commission in Decision No. 76181 also found the increased rates on sugar beets established pursuant to Decision No. 75135 to be "just and reasonable".^{6/} The protestant sugar beet interests presented oral and documentary evidence through several representatives of California sugar beet refiners and growers. Rebuttal testimony was by an SPT Co. cost expert and traffic official. A joint stipulation by applicant and protestant sugar beet interests was entered into the record, whereby substantially all of the evidence offered by said parties in the prior Ex Parte 259 intra-state freight rate increase proceeding in Application No. 50445 (Decisions Nos. 75135 and 76181) was incorporated by reference in and made a part of the record in the instant proceeding.

A summary of the transportation and marketing of the California sugar beet traffic is provided in Decision No. 76181. An abbreviated reference to the historical and updated evidence concerning the transportation and marketing of this traffic will suffice here. Sugar beets are grown in the major agricultural areas in the State and are harvested at different times of the year. The earliest crop matures in the Imperial Valley and the latest crop matures in the upper Sacramento Valley. It was explained that sugar beets are a deteriorating root which must be processed at the

^{6/} On January 21, 1970, the California Supreme Court denied a request for writ of review of Decision No. 76181 in S.F. No. 22699-Spreckels Sugar Co. et al. vs. P.U.C.

peak of their sugar content in order to realize the maximum amount of available sugar from the basic agricultural product. Transportation lead time from point of growth to the sugar refinery is a significant factor in the production of beet sugar. There are four sugar refineries operating ten plant facilities in California which are all located (except at Betteravia) at points served by the SPT Co.^{7/} The entire rail beet sugar movement is, except for movements to Betteravia by the Santa Maria Valley Railroad, via the SPT Co. direct. In 1969, SPT Co. transported 2,921,896 tons of sugar beets in California, which produced freight charges of \$8,602,432. Said freight charges amounted to 13 percent of SPT Co.'s 1969 estimated California intrastate freight revenues of \$65,546,000 (Exhibits 6 and 12). For the projected year 1970, protestant sugar beet interests estimate that SPT Co.'s sugar beet traffic will be 2,931,029 tons with freight charges amounting to \$8,717,269, not including the proposed Ex Parte 262 increase. Should the full 6 percent sought increase be granted, protestants estimate that SPT Co. would realize \$523,036 additional freight revenue from the projected 1970 sugar beet traffic. This amount represents 9.4 percent of the total additional California intrastate revenues contemplated under the sought Ex Parte 262 increase.

<u>7/</u>	<u>Sugar Companies</u>	<u>Plant Locations</u>
	Amer. Crystal Sugar Co.	Clarksburg
	Holly Sugar Co.	Hamilton City
	Holly Sugar Co.	Santa Ana (Dyer)
	Holly Sugar Co.	Tracy
	Holly Sugar Co.	Brawley
	Spreckels Sugar Co.	Spreckels
	Spreckels Sugar Co.	Manteca
	Spreckels Sugar Co.	Woodland
	Spreckels Sugar Co.	Mendota
	Union Sugar Co.	Betteravia

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.^{8/} 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.^{9/} Some of the refiners have placed into 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.

Applicant seeks authority to adjust the existing level of rail sugar beet rates, previously found to be just and reasonable by Decision No. 76181, so that such rates will reflect subsequent increases in operating expenses. Protestant sugar refineries, together with The California Beet Growers Association, contend that no further increase in the sugar beet rates is justified; and that as to the sought increases generally, Application No. 51480 should be denied.

^{8/} 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.

^{9/} Movements of 50-70 miles or less to refineries are generally by truck. Truck transportation costs are usually paid by the growers.

To support protestants' position, evidence pertaining to the following major allegations was submitted.

1. The Commission is required to make a finding and applicant the burden of proving that the sought increase in sugar beet rates is just and reasonable.

2. Infirmities in applicant railroads' interstate vs. California intrastate so-called separation or allocation studies are such as to make it impossible to determine their intrastate revenues and expenses; said railroads have, therefore, failed to justify their proposed general rate increase.

3. The sought increase in sugar beet rates will result in rates that are unreasonable, excessive and not justified.

As for protestants' contention relative to the necessity for a finding that the sought increase in rates on sugar beets is just and reasonable, the Commission's following conclusions in Decision No. 76181 are deemed equally appropriate in this proceeding:

"...we conclude that the proper legal standard to be applied in a so-called 'general revenue' proceeding in determining whether --- sought increases have been justified is...as expressed in Decision No. 73520... We further conclude that...it is not necessary nor appropriate to investigate, in a general revenue proceeding, the reasonableness of every increased rate or charge, nor to make finding of fact with respect thereto; the exception to this conclusion is... 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 instance, 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."

The evidence in this proceeding does not contain any basis for advancing a holding different from that expressed in Decision No. 76181 noted above.

Protestants' allegation relative to applicant railroads' so-called separation studies rests mainly upon the historical evidence of record in Application No. 50445. In Decision No. 76181 of said proceeding the Commission, in discussing the adequacy of the railroads' separation study, as updated by the SPT Co., reached the following conclusion:

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

The evidence in this proceeding will not support a conclusion, such as sought by the protestant sugar beet interests, relative to the so-called rail allocation study which is different or contrary to the conclusion reached in Decision No. 76181. Accordingly, the protestants' motion for dismissal of Application No. 51480 should be denied.

The sugar beet interests having raised the issue as to the reasonableness of the sought 6 percent increase in rates on sugar beets, proceeded to again rely rather extensively upon the historical evidence underlying Decision No. 76181. Additional supporting evidence was also presented in the instant proceeding by several representatives of the protestant sugar beet interests. In general, they endeavored to show that (1) the present level of sugar beet rates has adversely affected the volume of long haul sugar beet traffic from Imperial Valley and Kern County production areas; (2) the Ex Parte 262 sought increase would cause further erosion of

the long haul rail movement of sugar beets; and (3) the current level of sugar beet rates exceeds the rail carrier's out-of-pocket costs by substantial amounts, more than covers fully distributed costs and contributes more than the sugar beet traffic's fair share of SPT Co.'s intrastate revenue requirements.

It is the testimony of protestants that the Ex Parte 259 increase of some 3 percent on sugar beets, which became effective January 19, 1969, caused a significant reduction in Imperial Valley and Kern County sugar beet acreage contracted for by such refineries as Holly Sugar Co. (Tracy), Spreckels Sugar Co. (Mendota) and Union Sugar Co. (Betteravia); thereby allegedly causing a reduction in long haul rail freight volume and income to the rail carrier involved. Protestants maintain that a further reduction in sugar beet traffic will occur under the rails' proposed Ex Parte 262 increase.

Protestants explain that sugar beet grower participation in rail freight expense on long haul traffic started in Imperial Valley in 1955 when the U. S. Department of Agriculture permitted Union Sugar Co. to charge Imperial Valley sugar beet growers with all freight costs in excess of \$3.08 per ton. Said grower freight rate absorption has risen from 55 cents per ton in 1967 to 70 cents per ton in 1969 and would go to 93 cents per ton under the proposed 6 percent increase. Spreckels Sugar Co. assertedly pays all freight charges on its sugar beets, except on the movements from Imperial Valley to its Mendota factory the growers absorb all freight charges over \$3.25 per ton. Imperial Valley sugar beet growers for both Union Sugar Co. and Spreckels Sugar Co. are committed to absorb any further increases in their 1969 crop which is to be harvested during April-July, 1970. It is the position of the California Beet Growers Association that a 6 percent increase in sugar beet rates would cause

a substantial cutback in sugar beet acreage contracted for refineries at Betteravia (Union Sugar Co.) and Mendota (Spreckels Sugar) or the discontinuance of long haul sugar beet traffic resulting in a loss of over \$2 million in freight revenue by the Southern Pacific Transportation Company. It is alleged that the growers' costs, including freight costs, have increased at a greater rate than the return from their sugar beet crop. Many beet growers in Imperial Valley are assertedly experiencing unprofitable operations and difficult financing.

Applicant railroads attempted to show through cross-examination and argument on brief, that the protestants' position relative to the reduction of sugar beet acreage was, in fact, due to many economic factors other than the cost of long haul rail transportation. Applicant makes the observation that the sugar beet interests took the same position in opposition to the Ex Parte 259 increase on sugar beets. Notwithstanding such testimony of protestants, applicant notes that the 1969 intrastate rail movement of sugar beets substantially exceeded the 1968 movement and the projected movement for 1970 will exceed the 1969 movement according to protestants' Exhibit No. 12.

In an effort to demonstrate that the existing and proposed rail sugar beet rates do not exceed the value of the rail service involved and are, therefore, reasonable, applicant presented evidence to show that a regular and substantial rail movement of sugar beets has been transported prior and subsequent to the publication of the existing volume incentive sugar beet rates which take a minimum weight of 130,000 pounds (Exhibits 13-14). Applicant notes that many of the proposed volume incentive rates would actually

be on a lower level than rates between the same points in effect in 1959.

In considering the value of rail service for transportation of sugar beets in California applicant directs attention to the use made by the sugar beet shippers of for-hire highway carrier service. For example, during 1969 the movement of sugar beets into Spreckels Sugar Co. factories was stated to be as follows:

- | | |
|-----------------------------------------------|--------|
| (1) By rail from receiving station | 45% |
| (2) By for-hire trucks from receiving station | 25-30% |
| (3) By grower trucks directly from field | 30% |

In contrast to the published tariff rail rates for transportation of sugar beets, for-hire truck carriers enjoy agricultural exemption from rate regulation and are thus free to negotiate rates with the sugar shippers. Through cross-examination applicant developed that Spreckels Sugar Co. negotiates favorable truck rates for movement of sugar beets to its refinery for distances up to 70 miles. The Union Sugar Company has sugar beets from Western Kern County hauled by truck to its Betteravia plant, a distance of some 140 miles. It was established that the decision to transport sugar beets by rail rather than by truck rests upon a determination that the value of rail service or rate level is deemed to be superior or more desirable than a like movement by truck.

With respect to the "value of service" test of the reasonableness of the rails' sought increase in sugar beet rates, protestants contend that the sugar beet movement in California and the beet sugar companies are virtually captive shippers of the SPT Co.^{10/} Protestants argue that applicant seeks a level of sugar

^{10/} Finding 11 of Decision No. 76181 states: "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."

beet rates based upon the theory of what the traffic will bear rather than upon what is the reasonable value of the service involved.

Attention is directed to the holding in Seatrains Lines, Inc. v.

Akron, C&Y Ry. Co. (1940), 243 I.C.C. 199, 211-212, wherein the

I.C.C. in discussing value of service stated, in part, as follows:

"Although this evidence has been referred to as pertaining to the question of value of service, actually the question seems to be what the traffic will bear. The distinction between these two concepts was pointed out in Mountain-Pacific Oil Cases, 192 I.C.C. 599, 636-637, as follows:

'In determining reasonable freight rates we have always recognized that consideration should be given, among other things, to what has been called the value of the service. This has never been very clearly defined, and it has been confused with what the traffic will bear. There is some resemblance between the two things, but they are not identical. It has been deemed reasonable that the higher valued commodities should pay somewhat higher rates, relatively, than the lower value commodities, and that the relative burden of transportation cost in the distribution of a product should be taken into account. That is, in substance, what is meant by giving weight to the value of the service. It is equivalent to charging what the traffic can reasonably be required to bear. But charging what the traffic will bear carries this doctrine to an extreme, and we have never recognized that it has any place in public regulation.

'The Supreme Court has held that we cannot require traffic to be carried at less than cost plus a reasonable profit, regardless of whether the traffic can bear such rates. Northern Pacific Railway v. North Dakota, 236 U.S. 585. It would be equally unjust to compel traffic to pay rates which yield an exorbitant profit over cost, merely because it can pay such rates and continue to move. Regulation on such a basis would be equivalent to the exercise of the power of taxation." (Emphasis added.)

Protestants contend that their sugar beet traffic is now contributing more than its fair share of the SPT Co.'s total intra-state revenue requirements. To substantiate their position protestants refer to their Exhibits 94 and 95 in Application No. 50445 (Decision No. 76181) wherein it was shown that for the year 1968 the sugar beet movement within California produced a ratio of revenues to out-of-pocket costs of 165 percent, which compares with a 158 percent ratio for 1967 (Exhibit 13 in Application No. 50445). Exhibit 95 of record developed a ratio to fully distributed costs on sugar beets for 1968 of 102 percent.^{11/} Utilizing the SPT Co. cost data set forth in Exhibit 104 of record in Application No. 50445, protestants introduced a comparison (Exhibit 11) of the SPT Co. revenue to out-of-pocket cost ratios for the transportation of California sugar beets with like ratios of other commodities for the calendar year 1968. The sugar beet traffic produced the following ratios:

TABLE II

<u>Line of Exhibit 11</u>	<u>Miles</u>	<u>Weight (Pounds)</u>	<u>Ratios - Percent</u>	
			<u>(1)</u>	<u>(2)</u>
6	256	2,700,000	196.1	187
7	62	945,000	265.3	-
8	316	1,350,000	176.2	168
9	54	1,080,000	311.1	-

(1) For Calendar Year 1968.

(2) As adjusted by SPT Co. for 1969 increases in revenues and expenses.

^{11/} 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.

The revenue to out-of-pocket ratios noted above for sugar beets are higher than any of the other ratios shown in Exhibit 11 for various agricultural products, and such other commodities as crushed stone, sand, gravel, pulpboard, tires, cement, iron or steel articles, petroleum products and soap powders. From Exhibit 11 protestants conclude that sugar beets are paying unreasonably high rates. The applicant, on the other hand, submits that the increase in rates and expenses since 1968 has resulted in a definite reduction in the ratios for sugar beet movements but only a negligible change in the ratios for such products as crushed stone and pulpboard.

Section 454 of the Public Utilities Code provides that no public utility shall raise any rate except upon a showing before the Commission and a finding by the Commission that such increase is justified. 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 726 of the Code provides for the establishment of rates that will promote the freedom of movement of agricultural commodities at the lowest rate compatible with the maintenance of adequate transportation service.

It is well established that what, in fact, constitutes a reasonable rate or charge in any given situation may be determined within a so-called "zone of reasonableness". In Reduced Rates on Bulk Cement, 50 Cal.P.U.C. 622 (1951), the Commission defined the maximum and minimum limits of the so-called zone of reasonableness as follows:

"...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 lower limits are fixed, generally, by the point at which the rates would fail to contribute revenue above the out-of-pocket cost of performing the service, would cast an undue burden on other traffic, or would be harmful to the public interest. Rates at the upper limits of the zone may be termed maximum reasonable rates; those at the lower limits of the zone may be termed minimum reasonable rates."

The value of service yardstick for evaluating the upper limits of a reasonable charge, as that term is employed in the Public Utilities Code, has been shown herein to be the equivalent to charging what the traffic can reasonably be required to bear. It does not embrace the extreme doctrine of charging whatever the traffic will bear, in spite of the presence of economic factors to the contrary.

Protestant sugar interests have demonstrated that the rail rates for California sugar beet traffic, previously found just and reasonable by Decision No. 76181, not only produced revenues well above SPT Co.'s out-of-pocket costs but have also borne a substantially greater share of the rail carrier's revenue requirements than other agricultural and industrial products of higher value. Applicant has, on the other hand, shown that the SPT Co.'s operating expenses have increased some 5.97 percent since publication of the current sugar beet rates. The rails also have shown that their present California intrastate operations are now and may reasonably be expected to continue to experience deficit operating results under the relief sought herein.

The mere fact that the existing level of sugar beet rates was previously found to be just and reasonable is, standing alone, insufficient justification for not giving any consideration to subsequent known increases in the rail carrier's cost of operations.

In addition, to argue that the contribution of the California sugar beet traffic to SPT Co.'s intrastate revenue requirements is exorbitant when compared to the like contribution of other higher valued commodities is not completely determinative in the absence of a like showing that said latter commodities are, in fact, contributing their fair share of the rail carrier's operating expenses.

Application of an additional 3 percent increase in the established sugar beet rates, in lieu of applicant's sought full 6 percent increase, would enable the rail carriers to recapture the increase in expenses which they have experienced since the sugar beet rates were last generally revised and found to be just and reasonable. Such upward adjustment in the sugar beet rates should not cause any undue diversion of short-haul sugar beet traffic to unregulated for-hire and proprietary truck competition. In addition, the continued application of a maximum increase of 5 cents per net ton would tend to hold down the existing strained economic marketing conditions surrounding the long haul sugar beet rail traffic from Imperial Valley and Kern County growing areas while, at the same time, affording the rail carrier opportunity to recoup its increased costs of service.

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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

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is explained in Decision No. 73520, dated December 7, 1967, in Application No. 49493 (Ex Parte 256).

Findings and Conclusions

The Commission finds that:

1. The applicant railroads' sought increase in their California intrastate freight rates and charges is, with certain specified exceptions, the same as authorized by the Interstate Commerce Commission as an interim increase in interstate rates and charges, pending completion of a full investigation as to the revenue needs of the rail lines in Ex Parte No. 262, Increased Freight Rates, 1969, dated November 17, 1969. Said interim increase is generally 6 percent and became effective November 18, 1969, on interstate traffic.

2. The applicant railroads' sought additional revenues in connection with their interstate traffic was conditioned upon and in contemplation of like appropriate relief being authorized in conjunction with their intrastate traffic.

3. The allocation procedures employed by applicant railroads to develop estimates of their California intrastate revenues and expenses are predicated upon interstate-intrastate traffic flow separation studies utilized in prior related proceedings (Decision No. 58226, 57 Cal.P.U.C. 117, and Decision No. 76181, dated September 16, 1969, in Application No. 50445). Said separation studies are reasonably adequate for the purposes of this proceeding, although the record indicates that such studies can be improved upon and made more definitive.

4. Based upon the aforesaid allocation procedures, applicant railroads determined their California intrastate freight revenues,

expenses, and net operating loss for the year 1968, adjusted to reflect increases in revenues heretofore authorized by Decision No. 76181 of September 16, 1969, as \$94,400,000; \$103,089,000; and \$8,688,000, respectively.

5. Since applicant railroads' intrastate rates were last generally increased, effective October 16, 1969, pursuant to Decision No. 76181, the California railroads have experienced substantial increases in their wage, fuel, material and other related intrastate operating expenses. Said increase in expenses amounted to approximately 5.97 percent for the Southern Pacific Transportation Co. and its principal subsidiary, Northwestern Pacific Railroad Company, whose combined operating revenues for 1968-1969 reflect about 75 percent of the California railroads' total intrastate freight revenues.

6. Table I, contained in the preceding opinion, sets forth the reasonable estimates of revenues, expenses and net operating income (loss) for the California railroads involved in this proceeding. The table indicates that, as a group, the railroads' California intrastate operations for the year 1968 would have continued to be conducted at a loss had the increases in rates authorized by Decision No. 76181, and the Ex Parte 262 rate increase sought herein been in effect during that period.

7. Applicant estimates that the Ex Parte 262 sought increase in rates will produce additional annual California intrastate revenues of approximately \$5,524,000 as a partial offset for some \$6,231,000 increase in the California railroads' intrastate operating expenses as of December 31, 1969.

8. The applicant railroads' California intrastate freight revenues will be insufficient to cover their corresponding expenses under present rate levels.

9. The proposed increase, except in connection with carload rates on cement and sugar beets, has been shown to be justified and necessary.

10. In order not to alter the long-established and complex competitive marketing relationships between the various California cement mills, the expression of the proposed 6 percent Ex Parte 262 increase in cement rates as a uniform 1 cent increase in said rates has been shown to be highly desirable, to reflect reasonably the volume of relief sought herein, and to be justified and necessary.

11. In proceedings of this type the principal consideration is given to the carriers' overall revenue needs. No study is required of applicant railroads' 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 as to the reasonableness or lawfulness of any particular rate or charge.

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

13. The present sugar beet rates, as established pursuant to Decision No. 75135 and subsequently found to be just and reasonable by Decision No. 76181, have not been shown in this proceeding to exceed what the sugar beet traffic can reasonably be expected to bear or otherwise be in excess of maximum reasonable rates.

14. With but one exception, the entire movement of sugar beets from growing areas to refineries is by rail for distances over about 50-70 miles, and no other economic means of transportation is available. Said rail sugar movement is, except for shipments to Betteravia over the Santa Maria Valley Railroad, transported by the Southern Pacific Transportation Company.

15. Since the present sugar beet rates were established and found just and reasonable by Decision No. 76181, the SPT Co. has experienced increases, as of December 31, 1969, in its California intrastate operating expenses of approximately 5.97 percent. Said increases in operating expenses were not considered in the establishment of the level of the present rates on sugar beets.

16. Approximately 4 percent of the total estimated increase of 5.97 percent in SPT Co.'s California intrastate operating expenses is due to increases in wages for freight operating and nonoperating employees.

17. Application of the full 6 percent sought increase in the present level of sugar beet rates would tend to be detrimental and inhibit the free movement of sugar beets from Imperial Valley and Kern County growing areas to sugar refineries in Northern California; or, alternatively, will cause the growers of sugar beets to absorb a greater portion of the rail freight charges now borne by the sugar refiners.

18. A further increase of 3 percent, maximum 5 cents per net ton, is all that the California intrastate sugar beet traffic can reasonably be expected to bear as its fair share of SPT Co.'s increase in operating expenses. The sugar beet rates resulting, under the modified increase noted above will produce revenues in excess of SPT Co.'s out-of-pocket costs and will not exceed a maximum reasonable level of rates.

19. When the present carload sugar beet rates established pursuant to Decisions Nos. 75135 and 76181 are further adjusted to reflect the modified increase as set forth in Finding 18 above, the resulting increased rates are just and reasonable; whereas the differentially sought higher increase in said sugar beet rates has not been shown to be justified.

20. The proposed Ex Parte 262 increase in applicant railroads' California intrastate freight rates has, except as to the rates on sugar beets described in Findings 18 and 19, been shown to be justified by transportation conditions.

21. 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. Application No. 51480 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

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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.

O R D E R

IT IS ORDERED that:

1. Pacific Southcoast Freight Bureau, on behalf of the carriers listed in Application No. 51480, is authorized to establish the increases in rates proposed in said application, subject to the following exceptions thereto:

- a. The authority granted herein shall not extend to the increasing of any rates described in Appendix A, attached hereto and by this reference made a part hereof.
- b. The increase in the carload rates on Portland cement shall be 1 cent per 100 pounds.
- c. The carload rates on sugar beets shall be subject to an increase of 3 percent, maximum 5 cents per net ton.

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 five days after the effective date hereof on not less than five 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-262 by

appropriate supplement thereto. To the extent that departure from the terms and rules of General Order No. 125 is required to accomplish such publication, authority for such departure is hereby granted.

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

6. The authorities 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, except for the carload rates on sugar beets, 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 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, not 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 fifth day after the publication by applicant made pursuant to the authority granted in paragraph 1 hereof, on not less than five days' notice to the Commission and to the public; such tariff publications as are required shall be made effective not later than thirty days after the effective date of the tariff publications made by applicant pursuant to the authority granted in paragraph 1 hereof.

9. Common carriers maintaining, under outstanding authorizations permitting the alternative use of rail rates, rates based on rail rates which have been changed or canceled and which are below the specific minimum rate levels otherwise applicable, are hereby directed to increase such rates to applicable minimum rate levels, and to abstain from publishing or maintaining in their tariffs 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 five 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.

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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 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 5th
day of MAY, 1970.

William J. Sproull
President
Angela
W. J. Sproull
Veronica L. Sturgeon
Commissioners

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 280-I and 510-J
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-B to 3550-B, 3560-C, 10754-B, 10763-B, 10766-C to 10781-C, 10784-B, 10787-B, 10853-C, 10859-B to 10883-B, 10889-B to 10895-B, 10901-B, 10904-B, 10913-B to 10919-B, 10925-B, 10928-B, 10931-C, 10934-B, 10937-B, 10946-B to 10964-B, 10970-B
 - (B) Item 510-A
3. Minimum LCL charges in Item 205-N of Pacific Southcoast Freight Bureau, Agent Tariff 1016 (ICC No. 1590).

APPENDIX B

List of Appearances

For Applicant:

Charles W. Burkett and Leland E. Butler, for
Pacific Southcoast Freight Bureau.

Protestants:

Richard E. Costello, for Spreckels Sugar Co., Division of
American Sugar Co., Union Sugar Division, Consolidated
Foods Corporation, Holly Sugar Corporation and California
Beet Growers Association; J. R. Copeland, for Holly Sugar
Corporation; and Thomas B. Kircher, for Spreckels Sugar
Co., Division of American Sugar Co.

Interested Parties:

S. A. Mooke, for Kaiser Cement & Gypsum Corporation;
C. H. Costello, for Continental Can Co.; D. M. Enos, for
Owens-Illinois Glass; R. A. Morin, for Fibreboard
Corporation; George B. Shannon, for Southwestern
Portland Cement Co.; William Mitze, for American Cement
Corporation; Richard W. Smith, A. D. Poe and H. F.
Kollmyer, for California Trucking Association; E. J.
Bertana, for Pacific Cement & Aggregates; Ralph Hubbard,
for California Farm Bureau Federation; John T. Reed,
for California Manufacturing Association; Cornelius
Pititus, for United Concrete Pipe Corporation; W. R.
Donovan, for C. & H. Sugar Co.; William D. Mayer, for
Del Monte Corporation; and T. W. Curley, for Western
Milk Transport.

For Commission Staff:

Dale R. Whitehead and William Roe.