

Decision No. 79360

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Southcoast)
Freight Bureau for Authority to)
Make Effective Increases in Local)
and Joint Rail and Rail-Highway)
Freight Rates and Charges (X-265 B)
and X-267).)

Application No. 52329
(Filed November 25, 1970)

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 transpor-)
tation 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, OSH 624
(Filed January 13, 1971)

And Related Matters.)

- Case No. 5330, OSH 55
 - Case No. 5433, OSH 36
 - Case No. 5435, OSH 172
 - Case No. 5436, OSH 107
 - Case No. 5437, OSH 208
 - Case No. 5438, OSH 82
 - Case No. 5439, OSH 138
 - Case No. 5440, OSH 73
 - Case No. 5441, OSH 219
 - Case No. 5603, OSH 95
 - Case No. 5604, OSH 26
 - Case No. 7857, OSH 43
 - Case No. 7858, OSH 91
 - Case No. 8808, OSH 13
- (Filed January 13, 1971)

ADDITIONAL APPEARANCES

Phillip G. Blackmore, Jr., for California
Hawaiian Sugar Company; Asa Button, for
Spreckels Sugar Division - Amstar Corporation;
interested parties.
M. E. Getchel, for the Commission staff.

O P I N I O N

This is an application by Pacific Southcoast Freight Bureau for authority to increase railroad freight rates. By interim order in Decision No. 78695 applicant was authorized to establish the increases in Tariff of Increased Rates and Charges X-265-B (one percent) except as to carload commodity rates on sugar beets, and to establish the increases in Tariff of Increased Rates and Charges X-267-A (eight percent) except that said increases shall not exceed 16 cents per ton on carload commodity rates on sugar beets.

Public hearing was held April 26, 1971, before Examiner Thompson at San Francisco in this application on the issue as to whether applicant should be authorized to make effective further increases contemplated by Tariff of Increased Rates and Charges X-267 (15 percent). At the hearing applicant declared that it is the policy of applicant and the railroads not to establish increases on California intrastate traffic greater than increases that have been made effective as to interstate commerce. On March 4, 1971, the Interstate Commerce Commission in Ex Parte Nos. 265 and 267 (339 ICC 125) issued its final order in said proceedings under which the railroads were authorized to make permanent the increases in X-265-B, except as to modifications regarding rates on grain and eastbound transcontinental rates on fresh fruits and vegetables, and to establish a general increase of 12 percent, subject to certain hold-downs, in lieu of the eight percent increase authorized in X-267-A. The latter increases are set forth in Tariff of Increased Rates and Charges X-267-B and it is those with which we are concerned here.

Applicant presented estimates of the revenues and expenses of the four major railroads and their subsidiaries in connection with the transportation of property in California intrastate commerce under the proposed rates and at December 31, 1970 expense levels.

They are set forth in Appendix A attached hereto. The expense estimates are the same as those presented by applicant during the hearings on the interim phase of this proceeding and are identical with those shown in Appendix A of Decision No. 78695. In said decision we stated that the only areas of applicant's estimates where a different approach in the treatment of expenses might provide a significantly different result are in the treatment of net rents for equipment and in the inclusion of expenses related to passenger operations in an index of change in expense of conducting freight operations. We held therein that if in these areas adjustments were made which would eliminate any consideration of said expenses, the total expenses for California intrastate transportation of freight by railroads would amount to at least \$116,790,000 and that said figure would be a conservative estimate.

Applicant's estimate of increases in revenue resulting from the X-267-B tariff reflects additional revenue of \$238,000 from sugar beets and the application of a four percent increase in the revenues of all other traffic subject to the X-267-B increases. The amount of additional sugar beet revenue represents an increase of about 2-1/2 percent and reflects a hold-down in the application of the X-267-B increases of 24 cents per ton. Applicant's method of applying a four percent increase on top of the eight percent increase provided in X-267-A results in an overstatement of estimated revenues by about \$300,000. The 12 percent increase in X-267-B is to be applied in lieu of the eight percent increase in X-267-A. The estimate is further overstated because it does not give consideration to any of the "hold-downs" provided in Tariff X-267-B and also, as pointed out in Decision No. 78695, the base amount upon which the increases are to be applied (after X-265-B increases) is overstated. We estimate that the increases proposed herein will provide additional revenues of not more than 4 million dollars for California intrastate railroad freight transportation which represents an increase in carrier intrastate freight revenues of about 3.5 percent.

A conservative estimate of the total net railway income before income taxes from California intrastate freight operations by the four major railroads and their subsidiaries at the proposed rates is 2 million dollars. The average net investments of said carriers total some 5-1/2 billion dollars. Apportionment of said investment on the basis of the ratio of the relationship of California intrastate freight operating expenses before income taxes for the year 1969 to the system total operating expenses before income taxes for the same year for each of the carriers results in a net investment for California intrastate operations of \$252,650,700. The 2 million dollars of net railway income represents a return on investment of less than one percent before income taxes. The proposed increases in rates will not provide excessive earnings nor will they result in California intrastate railway freight transportation paying in excess of a fair proportionate share of the cost of maintenance of an adequate national railway system.

No new issues were presented at the hearing of April 26th. Protestant cement producers reiterated their position with respect to the proposed increases and presented evidence that the proposed increases on cement will result in further diversion of cement traffic from railroads to motor vehicle transportation. Their position is that cement is already paying more than its fair share of the railroad freight rate increases, that the railroads transporting cement within California (Union Pacific, Southern Pacific and Santa Fe) are in no way financially distressed and their overall profits have been substantial, that any rate increase on cement will be self-defeating to the railroads in that any potential revenue gains on cement through the application of the increases will be more than offset by actual revenue losses due to diversion of cement to motor vehicle transportation, and that further diversion of cement traffic will result from the establishment of the proposed increases which in turn will result in three double-trailer

truckloads of cement operating on the public highways for each rail carload of cement that is diverted. All of said assertions have been considered and have been discussed at some length in Decision No. 78695. The proposed increases in X-267-B will further reduce the area about a terminal within which the combined rail-truck rate from the mill to jobsite will be competitive with the rate for truck transportation direct from mill to jobsite. The increases in rates will result in further diversion of movements of bulk cement from railroad to motor vehicle transportation. It may be that the application of the increases provided in Tariff X-267-B may result in additional instances of California intrastate rates on cement exceeding the rates on interstate or foreign shipments of cement between the same points. Nevertheless, for the same reasons set forth in our opinion in Decision No. 78695 said circumstances do not provide just cause to prevent the finding that the increases are justified.

The proposed increases resulting from the application of Tariff X-267-B are justified. Applicant stated that although its revenue estimates were predicated upon a hold-down of 24 cents per ton on increases in rates on sugar beets and it is its intention to establish said hold-down, applicant is seeking authority to apply the same 12 percent increase on sugar beets as has become effective on interstate traffic. Sugar beet interests originally protested this application and withdrew their protest following the stipulation by applicant at the initial hearing herein that the X-267-A increases in rates on sugar beets be subject to a maximum increase of 16 cents per ton. The authority granted in Decision No. 78695 was subject to said hold-down. Applicant states that it now desires to use its managerial discretion with respect to the application of the hold-down. Applicant's traffic witness testified that it is applicant's intention to establish the 24 cents per ton maximum increase in a number of instances but "there are a few rates where the 12 percent would apply and the 24 cents hold-down would not apply." Those few

rates were not identified. California Beet Growers Association was excused following the stipulation made at the initial hearings and did not appear at the hearing on April 26, 1971. Under the circumstances the request of applicant that the increases in X-267-B be made applicable to rates on sugar beets without regard to the 24 cents per ton hold-down is not justified. Said finding is without prejudice to any application filed with the Commission and served upon the parties affected requesting authority to eliminate said hold-down with respect to any particular rate.

Although the X-267-B increases are to be applied in lieu of the X-267-A increases, there is evidence that in at least a few instances the provisions of the latter tariff will continue to apply on certain types of movements. Additionally, the order of the Interstate Commerce Commission dated March 4, 1971, made final the increases in X-265-B on interstate traffic. Certain modifications in said increases were prescribed; however, it does not appear that said modifications result in further increase nor would they significantly affect California intrastate traffic. Under the circumstances, the authorities granted in Decision No. 78695 should be made final and applicant should be authorized to establish the increases in Tariff X-267-B subject to a maximum increase of 24 cents per ton on carload rates on sugar beets.

All other issues in these proceedings have been discussed and considered in Decision No. 78695. We adopt the findings and conclusions in said decision as our findings and conclusions in these proceedings and make the following additional findings and conclusions:

We find that:

1. The Interstate Commerce Commission in an order dated March 4, 1971, and served March 22, 1971, in Ex Parte 265 and in Ex Parte 267, with certain modifications made final its authorization

to the railroads to effect the increases maintained in Tariff of Increases X-265-B, and authorized the railroad carriers to effect further increases of not more than 12 percent on intraterritorial traffic within the western states subject to certain hold-downs; and in said order made the following findings:

"Respondents are in need of additional revenue from their interstate freight rates and charges to offset recently incurred and prospective increased operating costs and to provide an improved level of earnings. The public interest and that of the national defense, in a sound, adequate, and efficient transportation system will be adversely affected unless the increased interstate freight rates and charges proposed by respondents in this proceeding, subject to the limitations and exceptions set forth below, be permitted to be continued or to be put into effect.

"In the absence of the additional revenue to be derived from the increased freight rates and charges authorized herein, the earnings of respondents would be insufficient to enable them under honest, economical, and efficient management to provide adequate and efficient railway transportation services consistent with the public interest and the national transportation policy."

2. Said authority to increase interstate freight rates was exercised by applicant by the publication of Tariff of Increased Rates and Charges X-267-B, and of Supplement 8 to Tariff of Increased Rates and Charges X-265-B, effective April 12, 1971.

3. At public hearing held April 26, 1971 in these proceedings applicant amended its proposal and now seeks authority to establish increases in rates and charges for the transportation of California intrastate commerce the same as has been authorized by the Interstate Commerce Commission on interstate traffic.

4. California intrastate transportation of property at the rates resulting from the proposed increases will provide additional revenues of not exceeding four million dollars to the four major railroads and their subsidiaries listed in Appendix A, attached

hereto, and will result in said carriers earning a combined net railway income before income taxes of an amount not exceeding two million dollars, and said earnings are not excessive.

5. The carriers listed in Appendix A in the past have received in excess of 95 percent of the total gross revenues from the transportation of all California intrastate railroad freight traffic.

6. The proposed increases will result in further diversion of carload cement traffic to transportation by motor vehicle on the public highways; however, said circumstance will not result in the increased rates on bulk cement being unreasonable, per se, nor will the loss of cement traffic because of such circumstance necessarily place an undue burden upon other railroad traffic.

7. The increases which will result from the application of Tariff X-267-B, together with the prior increases in cement rates, will not unreasonably burden cement as compared with other traffic, nor will the transportation of cement pay in excess of its fair proportionate share of the burden of said general increases in rates.

8. The proposed increases, except as to carload rates on sugar beets, have been shown to be justified; and as to sugar beets the proposed increase in X-267-B subject to a maximum increase of 24 cents per ton is justified.

We conclude that the application should be granted as provided in the order that follows and in all other respects should be denied, and that common carriers should be directed to adjust their rates as provided in the ensuing order.

The rates authorized herein are in the lower zone of reasonableness and are consistent with the purposes of the Federal Government's economic stabilization program in that the net income of the railroads involved represents a rate of return of less than one percent before income taxes.

O R D E R

IT IS ORDERED that:

1. The authorities and directives set forth in the interim order in Decision No. 78695 herein are hereby made final.

2. Pacific Southcoast Freight Bureau, on behalf of the carriers listed in Application No. 52329, is authorized to establish by appropriate supplement to Tariff of Increased Rates and Charges X-267-A the increases in rates in said tariff provided, however, that said increases shall not exceed 24 cents per ton on rates on sugar beets in carloads maintained in Pacific Southcoast Freight Bureau Tariff No. 65-N, ICC No. 1726. ✓

3. Tariff publications authorized to be made as a result of the foregoing authority 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, and said authority shall expire unless exercised within sixty days after the effective date of this order. To the extent that departure from the terms and rules of General Order No. 125 is required to accomplish such publications, authority for such departure is hereby granted.

4. The authority set forth above is 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.

5. 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 2 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 2 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 2 hereof, nor higher than the otherwise applicable minimum rates.

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

7. Tariff publications required or authorized to be made by common carriers as a result of ordering paragraph 5 hereof may be made effective not earlier than the fifth day after the publication by applicant made pursuant to the authority granted in ordering paragraph 2 hereof, on not less than five days' notice to the Commission and to the public; and 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 said ordering paragraph 2.

8. Tariff publications required to be made by common carriers, as a result of ordering paragraph 6 hereof, may be made effective not earlier than the effective date of this order on not less than five days' notice to the Commission and to the public and shall be made effective not later than sixty days after the effective date of this order.

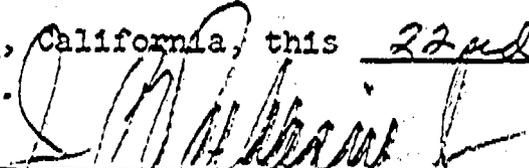
9. In making tariff publications authorized or required by ordering paragraphs 5 through 8, inclusive, common carriers are

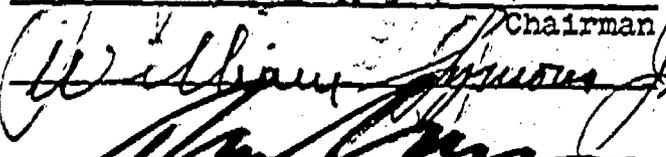
authorized to depart from the terms and rules of General Order No. 80-A, to the extent necessary to comply with said ordering paragraphs.

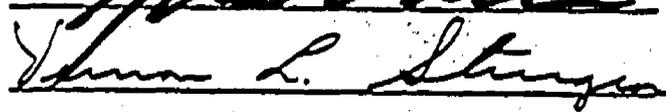
10. Applicant and common carriers, in establishing and maintaining the rates authorized hereinabove, are authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

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

Dated at San Francisco, California, this 22nd
day of NOVEMBER, 1971.



Chairman






Commissioners

APPENDIX A

Applicant's Estimated Freight Revenues, Expenses and
Net Railway Operating Income before Income Taxes of
the Carriers Listed, Based on 1969 California
Intrastate Traffic Adjusted to Reflect
Revenues at Proposed Rate and Expenses
at December 31, 1970 Level

	<u>Revenue</u>	<u>Expense</u>	<u>Income</u>
Southern Pacific Transportation Company	\$ 82,042,996	\$ 79,686,271	\$2,356,725
The Atchison, Topeka and Santa Fe Railway Company	26,619,978	26,064,281	555,697
Northwestern Pacific Railroad Company	5,057,779	5,560,673	(502,894)
Western Pacific Railroad Company	2,007,078	2,529,989	(522,911)
Union Pacific Railroad Company	1,972,672	1,943,028	29,644
San Diego and Arizona Eastern Railway Company	1,247,410	1,229,242	18,168
Sacramento Northern Railway Company	137,485	157,524	(20,039)
Sunset Railway Company	217,202	149,718	67,484
Central California Traction Company	114,030	146,248	(32,218)
Holton Inter-Urban Railway Company	225,645	158,493	67,152
Tidewater Southern Railway Company	33,058	39,331	(6,273)
Petaluma and Santa Rosa Railroad Company	23,948	18,756	5,192
Visalia Electric Railroad Co.	1,111	692	419
Total	<u>\$119,700,392</u>	<u>\$117,684,246</u>	<u>\$2,016,146</u>

(Red Figure)