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ORIGINAL

Decision No. 81445

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-281).

In the Matter of the Investigation
into the rates, rules, regulations,
charges, allowances and practices
of all common carriers, highway
carriers and city carriers relating
to the transportation of any and
all commodities between and within
all points and places in the State
of California (including, but not
limited to, transportation for
which rates are provided in Minimum
Rate Tariff 2).

And Related Matters.

Application No. 53107
(Filed January 24, 1972; amended
April 10 and 28, 1972, and
November 14, 1972)

Case No. 5432, OSH 692
(Filed March 14, 1972)

Case No. 5330, OSH 60
Case No. 5433, OSH 39
Case No. 5436, OSH 118
Case No. 5437, OSH 220
Case No. 5438, OSH 84
Case No. 5439, OSH 156
Case No. 5440, OSH 77
Case No. 5441, OSH 242
Case No. 5603, OSH 104
Case No. 5604, OSH 29
Case No. 7857, OSH 56
Case No. 7858, OSH 134
Case No. 8808, OSH 16
(Filed March 14, 1972)

Additional Appearances

(For initial list of appearances see Decision No. 80377)

Marshall W. Vorkink, Attorney at Law, for applicant.
Richard W. Smith and Arlo D. Poe, Attorneys at Law,
Ed Bill, and Herbert W. Hughes, for California
Trucking Association, interested party.
Clyde T. Neary and John F. Specht, for the Commission
staff.

O P I N I O N

Pacific Southcoast Freight Bureau (PSFB), on behalf of the California rail carriers participating in its tariffs, seeks authority to increase the local and joint rail and joint rail-highway freight rates and charges applicable to California intrastate traffic. On March 14, 1972 the Commission ordered that hearings be held in the several minimum rate cases concurrently with Application No. 53107 for the purpose of determining whether common carriers should also be authorized and directed to adjust their rates maintained under the "alternative application of common carrier rates" provisions of the various minimum rate tariffs of the Commission.

Antecedents

The rail increase initially sought in Application No. 53107 was the same as previously authorized by the Interstate Commerce Commission (ICC) effective February 5, 1972 on interstate rail traffic in Ex Parte 281, Increased Freight Rates, 1972, dated December 21, 1971. Subject to certain restrictions and limitations, Ex Parte 281 authority granted the California rail lines a general interim surcharge of 2-1/2 percent. In the first amendment to Application No. 53107 the rail carriers sought to establish on California intrastate traffic, in lieu of the originally proposed Ex Parte 281 increase, the higher interstate rate increases that were scheduled to

become effective May 1, 1972, as specifically set forth in the rail carriers' Tariff of Increased Rates and Charges X-281-A. Such increases were proposed on a selective service or commodity basis and ranged from 3 to 10 percent. Application of the Ex Parte 281-A selective increases on interstate traffic was suspended until November 30, 1972 by order of the ICC dated April 24, 1972 in Ex Parte 281. That order continued the application of the Ex Parte 281 general surcharge of 2-1/2 percent on interstate traffic.

In a continued effort to obtain California intrastate authority to apply its proposed Tariff X-281-A selective rate increases, in lieu of the lower Tariff X-281 surcharge initially requested, the applicant rail lines filed their second amendment to Application No. 53107 on April 28, 1972. By this amendment the California rail lines requested the same permissive authority relative to California intrastate rail traffic that had been previously withheld by the ICC in connection with the rails' interstate traffic. By Decision No. 80074 dated May 16, 1972 in this proceeding the Commission ordered that the first phase of this proceeding be restricted to the receipt of evidence pertaining to applicant's sought relief as set forth in their original application (Ex Parte 281 - general increase of 2-1/2 percent). By the Commission's interim order in Decision No. 80377 dated August 15, 1972, PSFB, on behalf of the California rail lines, was authorized to apply on California intrastate rail traffic the Tariff of Emergency Charges X-281 interim surcharge of 2-1/2 percent. The decision also directed that this proceeding remain open pending further action by applicant or order of the Commission.

Third Amendment - Application No. 53107

In the third amendment to Application No. 53107 the PSFB, on behalf of the California rail lines, now seeks authority to increase California intrastate rail rates to the same extent the Mountain Pacific Territory interstate rail rates were authorized to be increased, effective October 23, 1972, by the ICC in Ex Parte 281-B, Increased Freight Rates (1972) 341 ICC 290. Except for lower selective increases for certain specified commodities Ex Parte 281-B provides for a general increase of 5 percent in lieu of the existing interim Ex Parte 281 surcharge of 2-1/2 percent authorized by Decision No. 80377. If the sought Ex Parte 281-B increase is authorized, the rail lines request the Commission to find, as did the ICC, that the Ex Parte 281 interim surcharge of 2-1/2 percent authorized by Decision No. 80377 was just, reasonable, and otherwise lawful during the limited period of its applicability.

Public hearings on the second and final phase of this proceeding were held before Examiner Gagnon at San Francisco on March 28 and 29, 1973. Direct evidence was presented by several rail cost analysts and traffic officials on behalf of applicant. No one appeared in opposition to the sought relief.

In Decision No. 80377 recognition is given to the concern expressed by the Commission's Transportation Division staff over applicant's prolonged efforts to justify ex parte rail rate increases with up-dated 1969 California intrastate operating revenues and expenses. In response to the staff's query applicant explained that every effort would be made in the final phase of this proceeding to predicate further sought Ex Parte 281 relief upon the most current financial data available. Justification for the railroads' requested Ex Parte 281-B relief is based upon 1971 adjusted operating revenues and expenses of the four major California railroads and their subsidiaries. California intrastate freight revenues were adjusted to reflect the results of the Ex Parte 281 interim surcharge of

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2-1/2 percent authorized by Decision No. 80377 and thereafter further increased for a projected rate year to demonstrate the additional revenue contemplated under the sought Ex Parte 281-B rate increase. The related intrastate operating expenses of the rail carriers were adjusted to the September 30, 1972 level, with California intrastate allocations computed upon the basis of the ICC's 1971 Rail Form A cost allocation procedures.

The estimated annual gross intrastate revenues anticipated by the California rail lines under the proposed Ex Parte 281-B rate increase are summarized in Table 1:

TABLE 1

Estimated Gross Intrastate Revenues
From Proposed Rate Increase

<u>Line No.</u>	<u>Description</u>	<u>Additional Annual Gross Revenue</u>	<u>Percent Increase Over Year 1971</u>
1.	Southern Pacific Transportation Co.	\$1,076,659	1.7%
2.	Northwestern Pacific Railroad	19,171	0.4
3.	Santa Fe Railway Co.	289,583	1.4
4.	Union Pacific Railroad Co.	21,717	1.6
5.	Holton Inter-Urban Railway Co.	1,656	1.4
6.	Petaluma and Santa Rosa RR Co.	300	1.4
7.	San Diego & Arizona Eastern Ry. Co.	14,924	1.5
8.	Sunset Railway Company	736	0.4
9.	Visalia Electric Railroad Co.	-	-
10.	Western Pacific Railroad Co.	45,020	1.9
11.	Sacramento Northern Railway	10,317	2.0
12.	Tidewater Southern Railway Co.	1,068	1.1
13.	Central California Traction Co.	<u>4,152</u>	<u>2.0</u>
14.	Total California Railroads	\$1,485,303	1.6%

From Table 1 it will be noted that with the substitution of the Ex Parte 281-B general rate increase of 5 percent (subject to special commodity holddowns) for the present Ex Parte 281 interim surcharge of 2-1/2 percent, the rail lines anticipate receiving \$1,485,303 additional California intrastate annual gross revenues. This amounts to an approximate 1.6 percent increase in the annual gross intrastate revenues of the California railroads. The 1971 operating expenses allocated to California intrastate operations of the applicant railroads were increased to 106.2 percent in order to reflect expense levels as of September 30, 1972. The index of 106.2 percent was computed by a rail cost analyst for the Southern Pacific Transportation Company. This index was then employed by the other applicant railroads as controlling in their like expense projections. Computation of the subject index is summarized in Table 2:

TABLE 2

Index of Expenses

<u>Description of Expenditure</u>	<u>Percent of Total Expenses Year 1971</u>	<u>Percent Increase From Year 1971 To 9-30-72</u>	<u>Weighted Percent Increase Of Total</u>
Employee compensation	46.6	9.2	4.29
Health and welfare	2.5	26.2	.66
Federal payroll taxes	4.6	12.7	.58
Fuel, road, and yard	3.9	.5	.02
Other material	16.7	3.9	.65
Other expenses	15.7	*	*
Other taxes (excluding income)	4.1	*	*
Net rents and demurrage	5.9	*	*
Total operating expenses, rents, demurrage and taxes, excluding federal and state income taxes	100.0		6.20

*Although increases have occurred in these categories, they have not been evaluated.

From Table 2 it will be noted that wages and allied payroll expenses of the rail carriers constitute some 53.7 percent of the rail carriers' total operating expenses for the year 1971. Of this amount 46.6 percent is direct rail wage costs. The Table 2 computations also indicate that its total operating expenses for a projected rate year increased approximately 5.53 percent as a result of labor cost increases. It is this latter cost increase which applicant rail carriers now seek authority to offset by applying the Ex Parte 281-B rate increase to their California intrastate traffic. The projected operating revenues, expenses, and resulting net railway operating income anticipated by the rail carriers under the Ex Parte 281-B sought relief is summarized in Table 3:

TABLE 3

Revenues, Expenses, and Net Operating Income
 For California Intrastate Traffic
Year 1971 Revenues Adjusted to Ex Parte 281-B Level
Year 1971 Expenses Adjusted to September 30, 1972 Level

	<u>Estimated Revenues</u>	<u>Estimated Expenses</u>	<u>Net Railway Operating Income</u>
Atchison, Topeka and Santa Fe Railway Company	\$ 20,756,622	\$ 21,227,723	\$ (471,101)
Central California Traction Company	243,608	383,594	(139,986)
Holton Inter-Urban Railway Company	128,431	85,988	42,443
Northwestern Pacific Railroad Company	4,987,699	6,292,302	(1,304,603)
Petaluma and Santa Rosa Railroad Company	23,778	28,348	(5,070)
Sacramento Northern Railway Company	592,316	439,916	152,400
San Diego and Arizona Eastern Railway Company	1,094,531	844,071	250,460
Southern Pacific Transportation Company	69,556,236	80,221,686	(10,665,450)
Sunset Railway Company	193,768	159,485	34,283
Tidewater Southern Railway Company	113,899	121,197	(7,298)
Union Pacific Railroad Company	1,535,015	1,794,051	(259,036)
Visalia Electric Railroad Company	132	340	(208)
Western Pacific Railroad Company	2,847,904	3,762,130	(914,226)
Total	\$102,073,939	\$115,361,331	\$ (13,287,392)

() Indicates loss.

From Table 3 it will be noted that for a projected rate year the rail carriers anticipate a net operating deficit of \$13,287,392 from their California intrastate operations, under the Ex Parte 281-B sought increase in rates. The Southern Pacific Transportation Company, which transports the largest volume of California intrastate traffic, expects a net operating deficit of \$10,665,450 after obtaining the relief sought herein.

The Assistant Director of the Cost and Economics Division of the Western Railroads Association presented evidence to demonstrate that the Ex Parte 281-B sought increase is in full compliance with the guidelines of the Cost of Living Counsel as set forth in Rule 23.1 of the Commission's Rules of Practice and Procedure. He first directed attention to the fact that the Ex Parte 281-B increase has had the prior approval of the ICC which made the finding that such increase was in accordance with the Federal Government's Economic Stabilization Program. He also demonstrated that the sought 1.6 percent increase in revenues sought in this proceeding was less than the 2.8 percent increase in the 1971 system labor costs of five major California railroads,^{1/} which reflects a productivity gain factor of 1.3 percent. The witness also indicated that the effect of the sought increase upon the rail carriers' rate of return would be insignificant (0.026 percent).

Refunds

Application of the X-281 interim surcharge of 2-1/2 percent, as initially proposed by the rail lines and subsequently authorized by the ICC for interstate traffic in Tariff of Emergency Charges X-281, was made subject to the following provisions for refunds:

^{1/} Atchison, Topeka and Santa Fe Railway Company, Northwestern Pacific Railroad Company, Southern Pacific Transportation Company, Union Pacific Railroad Company, and Western Pacific Railroad Company.

Rule 13. Provisions for Refund.

"In the event any increases resulting from the application of this tariff exceed the increases subsequently approved or prescribed by the Interstate Commerce Commission, the carriers will refund the difference between the increases resulting from the application of this tariff and any increases which may subsequently be approved or prescribed by the Interstate Commerce Commission with 4 percent interest.

"In the event an increase resulting from the application of this tariff is disapproved by the Commission and no increase is authorized, the carriers will refund the full amount of the increase collected with 4 percent interest."

Application of the X-281 surcharge on California intrastate rail traffic, as authorized by the Commission's interim order in Decision No. 80377, was made subject to the following condition:

"2. All rates increased pursuant to the authority contained in this order shall be subject to a refund provision which shall read substantially as follows:

"In the event any increases resulting from the application of these rates exceed increases subsequently approved or prescribed by the California Public Utilities Commission the difference between the increase resulting from the application of these rates and any increase which may subsequently be approved by the California Public Utilities Commission will be refunded with 4 percent interest."2/

2/ The provisions for refund are also reflected in California Supplement K-33 to Tariff of Emergency Charges X-281, effective September 9, 1972.

Finding 3 of the ICC's order in Ex Parte 281-B, Increased Freight Rates (1972) 341 ICC 290, 528 states:

"3. That the surcharge tariff No. X-281, as amended, was just, reasonable, and otherwise lawful during the limited period of its applicability."

The rail carriers contend that the above finding of the ICC negates the refund provisions of the X-281 Tariff Rule 13. It is applicant's position that the same result should be reached in this proceeding relative to California intrastate rail traffic in order to prevent any discrimination against interstate shippers.^{3/} In light of the ICC's subsequent order on Petitions for Reconsideration concerning refund provisions, a similar result should be reached in this proceeding relative to applicant's position on refunds.

Findings

1. The Pacific Southcoast Freight Bureau, on January 24, 1972, filed Application No. 53107 requesting authority to increase California intrastate rail rates by amounts equivalent to increases authorized by the Interstate Commerce Commission in order dated December 23, 1971 in ICC Docket No. Ex Parte 281. This authority was exercised by the railroads through the publication of a Tariff of Emergency Charges X-281 for application on interstate rail traffic, effective February 5, 1972. The authority thus exercised provided for the application of a general 2-1/2 percent surcharge increase in interstate freight charges. By the Commission's interim order in Decision No. 80377 dated August 15, 1972 in this proceeding the X-281 interim surcharge was authorized for application on California intrastate rail traffic.

3/ On May 7, 1973 the ICC issued its order on Petitions for Reconsideration wherein its Finding 3 of the ICC's order in Ex Parte 281-B, Increased Freight Rates (1972) 341 ICC 290, 528 was revised to read:

"3. That the surcharge tariff No. X-281, as amended, was just, reasonable, and otherwise lawful during the limited period of its applicability, except where those surcharges resulted in increases greater than those which would have accrued at the rates increased as herein authorized." (Revision underscored.)

2. In the third amendment to Application No. 53107 authority is sought to increase California intrastate rail rates by amounts equivalent to the increases authorized by the Interstate Commerce Commission in Ex Parte 281-B, Increased Freight Rates (1972) 341 ICC 290. This latter authority was granted in lieu of the X-281 interim surcharge of 2-1/2 percent and was exercised by the railroads through the publication of a Tariff of Increased Rates and Charges X-281-B effective October 23, 1972. The authority thus granted provided for the application of a general 5 percent increase in interstate rail rates and charges within the Western Territory or more specifically Mountain Pacific Territory which includes California. The overall general X-281-B increase of 5 percent is substantially reduced by provisions for selective increases of lesser amounts for specified commodities.

3. Applicant estimates that the requested X-281-B increase will provide additional California intrastate annual gross operating revenues of \$1,485,303 which represent a 1.6 percent increase over like revenues for the year 1971 adjusted to reflect the results of the X-281 interim surcharge.

4. Applicant has demonstrated that the California rail carriers have experienced a 5.53 percent increase in their total California intrastate operating expenses due to labor cost increases. It is this labor cost increase which applicant rail carriers are endeavoring to offset by the requested X-281-B increase in their California intrastate rail rates.

5. Applicant has demonstrated that for a projected rate year under the sought X-281-B rail rate increase the California rail lines anticipate they will experience a net railway operating deficit from their California intrastate operations of \$13,287,392.

6. The California intrastate transportation of property by railroad at the increased rates and charges resulting under the proposed application of the Tariff of Emergency Charges X-281-B will not provide revenues in excess of the operating expenses reasonable and necessary for the conduct of transportation operations.

7. The increases in rates and charges that will result from the establishment of Tariff of Emergency Charges X-281-B have been shown to be justified.

8. The Ex Parte 281 interim surcharge of 2-1/2 percent, as amended, authorized by Decision No. 80377 in this proceeding has been determined to be just, reasonable, and otherwise lawful during the limited period of its applicability, except where the surcharge resulted in increases greater than those which would have accrued at the rates increased as herein authorized.

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

10. In compliance with Rule 23.1 of the Commission's Rules of Practice and Procedure, promulgated pursuant to the Economic Stabilization Act of 1970, as amended, the evidence of record in this proceeding demonstrates that:

- a. The sought increase in California intrastate rail rates is equivalent to increases authorized rail carriers by the Interstate Commerce Commission in Order dated September 27, 1972 in ICC Docket Ex Parte 281-B. Said interstate authority was exercised by the railroads with the approval of the Federal Price Commission.
- b. The Ex Parte 281-B increase in California intrastate rail rates and charges is cost-justified and does not reflect future inflationary expectations.

- c. The interim rail rate increase is required to assure continued, adequate and safe service and reflects obtainable productivity gains.
- d. The application of the Ex Parte 281-B increase on California intrastate rail traffic is expected to increase the California rail carriers' gross annual operating revenues by \$1,485,303 or 1.6 percent.
- e. The Ex Parte 281-B increase in California intrastate rail rates found justified herein will not provide additional revenues sufficient to eliminate the existing California intrastate net railway operating deficits of the major railroads operating within the State.
- f. To the extent that three of the subsidiary California railroads will achieve net operating earnings from transportation under the increased rates, it is believed that the effect of the resulting increased revenues upon said carriers' return on capital will be minimal.
- g. Pursuant to reasonable opportunity for participation by all interested parties at the public hearing in this matter, no other carrier appeared to present evidence expressing a willingness and capacity for providing service at the existing level of rates.

Conclusions

1. Applicant should be authorized to establish, by appropriate supplement, the Tariff of Increased Rates and Charges X-281-B on California intrastate traffic.

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 the level of the otherwise applicable minimum rates, whichever is lower.

3. Common carriers maintaining rates based on rail rates which have been canceled or changed should be required to adjust their 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-Series and 125 to the extent necessary to establish the increased rates authorized or required herein.

O R D E R

IT IS ORDERED that:

1. Pacific Southcoast Freight Bureau, on behalf of the California rail carriers listed in Application No. 53107, as amended, is authorized to establish for intrastate traffic, by appropriate supplement, the interstate increased rates and charges set forth in Tariff of Increased Rates and Charges X-281-B, as amended.

2. 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.

3. The authority set forth herein 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. The filing of rates pursuant to the authority herein granted constitutes an acceptance by applicant and said carriers as a consent to this condition.

4. 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.

5. Common carriers maintaining, under outstanding authorization 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.

6. Tariff publications required or authorized to be made by common carriers as a result of 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 paragraph 1 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 paragraph 1.

7. Tariff publications required to be made by common carriers, as a result of 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.

8. In making tariff publications authorized or required by paragraphs 5 through 8, inclusive, common carriers are authorized to depart from the terms and rules of General Order No. 80-Series to the extent necessary to comply with said ordering paragraphs.

9. 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 30th
day of MAY, 1973.

Jerome L. Steegen
President
William J. Simpson
Michael J. [illegible]
[illegible]
Commissioners