

ORIGINAL

Decision No. 82016

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 Freight Rates and Charges
to Offset Increases in Retirement
Taxes.

Application No. 54268
(Filed August 24, 1973)

INTERIM OPINION AND ORDER

Pacific Southcoast Freight Bureau (PSFB), on behalf of the California rail carriers participating in its tariffs, seeks authority to increase their local and joint freight rates and charges applicable to California intrastate traffic so as to obtain additional revenues sufficient to offset increases in the rail carriers' railroad retirement tax contributions. The rates and charges proposed to be increased are those which are described in and adjusted upward by Tariff of Increased Rates and Charges X-281-B pursuant to Decision No. 81445 dated May 30, 1973 in PSFB's Application No. 53107.

The increases in rates and charges initially proposed were 2 percent, effective October 1, 1973, plus an additional 0.7 percent, effective January 1, 1974, subject to certain exceptions and conditions as more specifically described in Tariff of Increases in Freight Rates and Charges to Offset Retirement Tax Increases - 1973, X-299. The nation's railroads, including those handling California intrastate traffic, previously petitioned the Interstate Commerce Commission (ICC) on August 15, 1973 for authority to make these same rate increases applicable to interstate traffic.

By its order in ICC Docket Ex Parte 299 dated September 13, 1973 the ICC granted the rail carriers (except the Long Island Railroad Co.) interim authority, pending hearing, to establish general freight rate increases of 1.9 percent on October 1, 1973 and 2.6 percent on January 1, 1974 in lieu of the October 1st increase. Such general increases were made subject to the various exceptions and conditions specified in the rail carriers' Tariff of Increased Rates and Charges X-299.

In granting interim rate increases lower than initially requested, the ICC stated: "Although the direct increase in retirement taxes will amount to \$64,492,388 for the period October 1 - December 31, 1973, approximately \$1,687,000 of those retirement taxes will be reimbursed to the railroads by Amtrak, and the said direct increased taxes should be reduced by the amount to be reimbursed by Amtrak." The ICC also specified certain additional information it desired to be explored in more detail on the record at the subsequent hearing to be held in Ex Parte 299. For example, consideration must be given to the rail carriers' productivity gains as one of the available means other than a rate increase by which the rail carriers might absorb or offset the increases in their railroad retirement tax contributions. The railroads will also be required to present evidence in justification of the rates and charges excepted from the interim tax offset rate increases as set forth in their Tariff of Increased Rates and Charges X-299. The ICC also expressed concern relative to the variation among the individual railroads in the amount of the increased retirement taxes offset by the additional revenues produced by the application of a uniform percentage increase in rates and charges.

In Application No. 54268 the California rail carriers now seek authority to make the same Ex Parte 299 tax offset increases in their rates and charges applicable on California intrastate traffic as were authorized by the ICC on September 13, 1973 for application in connection with the carriers' interstate traffic. Such requested California intrastate authority is independent of and in addition to that sought by applicant rail carriers in Application No. 54269 (Tariff of Increased Rates and Charges X-295) also filed on August 24, 1973.

By Public Law 93-69 (1973) 87 Stat. 162, the Congress of the United States on July 10, 1973 amended the Railroad Retirement Act of 1937, the Railroad Retirement Tax Act, and the Interstate Commerce Act (hereinafter referred to as the Railroad Retirement Amendments of 1973) whereby the nation's common carriers by railroad were required to contribute an increased proportion of the cost of the Railroad Retirement Plan. The Railroad Retirement Tax Act was amended to reduce employee contributions to the same levels provided under the Social Security Act and to increase employer (railroad) contributions accordingly. Section 15a of the Interstate Commerce Act (49 U.S.C. 15a) was amended by the addition of a new paragraph 15a(4). This addition to Section 15a of the Interstate Commerce Act directs the ICC to consider rate increases to offset increased expenses arising from the Railroad Retirement Amendments of 1973.

Section 15a(4)(b) of the Interstate Commerce Act states that the ICC shall, within 30 days of the rail carriers' filing, permit the establishment of rate increases in an amount approximating that needed to offset increases in expenses resulting under the Railroad Retirement Tax Act, as amended, occurring on or before January 1, 1975, or as a result of the enactment of the Railroad Retirement Amendments of 1973. Section 15a(4)(c) provides that, within 60 days from the date of establishment of interim rates under Section 15a(4)(b), the ICC shall commence hearings for the purpose of making the final rate determination. The petitioning carriers shall have the burden of proof for such final rate determination. In making such determinations, the ICC may take into account all factors appropriate to rate making in conformity with Part I of the Interstate Commerce Act. If the rate increases finally authorized are less than the rate increases initially made effective, the carriers shall make such refunds as may be ordered by the ICC, plus a reasonable rate of interest.

Pursuant to Section 15a(4)(d)(A) the state authority having jurisdiction over petitions for intrastate rate increases by carriers subject to Part I of the Interstate Commerce Act shall, within 60 days of the carriers' filing for rate increases to offset increases in carriers' railroad retirement tax contributions, act upon said petition. Such state authority may grant an interim increase or final rate increase. If an interim rate increase is granted, the state authority shall thereafter investigate and determine the reasonableness of such increase and modify it to the extent required by applicable law, subject to the same refund provisions as heretofore authorized by the ICC. In the event the state authority denies in toto the particular relief sought herein or fails to act on

such petition within 60 days from date of filing, the ICC is authorized, under Section 15a(4)(d)(B), to act upon such sought intrastate relief within 30 days of the filing of a petition therefor, subject to final determination by the state authority. Under Section 15a(4)(d)(C) of the Interstate Commerce Act, any partial denial of the sought intrastate tax offset rate increase is, upon the filing of an appropriate petition with the ICC, subject to review under the criteria of Section 13(4) of the Interstate Commerce Act.

In support of the California intrastate tax offset rate increases proposed herein, applicant rail carriers have presented substantially the same systemwide rail financial and statistical data previously presented, in conjunction with the nation's other railroads, to the ICC in Ex Parte 299 as justification for like interstate payroll tax offset rate relief. Such systemwide financial and statistical data are, in the first instance, subject to the same infirmities and need for further evaluation at a subsequent hearing in this proceeding as was found and ordered by the ICC on September 13, 1973 in Ex Parte 299 with respect to applicant rail carriers' sought interstate tax offset rate relief. Whether the impact of the Railroad Retirement Amendments of 1973 upon the California intrastate payroll tax expenses of applicant rail lines will, in fact, be the same as that projected for the interstate operations of the nation's railroads as a whole, cannot now be determined from the information presented in Application No. 54268.

The application is also deficient in that it does not comply with Rule 23 of the Commission's Rules of Practice and Procedure. Under the circumstances, interim relief no greater than that authorized by the ICC on September 13, 1973 should be granted with respect to the California intrastate operations of applicant rail lines, pending subsequent hearing in this proceeding.

Findings

1. The Pacific Southcoast Freight Bureau requests authority to increase California intrastate rail rates by amounts equivalent to the interim increases authorized by the Interstate Commerce Commission in order dated September 13, 1973 in ICC Docket Ex Parte 299. This authority was exercised by the railroads through the publication of a Tariff of Increased Rates and Charges X-299 for application on interstate rail traffic, effective October 1, 1973. The authority thus exercised establishes general freight rate increases of 1.9 percent on October 1, 1973 and 2.6 percent on January 1, 1974 in lieu of the October 1st increase, subject to various exceptions and conditions set forth in Tariff X-299.

2. Subject to further review upon consideration of evidence which may be adduced at a subsequent public hearing, the increases in rates and charges that will result from the application of Tariff of Increased Rates and Charges X-299 on California intrastate traffic are justified.

Conclusions

1. Applicant should be authorized to establish by appropriate supplement to Tariff of Increased Rates and Charges X-299 the increases in said tariff on California intrastate traffic.

2. Rates and charges increased pursuant to the authority granted by the order herein should be made subject to the refund provisions governing Tariff of Increased Rates and Charges X-299.

3. Applicant should be authorized to depart from the provisions of Section 460 of the Public Utilities Code and from the terms and rules of General Order No. 125 to the extent necessary to establish the increased rates and charges authorized herein.

4. The record in this proceeding should be kept open pending further action by applicant and/or order of the Commission.

IT IS ORDERED that:

1. Pacific Southcoast Freight Bureau, on behalf of the rail carriers listed in Application No. 54268, is authorized to establish for California intrastate traffic, by appropriate supplement to Tariff of Increased Rates and Charges X-299, the increases in rates and charges set forth therein.

2. All rates and charges increased pursuant to the authority contained in this order shall be subject to the refund provisions set forth in Tariff of Increased Rates and Charges X-299.

3. Tariff publication 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 publication, 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. Applicant, in establishing and maintaining the rates authorized hereinabove, is 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.

6. A public hearing shall be scheduled in this proceeding for the receipt of evidence relative to this application and full disposition thereof.

7. Prior to the hearing ordered in paragraph 6 hereof, applicant shall amend Application No. 54268 to comply with Rule 23 of the Commission's Rules of Practice and Procedure and provide the Commission with data which will enable the Commission to determine whether the impact of the Railroad Retirement Amendment of 1973 upon the California intrastate payroll tax expenses of applicant rail lines will in fact be the same as projected for the interstate operations of the nation's railroads as a whole.

The effective date of this order is the date hereof.

Dated at Los Angeles, California, this 16th day of OCTOBER, 1973.

Vernon L. Stinson
President

William J. S. S. S.

[Signature]

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.