

ORIGINAL

Decision No. 91128 DEC 18 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern Pacific Transportation Company and Northwestern Pacific Railroad Company for Authority to Increase Northern California Rates on Rock, Sand, and Gravel Published in Pacific South Coast Freight Bureau 166-I Tariff.

Application No. 58473
(Filed November 17, 1978)

John MacDonald Smith, Attorney at Law, for Southern Pacific Transportation Company and Northwestern Pacific Railroad Company, applicants.

Raymond A. Greene, Attorney at Law, for Lone Star Industries, Inc. and Pacific Ready Mix, Inc.; Ted Van Midde, for Shamrock Materials; and Bruce MacPhail, for MacPhail's Inc.; protestants.

Robert N. Lowry, Attorney at Law, for Kaiser Sand & Gravel Company; Michael J. Stecher, Attorney at Law, for Granite Rock Company; Asa Button, for Spreckels Sugar Division - Amstar Corp.; and John F. Buono, Jr., Attorney at Law, for Rhodes-Jamieson; interested parties.

Joseph C. Matson, for the Commission staff.

O P I N I O N

Southern Pacific Transportation Company (SP) and Northwestern Pacific Railroad Company (NWP) request authority to increase freight rates on rock, sand, and gravel from: (1) Bailache/Windsor, which are points on NWP in the Healdsburg area, to Santa Rosa, Petaluma, Novato, Ignacio, and San Rafael; (2) East Pleasanton/Radum to San Francisco Peninsula points; and (3) Olympia to San Francisco Peninsula points.

Public hearing was held before Administrative Law Judge Daly in San Francisco, and the matter was submitted on June 28, 1979 upon the receipt of concurrent briefs, which were filed on August 1, 1979.

Applicants' Presentation

According to applicants the decision to file the instant application was predicated upon a Profit Management System (PMS) report which is used to give management periodic reports of the contributions of various types and classes of traffic.

Prior to filing the application, applicants conducted studies of possible service changes to reduce operating cost. A new SP train was instituted from Radum/East Pleasanton, which permitted a single crew to operate across the Dumbarton Bridge to San Francisco Peninsula and return within 12 hours.

Service from Olympia is provided by an SP train which operates on a circuitous branch line through Santa Cruz on Mondays, Wednesdays, and Fridays. The same train operates on the Davenport branch on Tuesdays, Thursdays, and Saturdays. Because of this service constraint, no cost improvement could be made on the Olympia movements.

No further improvement on the NWP could assertedly be made.

The proposed rates are at the Ex parte-349 level, which reflect costs as of July 1, 1978 and are designed to provide revenues of \$44 to \$50 per rail car above applicants' PMS costs.

According to the application, the proposed rates would also be subject to all subsequently authorized general increases. On March 27, 1979 the Commission authorized an increase of 12 percent on rail movements of rock, sand, and gravel. This increase is commonly referred to as Ex parte 357 and reflects costs as of the October 1, 1978 level, except for wages which reflect costs as of January 1, 1979.

Although applicants' decision to file the instant application was based upon the PMS report, justification for the proposed rates was predicated upon the Rail Form A (RFA) cost finding procedure, which has been adopted by the Interstate Commerce Commission and has

also been accepted by this Commission in prior proceedings. Although the procedure provides for fully allocated costs with provision for return on investment and federal income tax, the method employed by applicants was at the variable cost level, which is approximately 29 percent below the full cost level.

The following is a comparison of RFA costs with revenue per car under the proposed rates at both the Ex parte 349 and Ex parte 357 levels:

| <u>From</u> | <u>To</u> | RFA Cost/Car 1/1/79 | Average Revenue Per Car | | |
|--------------------------|----------------|---------------------------|-------------------------|-----------------------------|-----------------------------|
| | | | <u>Present</u> | <u>Proposed (X-349)</u> | <u>Proposed (X-357)</u> |
| Healdsburg | Santa Rosa | \$220 | \$188 | \$192 | \$215 |
| | Ignacio | 274 | 201 | 259 | 290 |
| | San Rafael | 262 | 201 | 288 | 323 |
| E. Pleasanton/ Radium | Campbell | 284 | 202 | 300 | 336 |
| | San Jose, Lick | 284 | 191 | 290 | 325 |
| | Mountain View | 229 | 216 | 290 | 325 |
| | Redwood City | 221 | 216 | 238 | 267 |
| | San Carlos | 224 | 216 | 238 | 267 |
| | San Mateo | 231 | 216 | 238 | 267 |
| | Millbrae | 231 | 229 | 238 | 267 |
| | San Francisco | 283 | 247 | 284 | 318 |
| Olympia | San Jose | 405 | 234 | 381 | 427 |
| | Santa Clara | 391 | 234 | 381 | 427 |
| | Mountain View | 394 | 252 | 436 | 488 |
| | Redwood City | 402 | 252 | 460 | 515 |
| | San Carlos | 407 | 252 | 466 | 522 |
| | San Mateo | 412 | 270 | 466 | 522 |
| | Millbrae | 415 | 304 | 479 | 536 |
| | San Francisco | 479 | 361 | 494 | 553 |

The study indicates that in every instance the rates in effect as of the time that the application was filed produce revenues below the January 1, 1979 cost level. The same would be true if revenues produced under both the proposed rates and those authorized by Ex parte 357 were compared to fully allocated costs, which are 29 percent higher than variable costs.

The major imbalance between costs and revenues is in movements from Olympia to San Francisco Peninsula points and is attributable to the fact that the railroad line between Olympia and the San Francisco Peninsula is extremely circuitous.

Applicants also propose a major change in the demurrage rule in order to maximize the effective utilization of the cars used in rock, sand, and gravel movements. Under the rule a penalty is applied if cars are detained beyond the tariff-specified time for loading and unloading. Applicants contend that a greater utilization of cars results in operating efficiencies which reduce the cost of service.

Under the present demurrage rule, 24 hours of free time is allowed for loading and 48 hours of free time is allowed for unloading. The proposed demurrage rule would allow 12 hours free time for loading or unloading after the first 7 a.m. following placement. No consideration was given to possible increases in revenues that might result from the proposed change in the demurrage rule because the charge is designed to maximize car utilization rather than to increase revenues.

Protestants' Presentation

Although a number of companies made appearances as protestants or interested parties, only Lone Star Industries, Inc. (Lone Star) and Pacific Ready Mix, Inc. (Pacific) made affirmative showings in support of their protests. In addition to the testimony of witnesses representing each company, these protestants also introduced the testimony of one witness representing the Alameda County Planning Department and another witness representing the California Department of Transportation.

Their testimony is summarized as follows:

Emil J. Bertana

Traffic manager - Northern California Division,
Lone Star. Lone Star is engaged in manufacturing,
selling, and distributing cement, aggregates,

and ready-mix concrete. It maintains facilities at East Pleasanton and Olympia where it produces gravel and sand for sale and distribution to ready-mix plants between San Jose and San Francisco. Lone Star competes with Kaiser Sand & Gravel Company, Rhodes-Jamieson, and Granite Rock Company (Granite). The proposed rail rates would place Lone Star at a competitive disadvantage. It would have to divert a substantial amount of traffic to truck transportation, which would result in higher operational costs that could not be passed on to the customer because of a highly competitive situation. It is estimated that the additional cost would be approximately \$89,055 a year at Olympia and approximately \$102,752 a year at East Pleasanton. The additional cost at a batch plant in San Francisco is estimated at \$87,608 a year plus demurrage penalties in the amount of \$8,811.

The proposed rates would further aggravate the competitive inequity that exists because of the favorable rate that Granite has available from its plant in Logan.

Authorization of the demurrage rule changes would reward SP for significant inadequacies in service. Lone Star has constantly experienced problems with SP in scheduling rail cars to meet Lone Star's requirements.

Frank Nash

Secretary-treasurer - Pacific. Pacific operates ready-mix plants located in San Jose, Mountain View, Palo Alto, Redwood City, San Carlos, and San Mateo. Pacific receives shipments of rock, sand, and gravel. The proposed rail rates would place Pacific at a further competitive disadvantage with Granite, which operates a plant at Logan near Watsonville. If the proposed rates are authorized, all of Pacific's traffic to its San Jose, Mountain View, and Palo Alto plants would be diverted to trucks and 50 percent of the traffic to the San Carlos and San Mateo plants would also be diverted to trucks. Diversion to truck transportation would pose environmental, energy, and safety problems.

Revision of the demurrage rule would substantially increase demurrage charges. A significant amount of demurrage penalties are attributable to SP's failure to deliver cars when they are scheduled and needed. When rail cars are needed and not delivered, the material has to be brought in by truck. As a consequence, there is no immediate need for the material when the rail car is finally delivered and this results in penalty time because of a delay in the release of the car.

Bruce C. Fry

Assistant planning director - Alameda County Planning Department.

Introduced Resolution 183529 of the Board of Supervisors of Alameda County (Exhibit 7), adopted July 26, 1979, which opposes the rail increase because the board desires to "promote the use of rail transit over highway transit for goods and materials transported within and through the County of Alameda in order to avoid increasing highway congestion, impacts on land uses abutting highways, air pollution, and unnecessary consumption of critical fuel supplies." The City of Pleasanton has adopted an ordinance which restricts the use of city streets. Trucks serving the Lone Star facility may use city streets for three more years and after that will have to find another route. Gravel truck traffic through the city has been a constant irritation to residents living near truck routes.

The resolution of the Board of Supervisors was adopted at the request of Lone Star. SP was never contacted nor was it requested to state its position.

Leonard Newman

Chief Highway Operation Branch - California Department of Transportation.

Any increase in truck transportation, or any type of vehicle use, would have an adverse effect upon highway conditions in the Santa Cruz or East Pleasanton area. Additional trucks operating on the grades on State Highway 17 in the Santa Cruz area and Interstate Highways 580 and 680 in the East Bay area would have a significant impact and an adverse effect. Trucks operating on grades must operate at a slow speed and this contributes to traffic congestion.

The Department of Transportation takes no position on the merits of the application and has no knowledge as to the volume of rock, sand, and gravel that is presently transported over these routes.

Staff's Presentation

The staff's showing was limited to the introduction of Exhibit 6, which indicates that the proposed rail rates from East Bay points to points in the San Jose area are compromised because lower rates would be maintained to more distant points thereby violating Section 460 of the Public Utilities Code.^{1/} SP presently provides a direct route from East Pleasanton and Radum to San Jose via Niles and Milpitas with an alternate route slightly longer via Niles and Newark. These routes are the shortest rail mileage to San Jose but not necessarily to points north of San Jose. With the institution of its new train across the Dumbarton Bridge, shipments destined to the San Jose area are transported over a longer distance via Redwood City. SP's cost figures were based upon use of the Redwood City route.

The staff takes the position that the application should be denied unless the long- and short-haul conflicts are resolved and that SP's costs computed via Redwood City should not be accepted.

^{1/} "460. No common carrier subject to the provisions of this part shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, within this State, the shorter being included within the longer distance or charge any greater compensation as a through rate than the aggregate of the intermediate rates. This provision does not authorize any such common carrier to charge or receive as great a compensation for a shorter as for a longer distance or haul.

"Upon application to the commission a common carrier may, in special cases, after investigation, be authorized by the commission to charge less for a longer than for a shorter distance for the transportation of persons or property, and the commission may from time to time prescribe the extent to which such carrier may be relieved from the operation and requirements of this section."

The staff witness admitted, however, that if the Section 460 conflicts could be resolved and if it could be shown that the cost of service via Redwood City were comparable to costs via Niles or Milpitas, the staff would have no further objection.

The long- and short-haul conflict relates to Permanente, Monta Vista, Vasona, Luther, and Edenvale. A review of SP's records indicates that with the exception of Luther there have been no movements of rock, sand, and gravel to any of these points since 1975. On June 25, 1979 Pacific Southcoast Freight Bureau filed informal Application No. 9058 requesting Commission authority to cancel rates on rock, sand, and gravel from East Pleasanton and Radum to Permanente, Monta Vista, Vasona, Luther, and Edenvale.^{2/} If the commodity rates are canceled to these points, as requested, higher class rates would then apply.

In response to the staff's objection to the use of costs via the Redwood City route, SP made a comparative study with the East Bay route via Newark. The route via Niles was not considered because use of either of the East Bay routes would require an exchange of traffic from one train to another and only Newark has the trackage available to make the exchange. As a result of the study, it was determined that the reduction in costs from the 15-mile shorter route via Newark would be offset by the additional cost of the interchange. The savings in line-haul and car-mile costs resulting from dispatching the San Jose cars via Newark would be \$16.06 a car, whereas the additional switching costs would be \$15.78 so that the costs via both routes would be virtually the same.

Discussion

There is nothing in this record that contradicts applicants' cost evidence as presented in the RFA cost development. The evidence demonstrates that a comparison of RFA variable costs per car with revenues under prior rates would result in a loss in almost every instance and if compared to fully allocated costs would result in a loss in every instance.

^{2/} That filing, assigned Special Tariff Docket (STD) Application No. 9443 by the Commission, was dismissed on July 17, 1979 by Resolution No. 915.

The position of both Lone Star and Pacific is that because of the competitive sensitivities of their respective business operations the proposed rate increase, if authorized, would result in a substantial diversion of traffic to truck carriers, which according to their two supportive witnesses would have an adverse effect upon existing highways, particularly on Interstate Highways 580 and 680 in the East Bay and State Highway 17 in the Santa Cruz area.

There is no doubt that an increase in rail rates would result in some diversion of rock, sand, and gravel traffic to trucks, particularly from Olympia where the circuitous nature of the rail route substantially increases the cost-related rail rates over the rates of the truck, which have a direct route from Olympia to points on the San Francisco Peninsula. This diversion may have a material effect upon existing streets and highways that cannot be quantified on this record.

Lone Star and Pacific also claim that the proposed increase would place them in a further competitive disadvantage with Granite, which is engaged in mining, processing, and shipping rock and sand from its plant at Logan to its plant in Redwood City. Granite presently enjoys a favorable rate arrangement with SP, which was fully considered by this Commission in Decision No. 88788 dated May 2, 1977 in Cases Nos. 10316 and 10343.

The Commission found that Granite made capital expenditures in excess of \$1 million at its Logan and Redwood City facilities to reduce the overall cost to the railroad in moving traffic from Logan

to Redwood City. Because Granite performs essentially every function of loading, weighing, switching, preparation of documents, blocking, and cleaning at both the Logan and Redwood City terminals, all the SP crew has to do is pick up and deliver the cars as they would a unit train. The rates were found to be reasonable and nondiscriminatory.

The contention of Lone Star and Pacific that the proposed demurrage provisions, which would limit the receivers' free time to 12 hours after the first 7 a.m. following placement of the car, would substantially increase demurrage charges that are presently excessive because of SP's failure to deliver cars when scheduled and needed is without merit. The record shows that during the month of August 1978 the average demurrage for all of the receivers that would be affected by this application was .03 days per car. During the same period Pacific received 159 cars and paid 103 days of demurrage for an average of .65 days per car, or 20 times more than the other receivers. Unless a receiver is holding cars for its own operating convenience, it would appear that the 12-hour free time is a reasonable period for unloading cars.

By demonstrating that its operating costs via Redwood City and Newark are comparable and by its proposal to cancel commodity rates on rock, sand, and gravel from East Pleasanton and Radum to Permanente, Monta Vista, Vasona, Luther, and Edenvale, SP has satisfied the staff's objection and has solved the long- and short-haul problems. Cancellation of the commodity rates, however, would mean that higher class rates would then apply. A more equitable solution would be to extend the Campbell commodity rate levels to Permanente and all intermediate points, and have the San Jose commodity rate levels made effective to Luther and Edenvale.

Findings of Fact

1. The RFA cost development, as presented in this proceeding, indicates that applicants' respective operations for the

transportation of rock, sand, and gravel between the points covered by this proceeding are noncompensatory even when considered with the rate increase granted by Ex parte 357.

2. Although granting of the proposed increase would result in some diversion of traffic from rail to truck carriers resulting in additional highway movements, there is nothing in this record that quantifies existing highway conditions, the extent of the diversion, nor the effect that such diversion would have upon the highways in question.

3. The favorable rate arrangement that Granite has with SP is nondiscriminatory as to other receivers of rock, sand, and gravel located on the San Francisco Peninsula because of the extensive facility improvements that Granite has made at its Redwood City and Logan facilities, which have materially reduced SP's cost of providing service between said points.

4. The proposed 12-hour free time demurrage provision would help to reduce unnecessary car detention and would enable applicants to make better utilization of their rail cars.

5. Although SP's rail route to the San Jose area via Newark is 15 miles shorter than its route via Redwood City, the costs of operating over both routes are essentially the same.

6. Extension of the proposed Campbell commodity rate levels to Permanente and intermediate points and extension of the proposed San Jose commodity rate levels to Luther and Edenvale would remove long- and short-haul violations resulting from the adoption of the proposed rates.

7. The increases in rates and charges authorized by this decision are justified and are reasonable, and the present rates and charges, insofar as they differ from those prescribed by this decision, are for the future unjust and unreasonable.

Conclusion of Law

The Commission concludes that the application should be granted subject to the condition set forth in the order which follows.

O R D E R

IT IS ORDERED that:

1. Southern Pacific Transportation Company (SP) and Northwestern Pacific Railroad Company are authorized to establish the increased rates proposed in Application No. 58473. Tariff publications authorized to be made as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and to the public.

2. As a condition to the authority granted in Ordering Paragraph 1 hereof, SP shall extend the Campbell commodity rate levels for the transportation of rock, sand, and gravel to Permanente and all intermediate points and extend the San Jose commodity rate levels for the transportation of the same commodities to Luther and Edenvale.

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

Dated DEC 18 1979, at San Francisco, California.

John E. Burns
President

William P. Thompson
Secretary

Carl W. Hawks
Commissioner

George J. Delpratt
Commissioner

Samuel J. Smith
Commissioner