

Decision No. 92123 AUG 19 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern Pacific
Transportation Company and
Carriers Listed in Exhibit A
for Authority to Make Effective
on California Intrastate Traffic
General Increases in Local and
Joint Freight Rates and Charges
as Published in Tariff of Increased
Rates and Charges, X-357.

Application No. 58543

Application of the Pacific Southcoast
Freight Bureau for Authority to Make
Effective on California Intrastate
Traffic Selective Increases in Local
and Joint Freight Rates and Charges
as Published in Tariff of Increased
Rates and Charges X375B.

Application No. 59681

ORDER AMENDING DECISION NO. 91502 AND
REOPENING APPLICATIONS NOS. 58543 AND 59681
FOR FURTHER HEARING

By Petition for Rehearing and Modification of Decision No. 91502 filed May 1, 1980 by Amstar Corporation, Spreckels Sugar Division, Union Sugar Division of Consolidated Foods Corporation, and California Beet Growers Association, petitioners (referred to hereinafter as protestants or shippers) seek modification of Ordering Paragraph 1 of the decision to provide that the 15 percent increase in rail sugar beet rates authorized therein to Santa Maria Valley Railroad Company (SMV) and Southern Pacific Transportation Company (SP) will be subject to refund or reparation in the event that SP does not comply with the directives set forth in Ordering Paragraph 3 of the decision which provides as follows:

"Southern Pacific Transportation Company shall:
(1) immediately initiate and complete within a three-year period a program of rehabilitation or replacement of its sugar beet fleet or some other appropriate program to assure that it will have sufficient equipment in reasonable condition to meet the present and future needs of sugar beet shippers, and (2) submit to the Commission, within ninety days after the effective date of this order, the plan that it will undertake to achieve this goal."

The petition states that: (1) although the time within which SP is directed to furnish its car rehabilitation or replacement or other appropriate program expires July 1, 1980, SP has not as yet submitted such a plan to the Commission or discussed such a plan with protestants; (2) protestants are not aware of any rehabilitation work or other program undertaken by SP in response to the Commission's directive that such fleet improvements be immediately instituted; (3) while protestants fully expect that a plan complying with Ordering Paragraph 3 will be submitted within the required period, until such time that a plan is submitted and undertaken, the 15 percent increase granted to SP for sugar beet transportation would be excessive and unreasonable; and (4) Decision No. 91502 should be modified as requested to assure that SP will rehabilitate its sugar beet fleet as ordered and to safeguard against the collection of excessive rates if SP does not do so.

In its Response to Petition for Rehearing and Modification of Decision No. 91502 filed May 9, 1980, SP asserted that the requested modification was not justified and that it was diligently working on a plan as required and would file it within the specified time period. It requested that the petition be denied. SP also requested that protestants make available to it certain documents

and information bearing on the future of the sugar beet industry in California and protestants' future demands for SP rail service.

Because SP had until July 1, 1980 to submit its plan regarding the sugar beet fleet, the petition was premature, and action on it was withheld temporarily.

Subsequent to the filing of the petition and answer, the following events have occurred:

1. On May 21, 1980 Pacific Southcoast Freight Bureau, on behalf of SP and other common carriers participating in its tariffs, requested authority to make the same increases effective on California intrastate traffic which were authorized by the Interstate Commerce Commission, effective July 12, 1980, on interstate traffic in Tariff of Increased Rates and Charges X375B except for sugar beets. An increase of 8 percent was sought for sugar beets in lieu of the 12 percent increase sought for interstate traffic.

2. By letter dated June 4, 1980, SP advised that PLEX Division of PLM, Inc. (PLEX), a private rail car company, was offering a program to the railroads and sugar beet shippers whereby PLEX would purchase the sugar beet fleet, maintain the cars in acceptable condition and repair, and lease them to the shippers. SP stated that the proposal contemplates that new rates would be established for shipper-furnished cars and that it would explore this offer further.

3. On July 1, 1980 SP submitted its report on sugar beet gondola cars. The report discussed various problems in attempting to forecast future sugar beet traffic, the many millions of dollars of capital investment that would be required to either rehabilitate or replace the present 1,270-car fleet, and the alleged high risk of any such investment. It set forth the following three alternative programs to form the basis for mutual discussions and negotiations with the sugar beet shippers: (a) continue the present program of

light repairs with the expectation of an attrition rate of 10 to 20 percent per year in the fleet, and cooperate with shippers in arranging schedules for longer-haul rail movements while the shippers arrange over the next few years for a conversion from rail to truck, first for short and then for long hauls; (b) initiate a modified rehabilitation program costing approximately \$3,600 per car or \$4.6 million for the fleet which would keep the cars operational for an additional three years followed by several years of rapid attrition, and develop a sugar beet rate scale that would recover this additional expense; and (c) sell the serviceable cars to the sugar beet shippers or a third party, such as FLEX, and develop a schedule of rates for privately owned cars.

4. By letter dated July 11, 1980 protestants' attorney asserted that SP's July 1, 1980 report does not comply with the directive in Ordering Paragraph 3 of Decision No. 91502 and requested that action on its Petition for Rehearing and Modification be withheld until the July 29, 1980 Commission Conference to allow time to file a response to SP's report.

5. On July 25, 1980 protestants filed a Petition for Suspension of Rate Increases and Institution of Contempt Proceedings wherein they asserted that none of the options set forth in SP's July 1, 1980 report remotely comply with the directives in issue and that SP has completely ignored its obligation to rehabilitate the sugar beet fleet. This petition requests that: (a) the 15 percent sugar beet rate increase authorized by Decision No. 91502 be suspended, or alternatively made subject to refund as previously requested; (b) the 8 percent additional increase in sugar beet rates sought in Application No. 59681 be denied; (c) contempt proceedings be initiated against SP for its failure to comply with Ordering Paragraph 3 of Decision No. 91502; and (d) its May 1, 1980 Petition for Rehearing and Modification of Decision No. 91502 be granted.

6. Decision No. 92093 dated and effective July 29, 1980 granted the authority requested in Application No. 59681, including the 8 percent increase for sugar beets.^{1/} Because of the pending petition for Rehearing and Modification of Decision No. 91502 and the various additional filings in this matter, the 8 percent increase in sugar beet rates was made subject to refund. In this connection, Ordering Paragraph 13 of the decision provided as follows:

"Rate increases authorized herein for the transportation of sugar beets by Southern Pacific Transportation Company shall be collected subject to refund pending the final determination of Application 58543."

7. On August 4, 1980 SP filed its Reply to Petition for Suspension of Rate Increases and Institution of Contempt Proceedings. In the reply, SP asserts that: (a) protestants erroneously contend that Ordering Paragraph 3 of Decision No. 91502 mandates complete rehabilitation of the fleet, whereas, the paragraph directs SP in the alternative to undertake "a program of rehabilitation or replacement...or some other appropriate program" to assure car supply for the shippers; (b) several such programs were proposed by SP in its July 1, 1980 report to form a basis for discussions and negotiations with petitioners with the expectation that the parties could mutually agree on a solution that could best meet protestants' needs; (c) protestants have not given any assurance to SP that their future demand for rail service will warrant the complete rehabilitation program that they seek and have failed to furnish SP with information needed to factually determine what their essential future needs will be; (d) because of this, SP retained a consultant who is an expert

^{1/} Ordering Paragraph 2 of Decision No. 92093 authorized the incorporation of a 0.8 percent fuel surcharge into the increases authorized by the decision and provided that the fuel surcharge would be concurrently canceled upon the publication thereof. The 0.8 percent fuel increase is not involved in the petition and other pleadings herein.

in agricultural economics to prepare a study which concludes that the future of the sugar beet industry in this State is problematic and that investment by SP in specialized equipment for this industry would be imprudent; (e) protestants are unwilling to assume any of the expense of rail-related improvement for their industry by paying increased rates; and (f) Decision No. 91502 found that the 15 percent increase authorized therein was cost-justified. The reply requests that a finding be made that SP is complying with Ordering Paragraph 3 of Decision No. 91502 and that the petitions filed by protestants be denied in their entirety.

Findings of Fact

Each and every allegation of the petitions, replies thereto, and other filings herein having been considered, we find that:

1. The report filed by SP on July 1, 1980 regarding the future of its sugar beet fleet sets forth three optional programs for mutual discussions and negotiations with protestants and not a definitive program as was contemplated by Ordering Paragraph 3 of Decision No. 91502.

2. Application No. 58543 should be reopened for the limited purposes of determining (a) whether SP is complying in good faith with the directives set forth in Ordering Paragraph 3 of Decision No. 91502 regarding its sugar beet fleet; (b) the extent to which protestants have been cooperative in furnishing data or other information in their exclusive possession and control which may be vital to SP in formulating and implementing the required program; (c) whether SP could reasonably be expected to comply with this requirement without such data or other information from the protestants; and (d) based on the evidence developed at the hearing

on the aforementioned issues, whether the increases in rates on sugar beets authorized by Decisions Nos. 91502 and 92093 and the subject-to-refund provisions in Decision No. 92093 and provided herein should be canceled or otherwise modified.

3. Based on the information now before us, it has not been shown that the increases in sugar beet rates authorized by Decisions Nos. 91502 and 92093 should be suspended or otherwise modified except to the extent provided in Finding 4.

4. Until the issue of compliance by SP with Ordering Paragraph 3 of Decision No. 91502 is resolved, the 15 percent increase in sugar beet rates authorized to SMV and SP should be made subject to refund on and after the effective date of this decision.

5. Application No. 59681 should be reopened and set for hearing with Application No. 58543 for the limited purpose of determining whether Ordering Paragraph 13 of Decision No. 92093, which makes the 8 percent increase in sugar beet rates subject to refund by SP pending final determination of Application No. 58543, should be rescinded or otherwise modified.

6. Based on the information before us, it has not been established that SP is in contempt of the Commission's directives in Ordering Paragraph 3 of Decision No. 91502.

Conclusions of Law

1. Applications Nos. 58543 and 59681 should be reopened and set for hearing on a consolidated record for the limited purposes set forth in the order which follows.

2. Except to the extent provided in the order which follows, protestants' Petition for Rehearing and Modification of Decision No. 91502 and Petition for Suspension of Rate Increases and Institution of Contempt Proceedings should be denied.

3. In order to resolve these issues as expeditiously as possible, the order which follows should be made effective on the date it is issued.

IT IS ORDERED that:

1. Applications Nos. 58543 and 59681 are reopened and set for public hearing on Wednesday, October 8, 1980, before Administrative Law Judge Arthur M. Mooney in the Commission Courtroom, State Building, 350 McAllister Street, San Francisco, limited to the following issues: ✓

- a. Whether Southern Pacific Transportation Company (SP) is complying in good faith with the directives set forth in Ordering Paragraph 3 of Decision No. 91502 regarding a program and report concerning its sugar beet fleet.
- b. The extent to which Amstar Corporation, Spreckels Sugar Division, Union Sugar Division of Consolidated Foods Corporation, and California Beet Growers Association (protestants) have been cooperative in furnishing data or other information in their exclusive possession and control which may be vital to SP in formulating and implementing the required plan for its sugar beet fleet.
- c. Whether SP could reasonably be expected to comply with the aforementioned directives without cooperation from the protestants in formulating and implementing the required plan for its sugar beet fleet.
- d. Based on the answers to the above three issues, whether the 15 percent and 8 percent increases in sugar beet rates authorized by Decisions Nos. 91502 and 92093, respectively, and whether the subject-to-refund provisions for the 15 percent increase set forth in Ordering Paragraph 2 hereinbelow and for the 8 percent increase

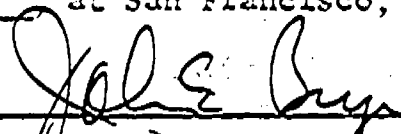
set forth in Ordering Paragraph 13 of Decision No. 92093 should be rescinded or otherwise modified.

2. The 15 percent increase authorized by Decision No. 91502 for the transportation of sugar beets by the Santa Maria Valley Railroad Company and SP shall on and after the effective date hereof be collected subject to refund pending final determination of the issues listed in Ordering Paragraph 1 hereinabove.

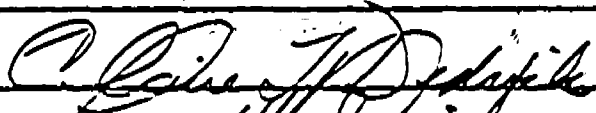
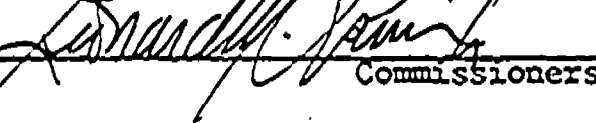
3. To the extent not granted herein, the petitions filed by protestants for Rehearing and Modification of Decision No. 91502 and for Suspension of Rate Increases and Institution of Contempt Proceedings are denied.

The effective date of this order is the date hereof.

Dated AUG 19 1980 at San Francisco, California.



President

Commissioners

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