

Decision No. 21278.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

HOLMES EUREKA LUMBER COMPANY,
Complainant,

vs.

NORTHWESTERN PACIFIC RAILROAD COMPANY,
Defendant.

ORIGINAL

Case No. 2641.

A. Larsson, for the complainant.

C. M. Jenks and J. J. Geary, for the defendant.

BY THE COMMISSION:

O P I N I O N

Complainant is engaged in the manufacture and sale of lumber and its products and as such ships and uses fuel oil in its logging operations. By complaint filed December 26, 1928, it is alleged that the rate assessed and collected on numerous carloads of fuel oil shipped from Bucksport to Palmer Creek was, is now, and for the future will be unjust and unreasonable, in violation of Section 13 of the Public Utilities Act, and unduly prejudicial in violation of Section 19 of the Act to the extent it exceeded, exceeds or may exceed a rate of 7 cents per 100 pounds.

Reparation and a reasonable, nonprejudicial rate for the future are sought. Rates will be stated in cents per 100 pounds.

The shipments here involved on which the cause of ac-

tion accrued more than two years prior to the filing of the complaint, although registered with this Commission under File I.C. 39393 within the statutory period, are barred from further consideration by reason of the decision of the California Supreme Court rendered April 26, 1929, in Los Angeles & Salt Lake Railroad Company vs. Railroad Commission et al., S.F.13152, 77 Cal.Dec. 594.

A public hearing was held before Examiner Geary at San Francisco April 12, 1929, and the case having been submitted is now ready for our opinion and order.

The shipments not barred from further consideration consisted of 62 tank cars of fuel oil from Bucksport, situated on the Northwestern Pacific Railroad 2.1 miles south of Eureka, to Palmer Creek, a point 14.7 miles south of Bucksport. The lawfully applicable rate assessed and collected for this movement was $9\frac{1}{2}$ cents, and this rate complainant compares with lower rates applicable on fuel oil applying between various points in California. The majority of the rates used for comparative purposes apply between points on lines other than the defendant's, although rates are shown from San Francisco Bay points to Petaluma and McGill and from Petaluma to Sebastopol applying in connection with the Northwestern Pacific Railroad. Defendant asserts that rates from bay points to Petaluma and McGill and from Petaluma to Sebastopol were originally established for the purpose of meeting water, rail or truck competition and therefore should not be used as a measure for the rates here at issue.

Complainant also refers to a rate of 7 cents applying from Eureka to Fernbridge, necessitating a slightly greater haul than in connection with the movement here involved. This rate also applies from Bucksport to Fernbridge, involving a

haul of 1.4 miles less than from Bucksport to Palmer Creek. Defendant contends that no fuel oil moves from Eureka to Fernbridge, the entire movement to the latter point being from Bucksport, and that the rate of 7 cents to cover this movement was reduced, effective July 1, 1927, from $9\frac{1}{2}$ cents to meet truck competition, and that this competition does not exist in connection with the traffic here under consideration.

The record shows that the rate on fuel oil from Bucksport to Palmer Creek on August 10, 1918, was $9\frac{1}{2}$ cents, established in compliance with General Order No. 22 of the Director General of Railroads during the period of federal control. Subsequently the rate was increased 25 per cent., to 12 cents, effective August 26, 1920, by authority of this Commission in Decision 8074, 18 C.R.C. 762, and later reduced to 11 cents, effective July 1, 1922 (Reduced Rates 1922, 68 I.C.C. 646). Effective June 22, 1925, defendant voluntarily reduced the 11-cent rate to $9\frac{1}{2}$ cents, and this rate has remained in effect since that time.

Fuel oil constitutes practically the entire inbound tonnage to Palmer Creek. Defendant contends that in view of the relatively light movement of this commodity the rate charged was reasonable and to make a further reduction would deprive it of revenue to which it was justly entitled. Defendant's witness stated that the Northwestern Pacific Railroad Company in 1928 failed to earn even its operating expenses and that during the last several years it has been unable to earn the interest on the outstanding bonds. It is claimed that the principal amount of its bonded indebtedness was created to cover that portion of its line from Willits to Shively, built to make possible a rail outlet for the lumber produced in Humboldt County.

After consideration of all the facts of record, we are of the opinion and find that the rate charged was not unjust,

unreasonable, unjustly preferential or unduly prejudicial. The complaint will be dismissed.

ORDER

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion, which said opinion is hereby referred to and made a part hereof,

IT IS HEREBY ORDERED that the complaint in this proceeding be and it is hereby dismissed.

Dated at San Francisco, California, this 25th day of June, 1929.

Thos S. Lewis

W. P. Cunn
Leon Whittell

W. P. Cunn
Commissioners.