

Decision No. 24530.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

MICCO LUMBER COMPANY,
 a corporation,

 Complainant,

 vs.

 SOUTHERN PACIFIC COMPANY,
 a corporation,

 Defendant.

ORIGINAL

Case No. 3167.

BY THE COMMISSION:

O P I N I O N

Complainant is engaged in marketing lumber, building material, rock, sand and gravel. By complaint filed December 28, 1931, it alleges that the charges assessed and collected for the transportation of 89 carload shipments of crushed rock and sand from Fillmore to La Patera during the period extending from November 1, 1930, to June 24, 1931 inclusive, were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

Reparation and an order authorizing the waiving of an undercharge are sought. Rates are stated in cents per 100 pounds.

Fillmore and La Patera are on the Southern Pacific Company 54 miles east and 9 miles north of Santa Barbara respectively. Charges were assessed on complainant's shipments

on basis of a rate of 5 cents, with the exception of one car on which there was a slight undercharge due to a clerical error in computing the charges. The 5-cent rate applied from Pacoima, a point 37 miles east of Fillmore, to La Patera. There was no specific commodity rate in effect from Fillmore to La Patera.

Effective September 16, 1931, in its Local, Joint and Proportional Freight Tariff 330-F, C.R.C. 3112, defendant published a rate of $4\frac{1}{2}$ cents, minimum 80,000 pounds, from Fillmore to La Patera, and it is on the basis of this subsequently established rate that complainant seeks reparation and an order authorizing defendant to waive the collection of an undercharge.

Defendant admits that the rate assessed was unreasonable to the extent it exceeded $4\frac{1}{2}$ cents, and has signified its willingness to make a reparation adjustment and to waive the undercharge, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and find that the assailed rate was unjust and unreasonable; that complainant made the shipments as described and is entitled to reparation without interest on the shipments on which it paid and bore the charges in excess of those herein found reasonable and to relief from the payment of the undercharge on the shipment on which higher charges were applicable. Complainant specifically waived the payment of interest.

O R D E R

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 preceding opinion,

IT IS HEREBY ORDERED that defendant Southern Pacific Company be and it is hereby authorized and directed to refund without interest to complainant Macco Lumber Company all charges collected in excess of $4\frac{1}{2}$ cents per 100 pounds, minimum 80,000 pounds, for the transportation from Fillmore to La Patera of the shipments of rock and sand involved in this proceeding.

IT IS HEREBY FURTHER ORDERED that defendant Southern Pacific Company be and it is hereby authorized and directed to waive the collection of charges applicable on complainant's shipments in excess of $4\frac{1}{2}$ cents per 100 pounds, minimum 80,000 pounds.

Dated at San Francisco, California, this 29th day of February, 1932.

CC Seaver
Leon ...
M. A. ...
W. B. ...
Fred G. ...
Commissioners.