

Decision No. 25704.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

PACIFIC TRADING COMPANY,
Complainant,

vs.

WILMINGTON TRANSFER & STORAGE CO.,
Defendant.

Case No. 3491.

ORIGINAL

PACIFIC ALKALI COMPANY,
Complainant,

vs.

WILMINGTON TRANSFER & STORAGE CO.,
Defendant.

Case No. 3492.

H. MUEHLSTEIN & COMPANY,
Complainant,

vs.

WILMINGTON TRANSFER & STORAGE CO.,
Defendant.

Case No. 3493.

SUCKOW BORAX MINES CONS. INC.,
Complainant,

vs.

WILMINGTON TRANSFER & STORAGE CO.,
Defendant.

Case No. 3494.

ATKINS, KROLL & COMPANY,
Complainant,

vs.

WILMINGTON TRANSFER & STORAGE CO.,
Defendant.

Case No. 3495.

AMERICAN CYANAMID SALES CO.,
Complainant,

vs.

WILMINGTON TRANSFER & STORAGE CO.,
Defendant.

Case No. 3496.

C. B. Carter, for both complainants and defendant.

D. G. Goldie, for Pacific Trading Company, complainant.

A. L. Davidson, for Pacific Alkali Company, complainant.

CARR, Commissioner:

O P I N I O N

These cases, which were consolidated for hearing, are an aftermath of Re Allen Brothers, Inc., et al., Decision No. 25024, dated August 1, 1932, in which the Commission, finding that various warehousemen in Los Angeles and vicinity, including the defendant here, had been departing from their published tariffs, ordered such warehousemen promptly to proceed to collect all undercharges. The several complainants are customers of the defendant, which were charged off-tariff rates, and which now claim that the tariff rates were unreasonable to the extent they exceeded the charges actually paid, and ask the Commission to authorize the waiving of the undercharges. The defendant warehouseman admits the allegations of the complaint and joins in the prayer for relief.

A public hearing was held at Los Angeles on March 1, 1933, and the case was submitted.

Generally in cases of this character, while there may be no issue as between the actual parties, it is necessary that the Commission scrutinize most carefully the proofs in support

of the complaint, lest by granting the relief sought, it lends its sanction and approval to what in substance and in effect is a rebate. The quantum and character of proof necessary to justify relief must measure up to that which would be required had these complainants paid the full tariff charges and then sought reparations upon the ground of unreasonableness, and the defendant had opposed the relief sought. And care must be taken to see that a discriminatory situation is not brought about, for attached to this Commission's power to grant reparation is the salutary limitation "that no discrimination will result from such reparation". (Sec.21, Article XII of Constitution; Sec.71(a) of Public Utilities Act.)

The facts developed in the record may be summarized briefly as follows:

The commodities involved are commercial fertilizer, borax and rubber. The tariff rates legally applicable, and the rates actually charged, the latter being identical with the prevailing rates in the Harbor District during the period in question, as well as with the rates now in effect, are as follows:

<u>Commodity</u>	<u>Lawful Tariff Rates</u>	<u>Rates Charged</u>
Commercial) Fertilizer)	Storage, 1¢ per cu.ft. or 40¢ per ton, per month	Storage, 20¢ per ton per month
Borax	Storage, 1¢ per cu.ft. or 40¢ per ton, per month	Storage, 20¢ per ton per month
Rubber	Storage, 4¢ per bale or case per month; handling 8¢	Storage, 2½¢ per bale or case per month; handling 6¢

At the time this merchandise was stored there were no specific commodity rates published for the storage of fertilizer and borax. The applicable rates were those provided for merchandise not otherwise specified. These commodities are comparatively

easy to handle, may be stacked in high piles, are uniform in size and weight and are not subject to loss or damage. The rubber, while probably a little more difficult to handle than fertilizer and borax, is not more so than commodities generally. All three of these articles, at the storage rates charged, return to defendant more revenue per square foot of floor space than average commodities. Defendant also testified that the rate charged for handling the rubber was compensatory and that the tariff rate was unreasonable. In each instance, rates of the volume of those charged have since been established.

The record shows that the storage and handling charges applicable to this merchandise are unjust and unreasonable to the extent they exceed 20 cents per ton per month for storage of fertilizer and borax and 2½ cents per bale or case per month for storage, and 6 cents per bale or case for handling the rubber involved in this case. Defendant should be authorized to waive collection of the undercharges. (San Francisco Milling Co., Ltd. vs. Southern Pacific Co., 34 C.R.C. 453.)

The following form of order is recommended:

O R D E R

These cases having been duly heard and submitted,
IT IS HEREBY ORDERED that defendant, Wilmington Transfer & Storage Co., be and it is hereby ordered to cease and desist from demanding from complainants, Pacific Trading Company, Pacific Alkali Company, H. Muehlstein & Company, Suckow Borax Mines Cons. Inc., Atkins, Kroll & Company, and American Cyanamid Sales Co., charges for the storage and handling of the merchandise

involved in these proceedings, in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that the defendant, Wilmington Transfer & Storage Co., be and it is hereby authorized and directed to waive the existing undercharges on complainants' merchandise involved in these cases.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 7th day of March, 1933.

O. S. Seamy
Leon Whiteley
W. A. Cain
W. B. Lewis
Walter H. ...
Commissioners.