

DECISION NO. _____

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 27418

DAIRYMEN'S COOPERATIVE CREAMERY ASSOCIATION,

Complainant,

vs

Case No. 694.

WELLS FARGO & COMPANY,

Defendant.

RIVERDALE COOPERATIVE CREAMERY ASSOCIATION,

Complainant,

vs

Case No. 695.

WELLS FARGO & COMPANY,

Defendant.

M. B. Harris, for complainants.

Alfred Sutro, for defendant.

GORDON, Commissioner.

OPINION ON PETITION FOR REHEARING

This is a petition for rehearing of Cases Nos. 694 and 695, which cases were heard on March 11, 1915. Decision No. 2219 was rendered March 15, 1915, ordering the defendant to publish and file with the Commission, within twenty days from the date of the order, rates on butter between Tulare and Los Angeles, distance 251.8 miles, and Riverdale and Los Angeles, distance 274.6 miles. These rates were agreed upon between complainants and defendant, and were 70¢ per 100 pounds between Tulare and Los Angeles and on the same mileage basis between Riverdale and Los Angeles.

Before the effective date of the order, the defendant asked for and was given until May 12, 1915, to comply therewith. On May 11, 1915, defendant filed a petition for a rehearing upon the ground that the rates which it had agreed to publish and file were "made through excusable inadvertence". Defendant presented the following contentions:

That the proposed rates would be unjust and would bring about an extremely heavy loss in revenue;

That if the proposed rates were used as a basis for making other butter rates, it would in some instances make an express rate lower than the freight rate concurrently in effect;

That in other instances, there would be too close a relationship between the express and the freight rate;

That a general schedule of butter rates made on the mileage basis would disrupt market conditions;

That such general schedule would disrupt the recognized and established existing differential in express rates between butter and other commodities; and,

That butter rates generally in California if based on the proposed Tulare-Los Angeles rate of 70 cents per 100 pounds would establish an unfair and improper precedent for rate making bodies in other States.

The petition for rehearing was set for May 28, 1915, at Fresno, at which time the presiding Commissioner announced that the evidence taken must be such as to enable the Commission to determine definitely whether its order theretofore made should stand, be modified or be vacated. In other words, if the evidence presented warranted the Commission in granting a rehearing such evidence would be used in disposing of the matter, thus obviating the necessity of a further hearing.

During the hearing it developed that the complainants were not prepared to introduce evidence in support of their con-

tention that the existing better rates were unjust and unreasonable, and in consequence the hearing was adjourned until July 7, 1915.

Before analyzing the testimony it is pertinent to say that the contentions upon which defendant relies for a re-hearing are insufficient, as I shall now proceed to show:

The defendant urges that its gross revenue would be very materially reduced. This unquestionably is true, but it in no way proves that the rates agreed upon are unjust or unreasonable. Another contention is that the rates mutually agreed upon bear too close a relationship to freight rates. This claim is made on the assumption that express rates should bear a certain relationship to freight rates. With this contention I disagree, though it is admitted that if the freight rates in and of themselves are reasonable the express rates should be in excess of the freight rates, particularly as the express rates include collection of packages at shipping points and their delivery at destination.

As was well said by the Interstate Commerce Commission, in Case No. 4198, In the Matter of Express Rates, Practices, Accounts and Revenue, 24 I C C 424:

"A reasonable express rate is one which gives reasonable compensation to the rail carrier for carrying ***** plus a reasonable compensation for service of gathering, care and delivering, which the express company as such renders."

The other reasons urged are irrelevant, inasmuch as they have no bearing upon the reasonableness or unreasonableness of the rates.

The rates on butter between Tulare and Los Angeles and Riverdale and Los Angeles in effect at the time the complaints were filed October 6, 1914, follow:

OPEN RATE

\$1.25 per 100 Pounds.

LOT OR QUANTITY RATES

Lots of 1000 lbs. and less than 2000 lbs. \$1.15 per 100 lbs.
 " " 2000 lbs. " over \$1.05 " " "

BOX OR CASE RATES

Per box or case containing not to exceed 66 two-pound squares or 132 pounds net and of exterior dimensions not exceeding 21 x 35 x 9½ inches.

: Single Boxes, : each	: Lots of 4 Bxs, : each	: Lots of 6 Bxs, : each	: Lots of 15 Bxs, : each
: \$2.10	: \$1.75	: \$1.61	: \$1.47

CUBE RATES

Per cube of exterior dimensions not exceeding 14½ x 15½ x 15½ inches.

: Single Cube, : each	: Lots of 8 Cubes, : each	: Lots of 15 Cubes, : each	: Lots of 29 Cubes, : each
: \$1.05	: \$.88	: \$.61	: \$.74

The rate before the Commission for adjudication is \$1.47 per case, containing 66 two-pound squares, in lots of 15 boxes. This rate, in the interest of brevity, will be designated "package rate". Witness for defendant, in reciting the history of this rate between Tulare and Los Angeles, stated that at the time the package rate was first established, 66 two-pound squares

of butter were shipped in boxes or cases made of light wooden material weighing eight pounds, known as a throw-away package. This container and contents weighed 140 pounds gross (case 8 pounds and butter 132 pounds). The rate on butter in lots of 2000 pounds or over is \$1.05 per 100 pounds. This rate is known as a lot rate. The package rate was determined by multiplying the rate of \$1.05 per 100 pounds by the gross weight of the package (140 pounds) and dividing by 100. The package rate was not applicable unless 15 or more packages (2100 pounds) were forwarded, thus making the rate per 100 pounds the same whether shipped under the lot or package rate. When witness was asked the basis of the lot rate, he stated that the second class freight rate concurrently in effect between the points was 70 cents per 100 pounds and that the lot rate was made 150 per cent of the freight rate. He had no knowledge as to when the lot rate became effective. From the Southern Pacific Company's tariffs on file with the Commission I find that a Second Class freight rate of 71 cents per 100 pounds was in effect from November 12, 1906, to May 27, 1912. This freight rate of 71 cents per 100 pounds was reduced on the latter date to 60 cents per 100 pounds but no corresponding adjustment was made in the lot or package butter rate. The express butter rates heretofore shown between Tulare and Los Angeles were in effect prior to May 27, 1912, and were voluntarily established by the defendant. Two-pound squares are transported in boxes made of heavy wooden material, substantially built, and are returned to the shipper to be refilled. The container and contents weigh 180 pounds gross (box 48 pounds and butter 132 pounds). The package rate of \$1.47 is equivalent to 81.6 cents per 100 pounds. Had defendant reduced its package

rate simultaneously with the freight rate, using the same percentage originally employed in fixing the package rate, the package rate on May 27, 1912, would have been automatically reduced to \$1.26. Based on the present gross weight of the package, (180 pounds) the rate per 100 pounds would be 70 cents. This is the rate per 100 pounds which the defendant voluntarily agreed to publish between Tulare and Los Angeles and which it now seeks to withdraw.

Testimony was introduced by defendant to show that the cost of handling this particular traffic is in excess of 89 cents per 100 pounds and that the rate agreed upon, being 70 cents per 100 pounds, is consequently unremunerative. The cost figure is not only in excess of the proposed 70 cent rate but is also greater than the present package rate of 81.6 cents per 100 pounds based on the present gross weight of the package. These cost figures, being purely speculative, cannot be seriously considered.

Riverdale Cooperative Creamery Association, failed to appear in opposition to defendant's application for a rehearing. A representative of the Dairymen's Cooperative Creamery Association, stated that it was impossible for the Riverdale Cooperative Creamery Association to be represented but that the Association *would rest on* ~~subscribe to~~ the testimony presented by Dairymen's Cooperative Creamery Association. The Manager for the latter association testified that its complaint was made in anticipation of what might happen in the future. No evidence was introduced in support of the contention that the present express rate is unjust and unreasonable, the only claim being that his plant is paying about \$80.00 daily in express charges, which charges appeared to him to be excessive. As complainants have failed to make a proper showing I recommend that the complaints be dismissed. When

complaints are lodged with this Commission complainants should come prepared to substantiate them, otherwise, as in this instance, the State as well as the utility is put to useless expense and trouble. In dismissing these cases, the Commission is not to be understood as holding that the defendant has justified the withdrawal of the proposed 70 cent rate, which it now alleges is unremunerative. The complaints are being dismissed because of the failure of complainants to make out a case. Our investigations in these proceedings show that defendant's butter rates in California are considerably out of line and it is suggested that they be readjusted so as to remove such inconsistencies as now exist.

I submit herewith the following form of order:

- O R D E R -

Wells Fargo & Company having filed with the Commission its petition for a rehearing in the proceedings entitled as above, and a hearing having been held thereon and the matter being now ready for decision,

IT IS HEREBY ORDERED that the above entitled cases be and the same are hereby dismissed without prejudice.

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 8th day of September, 1915.

Max Thelen
W. H. Loveland
Ally Gordon
Edwin O. Egan
Frank R. Deane

Commissioners.