

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 2927

San Francisco Artichoke Growers Association,

Complainant,

vs.

Ocean Shore Railroad Company,

Defendant.

ORIGINAL

Case No. 838.

Chapman and Thompson, for Complainant.  
A.C. Green and F.F. Thomas, Jr., for Defendant.

LOVELAND, Commissioner.

O P I N I O N.

Complainant in this proceeding is an unincorporated association of persons and firms engaged in the handling of Artichokes, its principal place of business being in San Francisco.

The petition filed August 5, 1915, alleges that the defendant has on file with this Commission a tariff known as Local and Proportional Freight Tariff No. 1, CRC No. 4, and assesses and collects freight charges thereunder, and that said tariff contains specific commodity rates applying on Artichokes from various points to San Francisco which are as follows:

		Rates in Cents Per ton 2000 Pounds
To San Francisco	From	
		Vegetables, viz: Artichokes, in packages, prepaid or guaranteed, car- load minimum weight 20,000 pounds.
	Tunitas	325
	Sealrox	325
	Purisima	310
	Arlata	300
	Halfmoon	300
	South Granada	300
	Moss Beach	300
	Tobin	260
	Brighton	220

It further alleges that the rates as charged are excessive, illegal and in violation of the Public Utilities Act, inasmuch as they exceed the Class "C" rates provided for vegetables in connection with Pacific Freight Tariff Bureau Exception Sheet No. I-B, CRC No. 52, supplements thereto and reissues thereof, filed with this Commission by F. W. Gomph, Agent, and to which the Ocean Shore Railroad became a party, January 30, 1912.

Complainant asks that reparation be made to its members on all carloads of artichokes moved from points on Ocean Shore Railroad to San Francisco subsequent to January 30, 1912, on the basis of the difference between the specific commodity rates as charged and the Class "C" rates which are contended to be the lawful rates. It particularly asks reparation in the sum of Nine hundred and Twenty-four Dollars, (\$924.00), together with interest thereon from the date of collection, as per Exhibit "A" attached to the complaint. Said exhibit only sets forth such shipments as could be located in the files of consignees and is not a complete statement of the amounts alleged to be due.

The rates involved in this proceeding are the same as those considered in Application No. 1861, Decision No. 2769, wherein the Ocean Shore Railroad Company applied for and was granted permission to amend its tariffs and restore the artichoke rates in effect prior to January 30, 1912. The testimony given in Application No. 1861, heard on the same day as this case, September 10, 1915, was by stipulation made a part of this proceeding.

Prior to the order of the Commission in Application No. 1861 the defendant had, in its tariffs on file with the Commission, two rates applicable to shipments of artichokes from various points of origin to San Francisco, one a commodity rate which was the rate collected upon the shipments involved in this proceeding, and the other a lower rate, namely, the Class "C" rate on vegetables. The Commission has heretofore, namely, on November

11th, 1910, established the following tariff regulation effective November 21, 1910:

"In every instance where a class or commodity rate is named in a tariff between specified points, the lowest of such rates is the lawful rate, provided that if some combination of class or commodity rates or class and commodity rates is found to be lower than the through rate the lower combination of rates shall apply, and the carrier shall immediately make its through rate correspond to the lower combination of rates, it being the intention to give the shipper the advantage of the lowest possible rate."

Therefore, under this rule the lower rate, namely, the class "C" rate on vegetables was the legal rate which the defendant should have charged for the shipments of artichokes involved in this proceeding. Any charge in excess of this legal rate is, of course, an excessive charge, and as to such charges the Commission is given power and must under the provisions of the Public Utilities Act, award reparation to the amount of the excess. Section 71 of the Public Utilities Act provides:

"Sec. 71. (a) When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection; provided, no discrimination will result from such reparation.

"(b) If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the commission."

Inasmuch as the defendant collected rates on the shipments of artichokes involved in this proceeding in excess of the legal rates on file with the Commission, the shipper is entitled to reparation to the amount of the excess. The Commission can not, however, award reparation on all excess charges collected from complainant subsequent to January 30, 1912, as requested in the complaint, inasmuch as Section 71, (b) of the Public Utilities Act requires that "all complaints concerning excessive or discriminatory charges shall be filed with the Commission within two years from the time the cause of action accrues". The complaint in this proceeding was filed on August 5, 1915. Reparation should, therefore, be awarded on all excessive charges collected subsequent to August 5, 1913.

I submit herewith the following form of order:

O R D E R

This case having come on regularly for hearing and the Commission being duly advised in the premises,

IT IS HEREBY ORDERED that Ocean Shore Railroad Company be and it is hereby ordered to make reparation to San Francisco Artichoke Growers Association for all charges in excess of the class "C" rate for vegetables filed with the Commission by said railroad and in accordance with the foregoing opinion applicable to the shipments on artichokes involved in this proceeding, collected subsequent to August 5, 1913, together with interest on the amount of the excess charges at the rate of seven per cent per annum from the date of collection thereof.

In the event that the parties to this proceeding are unable to agree upon the exact amount of the reparation due under this order, they may, within thirty days from the

date hereof, report that fact to the Commission, whereupon the Commission will issue a supplemental order herein with reference to this matter.

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

Dated at San Francisco, California, this 23<sup>rd</sup> day of November, 1915.

Max Thelen  
H. D. ...

Francis R. ...  
Commissioners.