

Dec No 5716

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

NAVARRO LUMBER COMPANY, a corporation,
Complainant

vs

ORIGINAL

SOUTHERN PACIFIC COMPANY, a corporation,
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY, a corporation, NORTHWESTERN
PACIFIC RAILROAD COMPANY, a corporation,
and CALIFORNIA WESTERN RAILROAD & NAVI-
GATION COMPANY, a corporation.

Case No. 1080

BY THE COMMISSION:

OPINION ON PETITION FOR REHEARING

Complaint was filed before this Commission by Navarro Lumber Company reciting that the rates given to the mills located along the lines of the Northwestern Pacific Railroad and the California Western Railroad & Navigation Company by the Southern Pacific Company and the Atchison, Topeka & Santa Fe Railway Company were discriminatory and preferential for the transportation of lumber to points in California as against the interests of this complainant.

The complaint also alleges, that the rates given by defendants to mills located on the lines of the Northwestern Pacific Railroad and the California Western Railroad & Navigation Company are preferential to such mills and unduly prejudicial to the interests of the complainant.

Thereafter the case was called for hearing and was partially heard, the complainant putting in its testimony in support of its complaint. Thereupon the defendants moved to dismiss the complaint upon the ground that no cause of action, of which the Commission had jurisdiction, had been stated, and thereafter the Commission did, on March 2, 1913, dismiss said complaint for the reason that no cause of

action had been stated.

Thereafter complainant filed the present application praying that the dismissal be set aside, which matter is now before the Commission.

After again reviewing the entire proceeding we have concluded that while our dismissal on the ground that no cause of action was stated was correct and proper as to that portion of the complaint referring to the movement of lumber from Navarro and the request for publication of through routes and joint rates for the transportation of lumber from the mills of complainant located at Navarro, we are of the opinion that the complaint should not have been dismissed in its entirety, as the joint all rail rates from points located on the rails of the Northwestern Pacific Railway and the California Western Railroad & Navigation Company are alleged to be preferential and prejudicial to the complainant in this proceeding.

Since this complaint was filed, the management and control of these defendant railroads have been taken over by the National Government and complainant advises that it will accordingly institute an entirely new proceeding covering this matter, with the Interstate Commerce Commission.

There is, therefore, no occasion to proceed further in the present case. The petition for rehearing will accordingly be denied, but we believe also that the order of dismissal heretofore made should be amended so that the proceeding is dismissed without prejudice.

O R D E R

In accordance with the foregoing opinion, the

petition of complainant for a rehearing filed herein on
May 22, 1918 is hereby denied and the order of dismissal
made herein on May 2, 1918 amended by adding the words
"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 26th
day of August, 1918.

Edwin O. Edgerton

H. J. Hayward

W. L. Gordon

Commissioners.