

Decision No. 26283.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SPRECKELS SUGAR COMPANY,
a corporation,

Complainant,

vs.

WESTERN WAREHOUSE & TRANSFER COMPANY,
a person, firm or corporation,

Defendant.

ORIGINAL

Case No. 3568.

Morrison, Hohfeld, Foerster, Shuman & Clark,
by Forrest E. Cobb, for complainant.

C. F. Culver, for defendant.

BY THE COMMISSION:

O P I N I O N

This is an aftermath of Re Allen Brothers, Inc., et al.,
37 C.R.C. 747, wherein the Commission found that various warehouse-
men in Los Angeles and vicinity, including the defendant herein,
had been departing from their published tariffs and ordered them
to collect all undercharges. Complainant, one of the customers of
the defendant which has been charged off-tariff rates, now claims
that the tariff rates were unreasonable to the extent they exceed-
ed the charges actually paid and asks the Commission to authorize
the waiving of the undercharge.

A public hearing was held before Examiner Kennedy at Los
Angeles August 9, 1933, and the matter submitted.

In cases of this character, it is necessary that the Commission scrutinize most carefully the proofs in support of the complaint, lest by granting the petition it lends its sanction and approval to what, in substance and effect, is a rebate. The quantum and character of proof necessary to justify relief must measure up to that which would be required had this complainant paid the full tariff charges and then sought reparation upon the ground of unreasonableness and the defendant had opposed the relief sought. Care must be taken to see that a discriminatory situation is not brought about, for, attached to the Commission's power to award reparation, is the salutary limitation that "no discrimination will result from such reparation" (Section 21 Article XIII, Constitution; Section 71(a) Public Utilities Act).

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

Complainant stored in defendant's warehouse large quantities of sugar in 100-pound bags on which it collected charges at rates of $3/4\%$ per bag per month storage, $1\frac{1}{2}\%$ per bag handling and 2% per bag unloading. The rates applicable at the time were $1\frac{1}{2}\%$ storage, 2% handling and 2% unloading. Other warehouses in this vicinity, complainant points out, concurrently published rates of $3/4\%$ per bag storage and $3\frac{1}{2}\%$ handling and unloading. Special economies and advantages of location, it contends, more than justified a $\frac{1}{2}\%$ lower rate at defendant's warehouse. Before this sugar was stored, defendant agreed to a rate of the volume of that originally assessed and promised to make the necessary tariff filing before the shipments were delivered. This it neglected to do.

Defendant admits that the rates actually paid by com-

plaintant were fair, reasonable and fully compensatory. It in effect joins in the prayer for relief. It compares these rates with those applicable on flour, which, although somewhat higher, apply on small quantities of an article said to be more difficult to handle. Defendant also testified that in 1924, when the applicable rates were published, its operating costs were much greater than at the time the articles in question were stored.

From the fact that, although not filed through defendant's negligence, rates of $3/4\%$ storage, $1\frac{1}{2}\%$ handling and 2% unloading were agreed upon before any of the sugar was placed in storage, that rates of $3/4\%$ storage and $3\frac{1}{2}\%$ handling and unloading are now published by defendant and were at the time in effect in other warehouses in this territory, and the testimony of defendant that the rates charged produced a reasonable return on its investment, we conclude that the charges applicable to complainant's shipments were unjust and unreasonable to the extent they exceeded $3/4\%$ per bag per month storage and $3\frac{1}{2}\%$ per bag handling and unloading. Defendant will be authorized to waive collection of outstanding charges on this basis. The record does not justify a finding that the handling and unloading charges as low as $3\frac{1}{2}\%$ were reasonable.

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that defendant Western Warehouse & Transfer Company be and it is hereby ordered to cease and desist from demanding from complainant Spreckels Sugar Company charges for the storage and handling of the lots of sugar involved in this

case, in excess of those herein found reasonable.

IT IS HEREBY FURTHER ORDERED that defendant Western Warehouse & Transfer Company be and it is hereby ordered and directed to waive collection of charges on complainant's merchandise involved in this case in excess of charges herein found reasonable.

Dated at San Francisco, California, this 21st day of August, 1933.

C. Stearns
Leon A. Alden
W. J. Lane
M. B. Haines
Commissioners.