

Decision No. 30048

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

IN THE MATTER OF THE APPLICATION
OF WOLF CREEK TIMBER CO., INC.,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY, T. M.
SCHUMACHER AND SIDNEY M. EHRMAN AS
TRUSTEES FOR THE WESTERN PACIFIC
RAILROAD COMPANY, AND THE WESTERN
PACIFIC RAILROAD COMPANY,

Defendants

Case No. 4193

ORIGINAL

Sanborn, Roehl & MacLeod, by H. E. Sanborn
and Clair W. MacLeod for Complainants.
A. L. Whittle and J. E. Lyons for Defendant
Southern Pacific Company.
L. N. Bradshaw, for Defendant The Western
Pacific Railroad Company.

BY THE COMMISSION:

O P I N I O N

Complainant seeks an order under Section 33 of the Public Utilities Act directing defendants to establish a through route and joint rates for the transportation of logs from Almanor to Susanville. It alleges that the present combination of local rates is unjust and unreasonable and that public convenience and necessity require the relief sought.

A public hearing was held at San Francisco before Examiner Freas.

Almanor is located on the line of The Western Pacific Railroad Company (hereinafter referred to as Western Pacific) 14 miles south of Westwood. Susanville is located on the line of the Southern Pacific Company (hereinafter referred to as Southern

Rates are stated in cents per 100 pounds and do not include authorized emergency charges.

Charges were assessed and collected on the basis of the fifth class rates from Los Angeles and San Jose to Oakland of $38\frac{1}{2}$ cents and 11 cents respectively.¹

In support of the allegation of unreasonableness complainant states that tin plate is entitled to low rates in that it is a heavy loading commodity² and that it is manufactured into various kinds of containers on which the railroads receive an outbound haul. It states further that tin plate is ordinarily shipped into Los Angeles, San Jose and Oakland from eastern mills but that there is considerable movement between these points in disposing of surpluses at one plant and relieving shortages at the others.

Complainant relies principally upon rate comparisons, however, and has submitted extensive exhibits comparing various rates maintained by defendants on the same commodity and on commodities which, it says, have similar transportation characteristics.³

Defendants contend that the movement of tin plate from and to

¹ Tin plate in carloads is classified at fifth class, minimum weight 36,000 pounds, in Western Classification.

The rail distance from Los Angeles to Oakland is 422.3 miles and from San Jose to Oakland 41.0 miles.

Complainant's exhibit shows that four carloads were transported from Los Angeles to Oakland during the period of December 5, 1933, to October 20, 1934. On September 12, 1935, a commodity rate of $21\frac{1}{2}$ cents, minimum weight 80,000 pounds, was established and no reparation is sought on shipments after that date.

15 carloads were transported from San Jose to Oakland by the Southern Pacific Company and 5 carloads by The Western Pacific Railroad Company, during the period October 5, 1934, to October 28, 1935. As to the movement from San Jose to Oakland, reparation is sought also on all shipments transported during the pendency of this action.

² The average loading per car of the Los Angeles shipments was 75,375 pounds and of the San Jose shipments 85,026 pounds.

³ Complainant compares the assailed fifth class rate of $38\frac{1}{2}$ cents, minimum weight 36,000 pounds, from Los Angeles to Oakland, with the following:
(a) the subsequently established commodity rate of $21\frac{1}{2}$ cents, minimum weight 80,000 pounds,

the points here involved is essentially sporadic⁴ and that class rates are proper for such traffic. They argue that complainant has not shown the class rates charged to be unreasonable as such, that the 38½-cent fifth class rate from Los Angeles to Oakland is itself a non-intermediate rate to meet water competition, and that the fifth class rate of 11 cents from San Jose to Oakland is below the level of the fifth class rate prescribed by this Commission in Sacramento Valley Class Rate Case, 11 C.R.C. 867. They also assert that tin plate is an expensive commodity to handle, in that it requires waterproofed wooden box cars in the best condition, with floors leveled and sides boarded.

3 (concluded)

- (b) a rate of 21½ cents, minimum weight 80,000 pounds, contemporaneously maintained in the opposite direction,
- (c) a rate of 34 cents, minimum weight 30,000 pounds, applicable from Los Angeles to Oakland on tin cans manufactured from tin plate,
- (d) a rate of 20 cents, minimum weight 80,000 pounds, applicable from Los Angeles to Oakland on long terme plate,
- (e) a rate of 34 cents applicable from and to the same points on certain other metals and metal products,
- (f) various rates on tin plate within Pacific Coast territory, yielding ton-mile earnings ranging from 7.7 mills to 11.4 mills, as compared with a ton-mile earning of 16.7 mills under the assailed rate.

It compares the assailed rate of 11 cents, minimum weight 36,000 pounds, from San Jose to Oakland, with the following:

- (a) a rate of 6½ cents, minimum carload weight 50,000 pounds, maintained by both defendants in the opposite direction,
- (b) a rate of 9 cents, minimum weight 14,000 pounds, applicable on tin cans from San Jose to Oakland,
- (c) rates on the same commodity and on other commodities which, it says, possess similar transportation characteristics, between other points in northern California, and which yield ton-mile and car-mile earnings ranging from 15.9 mills to 31.7 mills, as compared with the ton-mile earning of 53.6 mills under the assailed rate,
- (d) a rate of 8 cents, based on 32½% of the present first class rate of 25 cents, which percentage was prescribed by the Interstate Commerce Commission within southwest territory (Consolidated Southwestern Cases, 123 I.C.C. 203).

⁴ Exhibit No. 11 shows that but 5 cars of tin plate moved via the line of defendant Southern Pacific Company from Los Angeles to San Francisco Bay points during the period involved in the complaint as compared with a movement of 87 cars which moved in the reverse direction during the same period. Likewise Exhibit No. 8 shows a movement of 16 cars from San Jose to San Francisco Bay points moving via the line of this defendant for the same period as compared with a southbound movement of 229 cars.

Defendants discuss in detail the circumstances surrounding the publication of the various rates upon which complainant relies and assert that each was established under the stress of acute water or truck competition. For example, they state that the 21½-cent rate applicable from Oakland to Los Angeles, the reverse direction of the movement here, was established originally from Pittsburg as a non-intermediate rate to meet water competition. It was later extended to apply from other San Francisco Bay points and the non-intermediate restriction eliminated, to meet motor truck competition.⁵

The 21½-cent rate from southern California points was established, according to defendants, to take care of a northbound movement of tin plate from Los Angeles Harbor to San Francisco during the stevedore strike in 1934 which prevented shipments by intercoastal vessel from being unloaded at San Francisco Bay points. Defendants claim that were it not for the possibility of future disturbance in connection with water transportation and the likelihood in such event of a substantial movement of tin plate from and to these points there would be no justification for the maintenance of a commodity rate on tin plate lower than the applicable fifth class rate of 38½ cents. Defendants also argued that operating conditions northbound are more adverse than southbound,

⁵ Prior to the publication of the 21½-cent rate from San Jose to Los Angeles, this Commission in Continental Can Co. vs. Southern Pacific Co., 35 C.R.C. 531, found not unreasonable a rate of 37½ cents on tin plate from and to those points, which rate was obtained by combining a fifth class rate of 16 cents, minimum carload weight 36,000 pounds, from San Jose to Pittsburg, with a non-intermediate commodity rate of 21½ cents, minimum carload weight 80,000 pounds, from Pittsburg to Los Angeles. The Commission in its opinion said with respect to the 21½-cent factor from Pittsburg to Los Angeles: "The shippers at Pittsburg stated it was necessary to obtain a low rate either by rail or water to permit them to meet the competition of eastern tin plate coming into Los Angeles via intercoastal steamers. The 21½-cent rate is published non-intermediate in application under appropriate authority of this Commission and is thus presumptively less than a maximum reasonable rate (San Pedro Chamber of Commerce et al. vs. A.T. & S.F.Ry. et al., 34 C.R.C. 341)." "

due to the greater percentage of ascending grades.

With respect to the rate of 6 $\frac{1}{2}$ cents from Oakland and San Francisco to San Jose compared by complainant with the rate of 11 cents charged on its shipments in the reverse direction, defendant states that this rate was established to take care of a substantial and regular movement of tin plate from the San Francisco Bay region to San Jose and that the relatively low volume of this rate was necessary to meet motor truck competition.

This Commission has held repeatedly that rate comparisons are of little probative value unless it be shown that the factors influencing the volume of the various rates compared are similar.⁶ The burden of establishing the similarity of transportation conditions is upon the party relying upon such comparisons. Where, as in the present instance, complainant merely points to numerous low rates maintained by defendant, there is as much reason to believe that such rates are unreasonably low as that the rates assailed are unreasonably high.

The Commission is of the opinion that the rates assailed have not been shown to be unreasonable and that the complaint should be dismissed.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the conclusions contained in the opinion

⁶ Grayson-Owen vs. S.P.Co., 1 C.R.C. 195.
Hunt Bros. vs. S.P.Co., 2 C.R.C. 346.
Richfield Oil Co. vs. Sunset Ry., 24 C.R.C. 729.
Jacobs vs. Berkeley Transportation Co., 25 C.R.C. 18.

which precedes this order,

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

Dated at San Francisco, California, this 16th day of August, 1937.

W. H. ...
Leon ...
W. R. ...
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...
Commissioners.

Pacific) 29 miles northeast of Westwood. There are physical track connections between the two railroads at a point approximately one (1) mile south of Westwood and at a point about seven (7) miles south of Westwood Jct. in the vicinity of Mason; however no arrangement for interchange at either point is provided for in defendants' tariffs.

The present rate for transportation of logs from Almanor to Susanville is the combination of local rates of $5\frac{1}{2}$ cents per 100 pounds, Almanor to Westwood,¹ and \$12.00 per car,² Westwood to Susanville.

E. L. Mersereau, vice-president of complainant company, testified that complainant has holdings of four hundred million feet of mature timber in Plumas County in the vicinity of Lake Almanor, about 12 miles south of Westwood, adjacent to the line of The Western Pacific. He said that timber is a crop which should be cut as soon as it reaches maturity. He was apprehensive that delay in marketing would subject the complainant and its bond holders to partial or total loss through deterioration of the timber or by its destruction from insects or fire. This witness further testified that the principal market for complainant's timber is at Susanville but that the applicable combination of local rates will not permit marketing at that point. Moreover, he said, experience had shown that the cost of performing the transportation by motor truck would be prohibitive.

¹ Minimum carload weight 30,000 pounds, W.P. Tariff No. 675, C.R.C. No. 337, (Greenville as maximum).

² (Cars not exceeding 43 feet in length), S.P. Co. Tariff No. 634-C, C.R.C. No. 2848.

He suggested that a rate 31 cents per car mile plus \$3.00 per car switching, resulting in a total charge of \$16.45 per car, be established from Almanor to Susanville, and asserted that under this rate complainant would be able to move from 20 to 40 carloads per day.

In support of the allegation that the present combination of local rates is unjust and unreasonable, complainant compared the assailed rate with rates now in effect in the Klamath Falls District³ and between stations in the State of Washington.⁴

The Southern Pacific expressed a willingness to join⁵ in the establishment of through route and joint through rate. The Western Pacific refuses to become a party to such publication unless required to do so by this Commission.

Mr. P. L. Wyche, statistician, Operating Department of The Western Pacific, testified that the interchange of the proposed log traffic at Westwood would require the construction of a 40-car capacity track involving an estimated expenditure of from twelve to thirteen thousand dollars. Without such additional track the log trains would delay local train service of the Western Pacific between Keddie and Westwood.

J. F. Bon, Freight Traffic Manager of the Western Pacific, showed that many log rates in effect in other territories are higher than the rates sought here although lower in many

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Southern Pacific Company Tariff 634-C, C.R.C. No. 2848:
Gazelle to Hilt (41 miles), rate \$12.50 per car.
Thrall to Hilt (14 miles), rate 9.50 per car.
Edgewood to Hilt (49 miles), rate 15.00 per car.

4

Rate over 40 miles but not over 45 miles, \$19.60 per car, S.J. Henry N.P.C.F.B. Tariff 76 W.D.P.S. 361.

5

F. C. Nelson, Assistant General Freight Agent of the Southern Pacific Company, stated that in his opinion rates producing 31 cents per car mile, plus \$3.00 per car arbitrary for the joint haul, would be adequate and sufficient for movements of logs.

6

instances than the rates attacked. He expressed the view that his company should not be required to publish low rates in instances where such rates would divert traffic to an off-line mill and foreclose it from participating in the outbound haul.

No testimony was introduced to show that any freight other than logs shipped by the complainant would move through the Westwood interchange should same be established.

6 For example, witness Bon referred to Chicago Milwaukee St. Paul and Pacific Tariff I.C.C.-B 6377, naming a rate of 4 cents per 100 pounds on logs and 11 cents per 100 pounds on lumber applicable in Wisconsin for distances between 40 and 45 miles. In instances where the Milwaukee receives an outbound haul rates of 2½ cents and 5 cents per 100 pounds respectively are provided for the same transportation.

He stated that an average of 21 rates published by the Great Northern, Union Pacific and other northern lines for comparable distances produced \$2.20 per 1000 feet, and that the Great Northern scale east of the Cascade Mountains for the same distance is \$2.50 per 1000 feet. He believed that logs would load to approximately 10,000 feet per car.

Exhibit 2, introduced by this witness, sets forth various mileage scales in effect for the transportation of saw logs in Washington. Per car charges for distances between 40 and 45 miles range from \$15.68 to \$21.56. This exhibit shows several theoretical scales developed by increasing the rates now in effect in Washington by 115, 120, 125 and 130 per cent, the relationships said to be employed by the Milwaukee in building log rates, where that line does not receive an outbound haul. These theoretical scales show per car charges ranging from \$24.79 to \$28.03.

On brief, Western Pacific pointed out that in Lassen Lumber & Box Co. vs. Director General, 73 I.C.C. 212, the Interstate Commerce Commission prescribed a rate of 73 cents per car mile for transportation of logs from Fach to Susanville, a distance of 24.7 miles. The application of that rate to the distance here involved would produce a per car charge of \$31.39.

7 Westwood was named as an authorized interchange in Western Pacific Railroad Company's Terminal Tariff G.F.D. No. 35-J, C.R.C. No. 245, during the period October 20, 1931 to September 18, 1932. The cancellation was authorized by this Commission in its file 63-8468, upon the allegation that the publication was the result of an error, that no interchange existed, and that the resulting increase was technical only. Thereafter, in Brown vs. Southern Pacific Company, et al, (219 I.C.C. 333) the Interstate Commerce Commission found that Westwood was a proper interchange point for use in constructing through mileage livestock rates under the Docket 17000 scale.

Section 33 of the Public Utilities Act authorizes the Commission to require the establishment of a through route and joint rate when it appears that the existing rate is unreasonable and that public convenience and necessity require a through route. It is quite apparent that the applicable combination of local rates was not designed for a movement of the type or volume herein offered. In fact the 5½ cents per 100 pounds Western Pacific factor is the ordinary lumber rate, applicable to manufactured products as well as logs.

The combination of rates produces per car earnings ranging from \$28.50 for a minimum car to \$50.50 for a car of 70,000 pounds, the estimated average load, and is clearly unreasonable for the service involved. The fact that a reasonable rate will divert traffic to an off-line mill is no justification for denying such a rate to the public. On the other hand, the record fails to sustain the rate sought by complainant as a maximum reasonable rate. In view of the compared rates in effect in other territories for comparable hauls, the Commission is of the opinion that a rate in excess of \$23.00 per car not exceeding 43 feet in length, plus \$1.00 per foot or fraction thereof additional, for cars exceeding 43 feet in length, will for the future be unjust and unreasonable for the transportation here involved. The Commission is of the further opinion that the necessity of opening this route in order that complainant may market its extensive timber holdings, and the benefit to the public of putting the natural resources of the state to beneficial use, constitute a sufficient showing of public convenience and necessity to justify the establishment of the rate herein found reasonable, to

apply via the Westwood interchange.

O R D E R

The case being at issue upon complaint and answer on file, full investigation having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that The Western Pacific Railroad Company and Southern Pacific Company be and they are hereby ordered and directed to establish on or before twenty (20) days from the effective date hereof, on not less than ten (10) days' notice to the Commission and to the public, for the transportation of logs from Almanor to Susanville, a rate of \$23.00 per car not exceeding 43 feet in length, subject to a charge of \$1.00 per foot or fraction thereof for each additional foot, for cars exceeding 43 feet in length, applicable via interchange between said defendants near Westwood.

Dated at San Francisco, California, this 16th day of August, 1937.

W. H. ...
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Commissioners.