

Decision No. 49240**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 J. P. Haynes, Agent, for authority)
 to amend Item 520 of Pacific South-)
 coast Freight Bureau Tariff No. 48-U,)
 Cal. P.U.C. No. 189, relating to)
 computation of charges when rates on)
 lumber are named per 1000 feet, board)
 measure.)

Application No. 34591

Appearances

(Appearances are listed in Appendix "A" hereof)

O P I N I O N

Rail rates for the transportation of lumber in California are named in Pacific Southcoast Freight Bureau Tariff No. 48-U, Cal. P.U.C. No. 189. In addition to rates on a weight basis, the tariff also provides rates applicable on a "per 1000 feet board measure" basis. By this application, as amended, authority is sought to revise a rule in the tariff which provides a method of computing the footage to be used in connection with board feet rates.

A public hearing of the application was held at San Francisco on September 3, 4 and 29, 1953, before Examiner Jacopi.

The record shows that for many years prior to May 30, 1953, the rule in question did not provide for lumber of thickness over one inch. During that time, the rule read as follows:

"Rates shown herein, on Lumber per thousand feet, board measure, are for thicknesses of one inch. When thickness is 1/2 inch or less it will be considered as 1/2 inch. When thickness is over 1/2 inch and not over 1 inch, it will be considered as one inch."

The record shows also that in Decision No. 22273 of April 2, 1930 (34 CRC 526), in re Charles Nelson Co. et al. v. Arcata & Mad River R. Co. et al., involving the aforesaid rule, the Commission had found

that the terms "per 1000 feet" or "per 1000 feet board measure" meant the number of feet contained in the rough lumber before it was surfaced or trimmed when applied to shipments of either rough lumber or dressed lumber, or both. However, this interpretation was not incorporated by the carriers in the tariff rule in question and the rule remained unchanged until May 30, 1953, when it was amended to read as follows:

"Rates shown herein, on Lumber per thousand feet, board measure, are for thicknesses of one inch. When thickness is 1/2 inch or less it will be considered as 1/2 inch. When thickness is over 1/2 inch and not over 1 inch, it will be considered as one inch. Where thickness is over one inch, actual measurement will apply."¹

The amendment in question consisted of the addition of the sentence reading "Where thickness is over one inch, actual measurement will apply." In the instant proceeding, witnesses for the rail lines testified that the change made in the rule was designed to make it clear that the rough lumber dimensions applied also in determining the footage for lumber more than one inch thick. It was explained that the change was accomplished to eliminate the existing confusion on the part of shippers and other interested parties and to avoid constant inquiries regarding the meaning of the rule. The record shows that in view of the intended clarification the changed rule was flagged in the tariff as resulting in neither an increase nor a reduction.

According to the record, shippers and other interested parties have interpreted the amended rule since it took effect on May 30, 1953, as meaning that the footage on lumber more than one inch thick was to be calculated on the actual dimensions shipped and not on the rough lumber sizes. In addition, the record shows that

¹The revised rule was published in Item No. 520-A of Supplement 152 to Tariff No. 48-T, Cal. P.U.C. No. 132. Tariff No. 48-T was canceled by Tariff No. 48-U, effective July 10, 1953, but the rule in question was not changed.

upon presentation of the problem to the Commission's staff the carriers were given an informal interpretation to the effect that the sentence added to the rule provided for the use of actual sizes of the lumber shipped. According to the rail witnesses, the interested rail lines did not agree with the foregoing interpretations. On the contrary, the witnesses maintained that the change made in the rule was not intended to and did not change the original basis for the calculation of the footage. Assertedly, the rule now proposed was designed to eliminate confusion and to leave no room for doubt that the rough lumber sizes were to be used on surfaced, finished or trimmed lumber as well as on rough lumber.²

Various lumber interests and other interested parties appeared at the hearings in opposition to the establishment of the sought rule. Others appeared in support of the proposal. At the hearing on September 29, 1953, however, counsel for applicant reported that the carriers and shippers had reconciled their differences in this matter and that by "mutual consent and understanding" it was agreed that the present tariff rule involved herein provided for the calculation of footage on the "actual net measurements" rather than on the rough lumber sizes. On this understanding, the protestants withdrew their objections and joined with the rail lines and other interested parties in urging the Commission to authorize the establishment of the proposed rule so as to afford a definite basis for

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The proposed rule is as follows:

"On rough, surfaced, finished or trimmed lumber shipped subject to rates applicable on lumber per thousand feet, board measure, charges will be calculated on rough lumber sizes, except where rough lumber thickness is 1/2 inch or less, it will be considered as 1/2 inch, and where thickness is over 1/2 inch and not over one inch, it will be considered as one inch."

the calculation of charges under the footage rates. The parties were in agreement that the proposed rule, if authorized, should be made effective on statutory notice because of the trade practice of accepting orders based on future delivery. It was urged, however, that the tariff publication should be made as soon as possible.

Regardless of the agreement reached by the parties, it is clear on this record and the Commission finds (1) that the amendment effective May 30, 1953, of the rule in question as set forth in Item No. 520-A of Pacific Southcoast Freight Bureau Tariff No. 48-T, Cal. P.U.C. No. 132, and in Item No. 520 of Pacific Southcoast Freight Bureau Tariff No. 48-U, Cal. P.U.C. No. 189, had the effect of making the actual measurements shipped applicable on rough lumber or surfaced, finished or trimmed lumber more than one inch thick for use in connection with rates named on the basis of 1000 feet board measure and (2) that the amendment of the said rule as proposed in the application, as amended, filed in this proceeding is justified. Inasmuch as the parties indicated that early revision of the present tariff rule was desirable, the order herein will be made effective in ten days.

ORDER

Based on the evidence of record and on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that J. P. Haynes, Agent, Pacific Southcoast Freight Bureau be and he is hereby authorized to amend Item No. 520 of his Tariff No. 48-U, Cal. P.U.C. No. 189, as proposed in the application, as amended, filed in this proceeding.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

This order shall become effective ten days after the date hereof.

Dated at Los Angeles, California, this 27th day of October, 1953.

R. Z. [Signature]
President
Justin T. [Signature]
[Signature]
[Signature]
[Signature]
Commissioners

APPENDIX "A"

Appearances in Application No. 34591

CHARLES W. BURKETT and J. E. LYONS, for Pacific Southcoast Freight Bureau, applicant.

McENERNEY and JACOBS by GARRET W. McENERNEY, and REGINALD L. VAUGHAN, for Sunset Logging Co., Claude Shriner Lumber Co., R. H. Emerson & Sons, Burrell Logging Co., Lawrence Creek Lumber Co., Maple Creek Lumber Co., William Dunn Lumber Co., Pacific Fir Sales, Twin Harbor Lumber Co., Sound Lumber Co., Durable Lumber Co., Trio Lumber Co., Cannonball Lumber Co., Tirey Lumber Co., R. J. Heberle Lumber Co., Spring Creek Lumber Co., Main Lumber Co., Englewood Lumber Co., Brown Lumber Co., D & H Lumber Co., L & W Lumber Co., Al Thrasher Lumber Co., Brookings Plywood Co., D & M Lumber Co., State Lumber Co., Tacoma Lumber Sales, Wimer-Vickery Lumber Co., Daniels & Ross, Huntington Lumber Co., Hansen Pacific Lumber Co., K & S Lumber Co., Pacific Western Lumber Co., interested parties.

WILLIAM F. WHITE, of WHITE, SUTHERLAND & PARKER, for Humboldt Fir Co., Arcata Lumber Services, Cunningham & Quiggly, Van Worth Lumber Co., Halstead Lumber Co., Superior Lumber Co., Harnden Bros., Lumber Co., Wes-Cal Manufacturing Co., Humboldt Lumber Handlers, Shriner Lumber Co., R. H. Emmerson & Son, Sunset Logging Co., Farret Lumber Co., interested parties.

CLAIR W. MacLEOD, for California Redwood Association, Arcata Redwood Company, Coastal Plywood & Timber Co., Eureka Redwood Lumber Co., Hammond Lumber Company, Holmes Eureka Lumber Co., Hulbert and Muffly, Northern Redwood Lumber Co., The Pacific Lumber Company, Rockport Redwood Company, Simpson Logging Company, Union Lumber Company, Warm Springs Redwood Co., Willits Redwood Products Co., Wolf Creek Timber Co., Inc., in support of the application.

MARQUAM C. GEORGE, for Crane Mills, Inc., Geijsbeek Truckers, Aborigine Lumber Co., Casella Lumber Co., in support of the application.

FRANK LOUGHRAN, LARRY FITES, R. D. BOYNTON and R. M. DAHLBERG, for Truck Owners Association of California, in support of the application.

JOSEPH C. KASPER, for California Motor Transport Association, interested party.

K. C. BATCHELDER, for West Coast Lumbermen's Association, interested party.

HUGH A. GILLIS, for Western Pine Association, interested party.

B. R. GARCIA, interested party.

H. D. SMITH, for Weyerhaeuser Sales Company, in support of the application.

JACK FAIRHURST, for Fairhurst Lumber Company of California, in support of the application.

AXEL LARSON, for Larson Traffic Service, in support of the application.

W. C. COLE, for Southern Oregon Conservation & Tree Farm Association and Willamette Valley Lumbermen's Association, in support of the application.

CARTER R. BISHOP, of the staff of the Public Utilities Commission of the State of California.