

ORIGINAL

Decision No. 54790

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MARTIN BROTHERS BOX COMPANY OF)
CALIFORNIA, a corporation,)

Complainant,)

vs.)

NORTHWESTERN PACIFIC RAILROAD)
COMPANY, a corporation,)
SOUTHERN PACIFIC COMPANY, a)
corporation, and PACIFIC ELECTRIC)
RAILWAY COMPANY, a corporation,)

Defendants.)

Case No. 5592

Gordon, Knapp & Gill, by Hugh Gordon and
Howard Alphson, for complainant.
Charles W. Burkett, Jr., for defendants.

O P I N I O N

By complaint, Martin Brothers Box Company of California alleges that the rates and charges assessed on 213 carloads of rotary cut veneer or rotary cut lumber which moved via defendant rail lines from Arcata and Eureka to Whittier during the period from August 3, 1951 to December 23, 1953, inclusive, were and are unjust and unreasonable in violation of Section 451 of the Public Utilities Code. The shipments in issue were routed via Northwestern Pacific to Schellville, thence via Southern Pacific to Los Angeles, thence via Pacific Electric to destination. Waiver of undercharges and reduced rates for the future are sought.

Defendants deny the essential allegations of the complaint.

Public hearing was held before Examiner Carter R. Bishop on May 22, 1956, at Los Angeles, following which concurrent opening

and reply briefs were filed.¹ The matter is now ready for decision.

Charges on the shipments here in issue were originally assessed and collected on the basis of a base rate of \$13.07 per 1,000 feet, board measure, subject to a minimum quantity of 20,000 feet, and further subject, as to shipments moving on and after January 31, 1952, to a surcharge of six per cent or 15 per cent.² On various dates in 1954, and after all the shipments in issue had been delivered, defendants issued balance due bills against said shipments revising the charges therein to the basis of a base rate of 53 cents per 100 pounds, minimum weight 50,000 pounds, and subject to the above-mentioned surcharges of six per cent and 15 per cent. Complainant refused to pay the additional charges and on August 3, 1954, defendants filed suit in superior court for the collection thereof. Within ninety days after service of summons in said suit complainant filed the complaint herein. Complainant admits that the rate of 53 cents, plus surcharge, is applicable to the shipments in question.

Complainant alleges, in the first instance, that the lawful charges, totaling \$103,564.16, are unreasonable to the extent that they exceed those originally billed under the board

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On the filing of closing briefs the matter was taken under submission. However, on the 29th day thereafter defendants filed a written motion to strike certain matter from complainant's reply brief. This was followed, 21 days later, by the filing of "Complainant's Memorandum in Opposition to Motion to Strike." Since the examiner's order relative to the filing of briefs did not provide for the filing of the aforesaid motion and of the reply thereto, those documents have been disregarded by the Commission in its consideration of the record herein.

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The six per cent surcharge was applicable from January 31, 1952, to November 17, 1953. The 15 per cent surcharge was applicable on and after November 18, 1953.

foot rate, namely, \$64,295.53.³ As an alternative, complainant asserts that, if a rate in cents per hundred pounds is desirable, a rate of 38 cents per 100 pounds, minimum weight 80,000 pounds, would be a maximum reasonable rate for the transportation in question. This basis would produce total charges of \$71,939.09. The foregoing bases are also sought as reasonable rates for the future.

The board foot rate originally assessed applies on a limited number of commodities, designated in the applicable tariffs⁴ as "Commodity Rate Group C." The group embraces lath, lumber, pickets, posts, shakes, shingles, stakes and ties. It does not include veneer. The application of the board foot rate to shipments of lumber is limited as follows:

"Lumber, viz.:

The products of saw and planing mill plants, not further advanced in manufacture than by sawing, resawing and by passing lengthwise through a standard planing machine, crosscut to length and ends matched."

The rate of 53 cents, to which the charges were revised by defendants, applies on a comprehensive list of forest products, designated in the tariffs as "Commodity Rate Group A." This list includes both lumber, without qualification as to method or degree of manufacture, and veneer. The Group A commodities, besides being subject to the afore-said base rate of 53 cents, minimum weight 50,000 pounds, are, and were at the time of movement, subject to an alternate base rate,

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The outstanding undercharges on the 213 carloads are the difference between the two above-stated amounts, or \$39,304.63. Federal transportation tax in the amount of \$1,179.34 is also due in connection with these undercharges.

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The base rates in issue in this proceeding are named in Pacific Southcoast Freight Bureau Tariffs Nos. 48-T and 48-U, of J. P. Haynes, Agent. The 6 per cent and 15 per cent surcharges are published in Tariffs of Increased Rates and Charges Nos. X-175-A and X-175-B.

applicable from Arcata and Eureka to Whittier, of 64 cents per 100 pounds with a minimum weight of 34,000 pounds.

The record discloses that a variety of commodity designations were used in describing the shipments on the sales and transportation documents. On the invoices the following terms were used: rotary cut lumber, rotary cut rough green lumber, green Douglas fir lumber, green Douglas fir veneer and green veneer. On the bills of lading the shipments were described as rough green veneer, rotary cut rough green lumber and rotary cut rough fir lumber. The freight bill descriptions were: rough green lumber, rotary cut rough fir lumber and rotary cut rough green lumber.

The record also discloses that all of the shipments embraced by the complaint had been subjected to the rotary cut process of manufacture. Complainant's office manager described this process as follows: After the bark has been peeled from the logs the latter are rotated against a sharp blade, which peels the lumber from the logs. The resulting sheets may be of varying thickness, depending upon the setting of the blade. In the case of the 213 shipments the individual pieces of lumber or veneer had an average thickness of 3/16ths of an inch. The witness contrasted the foregoing method with that employed in sawmills. In the latter, the peeled log is tied down to a carriage, and, as the carriage moves along, the log is sawn lengthwise by a band or circular saw. The pieces of lumber are then put through an edger, which reduces them to the desired widths. Finally, in the sawmill process, the pieces of lumber are put through a series of trim saws, which trim out the defects in the wood. According to the record, the rotary cut process has been utilized in the lumber industry for at least 50 years past, but first made its appearance in California from 10 to 15 years ago.

According to complainant, the shipments here in issue, in so far as they were described on the sales and shipping documents as "veneer," were improperly identified, the correct designation of the commodity assertedly being "lumber." The office manager testified, however, that the terms "veneer" and "lumber" have been used interchangeably by the trade in referring to the commodity in question. He pointed out that the forest products involved herein are used by complainant in the manufacture of wooden boxes, that the lumber is produced from low grade logs and that the pieces, as they come from the mill, often contain imperfections, such as knots and stains. The presence of these imperfections, he said, does not make the material unsuitable for manufacture into boxes, and no further work is done on the pieces after arrival at Whittier except cutting to size.

The witness contrasted rotary cut lumber, as described above, with rotary cut veneer. The latter product, he said, is utilized to form the surface layers of built-up wood or plywood, which in turn enters into the manufacture of such articles as furniture and doors, and is necessarily produced from selected, high grade logs, so that the sheets of veneer will be free from knots, stains and other blemishes. After the logs are peeled they must be steamed. They are then placed on a lathe and rotary cut, or, in some instances, sliced. The machines used in veneer production, as distinguished from those used in rotary cut lumber production, must be of a precision type, since the veneer must be cut to a much finer tolerance than is necessary in the case of lumber; also, much greater skill is required of the lathe operator in the manufacture of veneer. For comparative purposes, the witness introduced photographs of samples of rotary cut lumber, sawn lumber and plywood (made from rotary cut veneer). The samples themselves were also brought into

the hearing room. The wood in the veneer sample was definitely superior in quality to that of the lumber samples. With respect to the latter, the rotary cut lumber and the sawn lumber appeared to be equally poor in quality, the only noticeable difference being that the samples of rotary cut lumber exhibited a slight curvature.

Complainant introduced exhibits and testimony through the above-mentioned witness and through a transportation consultant, purporting to show that maximum reasonable charges for the traffic here in issue would be those based on the board foot rate originally assessed, or on the alternatively suggested rate of 38 cents per 100 pounds. With respect to the transportation characteristics of the shipments involved, the record shows that the sheets were shipped in bundles or bales ranging from 40 to 80 inches in length, from 20 to 50 inches in width, and 24 to 36 inches in height.⁵ The weight of individual bundles ranges from 600 to 2,300 pounds, depending upon their dimensions. Loading is accomplished with fork lift trucks and loading, bracing and unloading are, in all instances, performed by shipper and consignee.

The evidence shows also that bundles of rotary cut lumber are heavy-loading. In the case of the 213 carloads involved in this complaint the average weight per carload was 87,388 pounds. The weights of individual carloads ranged from 53,120 pounds to 116,680 pounds. Only 10 of the cars weighed less than 70,000 pounds and 48 cars weighed less than 80,000 pounds. While a small amount of damage has been observed, this has been insufficient to warrant filing a claim. No damage claims were filed on any of the shipments in question.

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According to the record, some more recent shipments of rotary cut lumber received by complainant included bundles measuring up to 96 inches in length.

The value of rotary cut lumber for box manufacturing, the record indicates, is much less than that of veneer used for facing in plywood. The price of rotary cut lumber at the mill, the office manager stated, ranges from \$95 to \$120 per 1,000 board feet, while lath and shingles, which are subject to the board foot rate sought herein, sell approximately for \$74 and \$140, respectively, per 1,000 board feet. The price of veneer, such as is used in making furniture, this witness had been informed, ranges from \$60 to \$100 per surface foot. Using a conversion factor of 1/32 of an inch for thickness he arrived at a minimum price for veneer of approximately \$2,000 per 1,000 board feet.⁶

The transportation consultant made comparisons of the ton mile and car mile earnings accruing under the assailed rate with those which would result under the sought rates. An exhibit of record shows that the average ton mile and car mile earnings for the 213 shipments here in issue were: (1) under the assailed rate, 14.2 mills and 62.0 cents, respectively; (2) under the sought board foot rate, 8.8 mills and 38.5 cents, respectively; and (3) under the alternate sought rate of 38 cents per 100 pounds, 9.7 mills and 43.1 cents, respectively. The foregoing earnings were compared with those resulting under a limited number of forest products rates applicable between other points involving distances comparable to the haul from Eureka and Arcata to Whittier (average distance 784 miles).

Only four such rate comparisons were made and, because of the length of haul involved, two of these were interstate. The rates shown, which apply on both lumber and veneer, are from Redding to

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Complainant does not utilize plywood veneer in its operations. The witness had secured the above-stated prices for that commodity from the company from which he had obtained the sample of veneer which was introduced at the hearing.

San Diego (736 miles), from Westwood to Riverside (680 miles), from McNary, Arizona, to Los Angeles (700 miles) and from Coos Bay, Oregon, to San Francisco (717 miles). The rates, which are all stated in cents per 100 pounds, range from 53 cents to 61 cents, the minimum weight being 40,000 pounds for three of the rates and 38,000 for the fourth. The earnings reflected by these compared rates range from 14.8 mills to 17.7 mills, per ton mile, and from 28.1 cents to 35.3 cents per car mile. Thus, the per ton mile earnings, in every instance, are greater than those accruing under the assailed rate and are substantially greater than those which would result under either the sought board foot rate or the alternate suggested rate of 38 cents. The per car mile revenue shown under the compared rates is, in every instance, less than that which would accrue under either of the sought rates, and far less than that reflected by the assailed rate. However, it is here pointed out that, while the per car mile revenue under the assailed and sought rates is predicated on the average carload weight of the shipments involved in the complaint, the revenue under the compared rates was calculated on the basis of the applicable minimum weights. This was done in the absence of any information as to actual weights of shipments moving under the latter rates. The consultant stated that it was difficult to find, for comparison purposes, rates on lumber and veneer having a minimum weight of 80,000 pounds. ✓
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The consultant also compared the earnings reflected by the assailed and sought rates with those accruing under rates on other heavy-loading commodities assertedly having the same or similar transportation characteristics and having the same, or nearly the same, classification ratings. These rates, five in number, were all of the same volume, 29 cents per 100 pounds, with minimum weights.

ranging from 80,000 to 100,000 pounds. They apply on plasterboard from Plaster City to Sacramento (682 miles) and from Midland to Oakland (618 miles), on fibreboard boxes (knocked down flat) from San Francisco to Anaheim (498 miles), on iron or steel coiled wire rods from Rocktram to Bloomington (536 miles) and on canned goods from Tustin to Sacramento (560 miles). The per ton mile earnings range from 8.5 mills to 11.6 mills and the per car mile revenue, based on carload minimum weight, varies from 36.1 cents to 54.1 cents. All of the distances involved in these comparisons are less than the distances from Eureka and Arcata to Whittier, and those for the compared commodities other than plasterboard are substantially so.

Both the assailed and the sought rates apply from a large territory embracing substantially all of the rail lumber shipping points in the so-called Redwood Empire. The assailed rate applies not only to Whittier but to all points in what is known as the Los Angeles Basin and to points down the coast as far as San Diego. The sought rate, with limited commodity description, applies to more restricted destination territory in the vicinity of Los Angeles and Los Angeles Harbor, including Whittier. In view of these facts, and in order not to jeopardize present rates on forest products from other producing points in California to southern California, the consultant proposed that in establishing the sought rate for the future it be made subject to the following description:

"Lumber or Veneer, viz.:

Fir, green, rough, rotary cut to not less than 1/8" thickness, in strapped bundles of not less than 150 board feet nor less than 600 pounds each (not subject to Item 520)."

The proposed description includes both "lumber" and "veneer," the consultant explained, because he had found that within the particular branch of the lumber trade involved the term "veneer"

is used interchangeably with the term "lumber," and that it is the custom to refer loosely to any lumber produced by the peeling method as veneer, rather than lumber, irrespective of the end use to which the product is put. The suggested minima of 150 board feet and 600 pounds per bundle, the witness said, represent the minimum size and weight of the bundles of rotary cut lumber involved in this proceeding.

Item No. 520 series of the applicable tariffs provides, in connection with board foot rates, that boards having a thickness of less than one-half inch will be considered as one-half inch in thickness. In proposing that the sought rate be exempted from the requirement of this rule, the witness asserted that the carrier would not be concerned with the thickness of individual pieces, since the lumber would be tendered for shipment in compact bundles. He pointed out that shipments of lath or of shingles, when moving under board foot rates, are not subject to the provisions of Item No. 520. Both of these commodities are shipped in bundles.⁷

It was the opinion of the consultant that the proposed description would exclude finished veneer, as well as articles of lumber which might be shipped loose and as to which the carrier would be reasonably entitled to apply the provisions of Item No. 520 series.

Evidence on behalf of defendants was given by an assistant freight traffic manager of defendant Southern Pacific Company. He introduced an exhibit showing the history of the assailed rate of 53 cents from Eureka to Whittier and of the forest products rates

⁷ The tariff provides that 5,000 pieces of lath (1½ inches by 4 feet) will be considered the equivalent of 1,000 board feet of lumber, and that 50 bundles (200 shingles per bundle) of shingles will likewise be considered the equivalent of that amount of lumber.

from other northern California producing points to the same destination point. This history showed the rate changes from October 31, 1929, to the present. On November 1, 1929, the witness stated, a substantial reduction was made in the rate from Eureka in an attempt to secure for the rail lines traffic which was moving largely by water to the southern California ports. Subsequently, corresponding adjustments were made from the interior mills.

While further reductions were later made from interior points, the history shows that, until November 14, 1954, the only changes in the above-mentioned Eureka rate were increases. These reflected general rate increases corresponding to those authorized in Interstate Commerce Commission Ex Parte dockets. On November 14, 1954, the supplemental nine per cent increase corresponding to that in I.C.C. Ex Parte No. 175 was removed from all of the rates applicable from northern California producing points to points in the southern part of the state. The witness stated that this was necessitated by the fact that the rail lines were losing business to the trucks under the higher rates. The purpose of the rate history was to show the close relationship between the forest products rates from the various producing points, and it was the opinion of the witness that any reduction from Eureka might have an adverse effect on the rate structure from other shipping points.

In another exhibit, defendants' witness showed the relationship of the assailed base rate of 53 cents from Eureka to the first-class rate for the same distance reflected by a scale of rates prescribed by the Interstate Commerce Commission in 1926, including all subsequent general increases, for application between Arizona and California.⁸ The exhibit showed like relationship for

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Docket No. 14999, Arizona Corporation Commission vs. Arizona Eastern R.R. Co. (113 ICC 52).

the lumber rates from other northern California shipping points to Whittier. The lumber rate reflecting the lowest percentage, 12.35 per cent, of the constructive first-class rates was that applicable from Eureka. It is noted, however, that the applicable minimum weights from the interior points were either 34,000 or 40,000 pounds, while that under the assailed rate is 50,000 pounds.

In a third exhibit, defendants' witness compared the assailed rate with two rates on lumber which were prescribed in 1925 by this Commission as maximum reasonable rates from San Pedro to San Francisco (490 miles) and from Madera to Calexico (525 miles). These rates, including all subsequent general increases, were 52 cents and 72 cents per 100 pounds, respectively, with a minimum weight of 30,000 pounds. These rates, the witness said, were a part of the only adjustment in lumber rates which this Commission had made over a wide area. In his opinion the exhibit showed that the assailed rate is substantially lower than a reasonable maximum rate for the distance involved.

The genesis of the board foot rate originally assessed and sought herein, together with its accompanying commodity description, was explained by this witness. He stated that, in 1936, in order to meet the competition of the coastwise water lines, the railroads established board foot rates from Eureka, Arcata and related points to southern California, making them nonintermediate in application under appropriate authority from this Commission. Under that authorization the rates in question were made subject to the same limited commodity description as applied in connection with the competitive rates of the water lines. The publication in rail tariffs of rates on a board foot basis, the witness said, is unusual, and that form of rate has been utilized only where necessary to meet water competition.

As hereinbefore stated, complainant proposed alternatively that a rate of 38 cents per 100 pounds, minimum weight 80,000 pounds, be established on the commodity in issue, which would alternate with the present rates that are subject to minima of 34,000 and 50,000 pounds. Testifying with respect to this proposal, defendants' witness asserted that it has been the practice of the carriers to publish alternating rates, subject to different minima, only under compelling circumstances. These include efforts to meet competition of other means of transportation and to develop traffic. The mere fact, he said, that a given commodity may consistently load to weights substantially in excess of the carload minimum weight is not justification for establishing a lower alternating rate subject to a higher minimum weight. He asserted that it is not unusual for shipments of lumber weighing 87,000 pounds or more to move from northern California or Oregon to southern California, and that he had seen bills covering shipments of fir lumber weighing 110,000 pounds which moved under rates subject to minimum weight of 40,000 pounds.

As justification for a lower rate on the commodity here in issue complainant's rate witness had pointed out that the assailed rate applies also on finished articles, such as doors, bookcases and buffets, all of which are much more valuable than rotary cut lumber. In reply to this, defendants' witness stated that the commodity description to which the assailed rate is related is a broad general one, including not only articles of relatively high value but also commodities of low value. Among the latter he mentioned kindling wood, sawdust and shavings. He asserted that, if lower rates were to be established on some articles in the list because of their lower value, it would be proper to establish higher rates than those presently applicable on the articles of higher value.

In its briefs complainant argued that the evidence adduced by it had shown the assailed rate to be unjust and unreasonable and

that the sought rates would be just and reasonable. It appears unnecessary to set forth all of complainant's contentions in detail. The following points, however, are here mentioned: that the Interstate Commerce Commission some years ago prescribed maximum reasonable transcontinental rates on veneer based 15 percent over the rates applicable on lumber and that in the same decision it recognized that rotary cut lumber should be treated the same as sawn lumber;⁹ that in making comparisons of per car and per car mile revenue it was proper to base such earnings for the compared rates on the carload minimum weights because the carriers, in establishing such weights, had deemed them sufficient to make the rates compensatory; and that the mere fact that the sought board foot rate was originally published to meet water competition is of no concern now since the water competition has long since disappeared.

In support of its alternate proposal to establish a rate of 38 cents per 100 pounds, minimum weight 80,000 pounds, complainant cited a decision of the Interstate Commerce Commission¹⁰ in which the publication of a lower alternating rate subject to higher minimum weight was found justified in order to meet competition and to

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The proceeding mentioned is that of National Veneer and Panel Manufacturers Association v. A. & R. R.R. et al.; 81 ICC 227 (1923) and 219 ICC 183 (1936). Complainant appears to be in error as to any conclusion of the Interstate Commerce Commission in the cited decisions regarding rotary cut lumber, as such. A review of the decisions fails to disclose any specific mention of rotary cut lumber. The original decision contains a description of the manufacture of veneer by the rotary cut process.

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Unmanufactured Tobacco From, To and Within the South; 279 ICC 729 (1950).

develop traffic.¹¹ With respect to defendants' comparison of two lumber rates prescribed by this Commission, complainant contended that such comparisons are of no value because they were prescribed many years ago and pointed out that there is now no mill operating at Madera, one of the points of origin involved.

Defendants, in their briefs, contended that complainant had failed to show that the assailed rate was unreasonably high and requested that the complaint be dismissed. They argued, inter alia, that the evidence adduced by complainant as to the transportation characteristics, value and claim experience of the box material are inconclusive; that the assailed rate is water-compelled and even today does not reflect the full measure of general "ex parte" increases hereinbefore mentioned and that it cannot, therefore, be construed as a maximum reasonable rate; that the assailed base rate has been in effect for over 20 years without being the subject of formal complaint and is therefore presumptively reasonable; that related rates, such as those from all northern California producing points, should not be disturbed except on a clear showing that the rates assailed are indefensible,¹² which complainant, assertedly, has failed to make; that the commodity description proposed by complainant's rate witness is unknown in any lumber tariff today, and that its adoption would accord preferential treatment to the product

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In this connection the record shows that no shipments of the commodity here in issue were made by applicant by rail subsequent to the time of movement of the carloads involved in this proceeding and that complainant's shipments are now moving entirely by truck from other areas. A witness for complainant indicated that if either of the sought rates was established at least 50 per cent of applicant's total requirements of the box material would probably be returned to rail movement under such rate.

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Defendants cited an Interstate Commerce Commission case: Connor Lumber and Land Co. v. Ann Arbor R.R. Co., et al., 220 ICC, 648, 654, 655 (1937).

in issue; and that complainant's comparisons of rates on other commodities are of no value since the circumstances under which those rates were established have not been shown.

With respect to the suggested alternate rate, defendants argued that no competitive situation is involved and that the mere fact that cars are loaded substantially in excess of the minimum weight, does not justify the publication of an alternating rate subject to a higher minimum weight;¹³ that the only fair comparison of per car and per car mile earnings under other lumber rates would be on the basis of a weight of not less than 80,000 pounds, rather than by use of the carload minimum weights; and that on such basis the compared rates reflect substantially greater earnings than under either the assailed rate or those sought herein.

Conclusions

The first determination to be made herein is with respect to the applicable rate or rates. While complainant and defendants agree that the board foot rate, embracing a small number of forest products, is inapplicable to the shipments here in issue and that the revised basis of charges, reflecting the general forest products rate of 53 cents per 100 pounds, is applicable, such agreement is apparently reached from different premises. According to complainant, the product in question is rotary cut lumber and, as such, is not subject to the board foot rate because the latter applies only to lumber which is produced by a method other than the rotary cut process. Defendants, on the other hand, assert that the product is properly designated as veneer, not lumber, and, therefore, regardless of the method by which it is produced, is not subject to the board foot rate because the list of commodities on which that rate applies

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Citing this Commission's decision in United States v. Southern Pacific Company, 49 Cal. PUC 5 (1949).

does not include veneer:¹⁴ The practice of the trade, the record indicates, has been to refer to the product interchangeably as veneer or lumber.¹⁵

Upon careful consideration of all the pertinent evidence, our conclusions, and we so find, are that the commodity here in issue may be properly described either as rotary cut lumber or rotary cut veneer, that the board foot rates originally assessed were inapplicable and that the regular forest products rates, to the basis of which the charges on the shipments involved were subsequently revised, were applicable.

It is pertinent at this point to comment on the practices of defendants in assessing charges on the traffic in question. The fact that the carriers over a period of at least three years, and probably longer, applied the board foot rate, with its specifically restricted lumber description, to hundreds of carloads of forest products with a variety of commodity descriptions, in the majority of which the words "rotary cut" appear, gives one pause. Defendants are strongly admonished to review carefully their billing practices with a view to preventing future recurrences of such wholesale errors in tariff application as have been exhibited in connection with the shipments involved in this complaint.

The determination next to be made relates to the question of alleged unreasonableness of the rates herein found applicable

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In its briefs complainant consistently described the commodity in question as "rotary cut lumber," while defendants, in their briefs referred to the material as "veneer" or "rotary cut veneer."

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Definitions of "veneer" as set forth in Funk & Wagnalls' New Practical Standard Dictionary (1956) read as follows:

1. A thin layer, as of choice wood, upon a common surface; a layer of superior material overlaying a cheaper one.
2. Any of the thin layers glued together to strengthen plywood."

under defendants' tariff and the related question of maximum reasonable rates for the transportation in question. With respect to complainant's comparisons of the assailed and sought rates with other rates on forest products and on other commodities our conclusions are that (1) the number of compared rates is insufficient, aside from the question of their validity, to establish either the unreasonableness of the assailed rate, or the maximum reasonableness of the sought rates; (2) the comparison of per car mile earnings based on the actual weights of the shipments in issue with corresponding earnings based on the much lower minimum carload weights of the compared lumber rates is improper. As stated earlier herein the comparison of ton mile earnings fails to establish the validity of complainant's contentions, and a comparison of car mile revenue predicated on comparable carload weights would be to the same effect.

Complainant's contention that the rates generally applicable on forest products are unreasonably high for rotary cut lumber because the broad commodity description on which such rates apply includes articles of relatively high value likewise fails to carry weight. The record shows that the commodity list in question is a long-standing one, of general application in tariffs naming rates on forest products, and includes the cheaper forest products as well as those of high value.

As in the case of complainant's lumber rate comparisons, those adduced by defendants in support of their contrary contentions are insufficient in number to have any probative value in this proceeding. Moreover, it has not been shown that the compared rates, as constructively augmented by the various "ex parte" increases which have been authorized since 1925, meet the needs of commerce today or would be reasonable maximum rates under present conditions.

Likewise, defendants' comparison of the assailed base rate from Eureka, and of lumber rates from other northern California points, with constructive first-class rates for the same distances, based on the so-called Docket 14999 scale, is of little value. Without going into all the reasons for this conclusion we simply point out that it has not been shown that the scale in question has any proper relationship to California intrastate transportation.

While defendants' exhibit depicting the history of the lumber rates from northern California producing points to Whittier and other points in the Los Angeles area purports to show that reductions in the rates from Eureka caused corresponding reductions in the rates from other points, such does not appear to be the case. As previously stated, the rate from Eureka was reduced on November 1, 1929. Reductions from interior points, however, were not made until about two years later. These latter adjustments were not uniform and did not reflect the same amount of reduction as had been made in the Eureka rate. Moreover, the establishment, in 1936, of the water-compelled board foot rate from the latter point did not cause further reductions in rates from the interior points.

The evidence heretofore appraised fails to establish either the propriety or impropriety of the assailed rates. Such does not appear to be the case, however, with respect to certain other evidence adduced by complainant. That evidence tends to establish (1) similarity in the transportation characteristics, claim experience and values of rotary cut lumber, on the one hand, with those of sawmill lumber, shingles and lath, on the other hand, all of which latter group were and are subject to the board foot rates; (2) the fact that rotary cut lumber competes with sawn lumber; and (3) the

marked divergence in the quality of wood, the degree of refinement in manufacture, and the thickness of the sheets, of rotary cut wood used for box material, on the one hand, and of rotary cut veneer such as is used in the manufacture of furniture and doors, on the other hand. These are considerations which may not be lightly set aside in the disposition of this complaint.

Defendants point out that the board foot rates, having been published originally to meet water competition are depressed and assert that, consequently, said rates cannot be considered as maximum reasonable rates. The record shows, however, that the water competition which prompted the establishment of those rates has long since disappeared and that the latter have been subject to various "ex parte" increases during the intervening years. Thus, while the rates in question are still maintained under long- and short-haul relief, transportation conditions and circumstances have so changed since 1929 that it is questionable whether the board foot rates can now properly be considered as depressed.

While the aforesaid board foot rates have not, in and of themselves, been shown on this record to be reasonable maximum rates for the transportation of rotary cut lumber, there is strong support for a conclusion that relatively they constitute an upper limit of reasonableness for such transportation. The mere fact that lumber is the product of saw and planing mill plants and is sawed and planed does not entitle it to lower rates than apply to lumber which is produced by the rotary cut process. It is reasonable to believe, on the basis of this record, that the board foot rates were restricted to sawn and planed lumber when such rates were first published from Humboldt Bay points to southern California, simply because at that

time the rotary cut process was not in vogue in this state. It is our conclusion, and we so find, that the rates and charges lawfully applicable to the shipments involved herein were, under all the circumstances and conditions existing at time of movement, unjust and unreasonable to the extent that they exceeded the board foot rates and charges which were concurrently applicable to shipments of sawn lumber, as described in Commodity Rate Group C of the governing tariffs, from the same points of origin to the same point of destination, including application of the provisions of the "thickness" rule as set forth in Item No. 520 series of those tariffs. Defendants will be directed to cancel the undercharges now outstanding against said shipments.

We further conclude, and hereby find, for the future, that rates and charges on carload shipments of rotary cut lumber and rotary cut veneer embraced in the commodity description proposed by complainant, as shown in Exhibit No. 14, moving from Arcata and Eureka to Whittier, are and will be unjust and unreasonable to the extent that they exceed the board foot rates concurrently applicable, as an alternative basis, to shipments of lumber as described in Commodity Rate Group C of the governing tariffs, from and to the same points via the route over which the shipments in this complaint moved. Defendants will be directed to amend the description in said Commodity Rate Group C by adding thereto, for application from Arcata and Eureka to Whittier via the route in question, the aforesaid commodity description proposed in Exhibit No. 14. The record is convincing that said description will exclude from application of the board foot rates the more valuable rotary cut forest products, such as the veneer used in the manufacture of furniture.

The evidence is insufficient to justify exemption of the proposed commodity description from the provisions of Item No. 520 series of the tariffs, as proposed by complainant. Defendants will be directed to make the description subject to those provisions.

Defendants will be authorized in the order which follows, to provide, in connection with the rates hereinbefore found reasonable for the future, the same nonintermediate application as to the point of destination as now governs the board foot rates on sawn lumber between the same points. The Commission will entertain applications of defendants and other participating carriers in the present board foot rates for similar long- and short-haul relief via other routes and from and to other points of origin and destination.

In view of the findings and conclusions heretofore set forth, it is unnecessary to reach any conclusion with respect to complainant's proposal that an alternate rate of 38 cents per 100 pounds, minimum weight 80,000 pounds, be found reasonable for the transportation involved in this complaint.

In reaching the foregoing findings and conclusions, the Commission has carefully weighed and appraised all the evidence of record, and has fully considered the arguments advanced by the parties in support of their respective positions.

ORDER

Based upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED that defendants, Northwestern Pacific Railroad Company, Southern Pacific Company and Pacific Electric Railway Company be and they are ordered and directed to cancel

undercharges outstanding against complainant, in the amount of \$39,304.63, as reparation for the unreasonable charges assessed on the shipments involved in this proceeding.

IT IS FURTHER ORDERED that said defendants shall publish; file and maintain, until further order of the Commission, carload rates in cents per 1,000 board feet on the following commodity description,

"Lumber or Veneer, viz.:

Fir, green, rough, rotary cut to not less than 1/8" thickness, in strapped bundles of not less than 150 board feet of lumber nor less than 600 pounds each,"

to apply from Arcata and Eureka to Whittier, via Northwestern Pacific Railroad Company to Schellville, thence via Southern Pacific Company to Los Angeles, thence via Pacific Electric Railway, which rates shall be no greater in volume and effect than those concurrently applicable on lumber, as described in Commodity Rate Group C, published in Item No. 650 series of Pacific Southcoast Tariff Bureau Tariff No. 48-U, issued by J. P. Haynes, Agent, from the same points of origin to the same point of destination, and which rates prescribed herein shall be subject to the same tariff rules and regulations, including those governing the minimum carload quantity and the determination of thickness, concurrently governing said rates on lumber as described in Commodity Rate Group C.

IT IS FURTHER ORDERED that said defendants are hereby authorized, pending further order of the Commission, to depart from the long- and short-haul provisions of Section 460 of the Public Utilities Code and of Article XII, Section 21, of the Constitution of the State of California in so far as such departure is necessary

to maintain the rates prescribed herein nonintermediate in applica-
tion as to point of destination only.

The effective date of this order shall be sixty days after
the date hereof.

Dated at San Francisco, California, this 9th
day of APRIL, 1957.

Robert E. Mitchell
President

Ralph L. Linterman

Wm. H. ...

H. ...

T. ...
Commissioners