

ORIGINAL

Decision No. 54887

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 into the rates, rules, regulations,)
 charges, allowances and practices)
 of all common carriers, highway)
 carriers and city carriers relating)
 to the transportation of general)
 commodities (commodities for which)
 rates are provided in Minimum Rate)
 Tariff No. 2).

Case No. 5432
 Order Setting Hearing Date
 May 3, 1955

John MacDonald Smith, for Southern Pacific Company, Northwestern Pacific Railroad Company and The Atchison, Topeka and Santa Fe Railway Company; Frederick G. Pfrommer, for The Atchison, Topeka and Santa Fe Railway Company; William M. Larimore, for Yreka Railroad Company; Frank Loughlin, for Barbero Truck Line, Joe J. Rossi, Collier Transportation Co., Vic Ruell, George Butler and B. Eastman; Marvin J. Colangelo, for Minatta Transportation Co. and T. Elmer Hight; J. J. Devine, for Devine and Son; Don Baxter, for Stockhouse Truck Co.; Chris J. Gertz, for American Truck Lines; Al Barbero, for Barbero Truck Lines; Joe J. Rossi, for Joe J. Rossi Company, Inc.; Al Blasi, for Blasi Transportation; Robert B. Collier, for Collier Transportation Company; Guy Warren, for Warren Transportation Company; H. J. Bischoff, for Southern California Freight Lines; respondents.

J. C. Kaspar and A. D. Poe, for California Trucking Associations; Phillip J. Roth, Clarence R. Greenlip and Eugene Stark, for United Log Truckers Association, Inc.; B. R. Garcia in propria persona; Selwyn J. Sharp, for California Redwood Association; R. J. Blich, for The Pacific Lumber Company; Meyer Kapler, for Tarter, Webster and Johnson; Clair MacLeod, for Union Lumber Co.; Robert E. Phelan, for Rate Service Company; Robert B. Costello and Arnold J. Larson, for Masonite Corporation; Reginald L. Vaughan, for 33 producers, brokers and wholesalers of lumber; and Frank Turcotte and Jack O. Goldsmith, for 28 retailers of lumber; interested parties.

Wm. Roche and Norman Haley, for the Commission staff.

O P I N I O N

This proceeding concerns the establishment or adjustment of minimum rates for the transportation of lumber from points in the Counties of Humboldt, Mendocino, Lake and Sonoma. On May 3, 1955, the Commission, upon the recommendation of its Transportation Division, ordered hearing set in this matter.

Public hearings were held before Examiner Jack E. Thompson at San Francisco on October 25 and 26, 1955, December 3, 1955, February 28 and September 18, 1956, and at Los Angeles November 27, 1956. The matter was taken under submission on the latter date and is ready for decision.

The aforementioned counties are large producers of lumber and forest products. Most of the production sold within California is consigned to receivers in the areas of large population such as the San Francisco Bay area and the Los Angeles Basin area. Rail transportation is available to producers in Humboldt County on the lines of the Northwestern Pacific Railroad Company and the Arcata and Mad River Railroad Company. In Mendocino County, producers in the Fort Bragg area have rail transportation via the California Western Railroad which connects with the Northwestern Pacific Railroad Company at Willits.

The principal highways used by motor carriers serving these areas are U. S. Highway No. 101 and State Highway No. 128. U. S. Highway No. 101 follows generally the same route as the Northwestern Pacific Railroad Company except between Longvale and South Fork. Between the aforesaid points the rail line follows the course of the Eel River whereas the highway is to the westward.¹ In the case of

¹ The routes are divergent but the distance is about the same. From Longvale to South Fork the rail distance is approximately 86 miles and via the highway about 87 miles.

Fort Bragg, the rail route follows generally the Noyo River easterly to Willits and thence southerly generally along U. S. Highway No. 101 to Cloverdale and beyond. The highway route from Fort Bragg to Cloverdale is along State Highway No. 1 and State Highway No. 128 in a southeasterly direction.²

Distance rates in cents per 100 pounds are provided in Minimum Rate Tariff No. 2 for the transportation of lumber. These rates alternate with the published rail rates for the transportation of lumber between the same points at railhead and may be used in combination with the published rail rates whenever such combination rates produce a lower aggregate charge than the distance rates set forth in Minimum Rate Tariff No. 2.

The published rail carload rates for the transportation of lumber from the areas are in cents per 100 pounds and also, to certain points in the state, are on a 1,000 board foot basis. The rates, both weight and footage, are the same from all points of origin on the rail lines in Humboldt and Mendocino Counties to individual points of destination in southern California. It appears that on shipments of green redwood lumber the 1,000 board foot rates produce the lower charges and on lumber of lighter density, such as fir, the rates in cents per 100 pounds produce the lower charges.

A representative of the Commission's Field Section testified that the situation outlined above makes for conditions that encourage minimum rate violations by highway carriers. He stated that it was his observation that the lumber producers compete among one another in the California market. Shippers that are not on rail lines are at a competitive disadvantage even though they may in numerous instances be many miles nearer to the market than shippers

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The highway distance between Fort Bragg and Cloverdale is 80.6 miles, the rail distance is 94.3 miles.

located at or near points served by rail by virtue of having higher freight rates.³ In many instances, according to the witness, the shippers find it necessary to curtail transportation costs in order to compete in the market and there is resistance to the payment of charges which exceed the rail rates, particularly when the shipper is located on one of the highway routes and is nearer to destination points than the points served by railroads. It was stated that these conditions, together with the competition among carriers for traffic, cause the carriers and the shippers to seek devices whereby transportation is performed at rates less than the established minimum.

An associate transportation rate expert of the Commission's staff suggested that minimum rates in cents per 100 pounds, and also rates in cents per 1,000 board foot measure, be established from the "Coastal Lumber Region," which is an area blanketing most of Humboldt and Mendocino Counties, to various points in the San Francisco Bay area, San Joaquin Valley, Los Angeles Basin area and San Diego. It was proposed that the rates be intermediate in application over specified routes. The rate expert testified that his rate proposals were based to some extent upon cost estimates furnished to him by the Commission's engineering staff. The cost estimates are not of record.⁴

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It was pointed out that in many instances, particularly involving destinations in southern California, the minimum rate for the transportation of lumber from Garberville is a combination of the published rail rate applicable from South Fork and the distance rate for 35 constructive miles from Garberville to South Fork. Garberville is a point on U. S. Highway No. 101 between South Fork and points in southern California.

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On motions made at the hearings, the cost exhibits were stricken from the record because serious illness prevented the witness who testified to the exhibits from attending later hearings, thereby precluding parties from testing the reliability of the estimates through cross-examination.

A number of retailers of lumber in southern California testified in support of the rate expert's proposals. For the most part, the witnesses' yard facilities are not at railhead and they are located at points where the rail rates in cents per 1,000 board foot measure are higher than at the nearby points of Los Angeles, Burbank, San Gabriel, Orange and Santa Ana.⁵ The testimony of the witnesses is substantially the same; all of them compete with retailers in Los Angeles and in their respective immediate areas, the cost of lumber to them is calculated on the price f.o.b. mill origin plus transportation charges, the transportation charges to these retailers are computed on a combination of the rail rate plus an "off-rail charge,"⁶ the resulting charges are substantially higher than those paid by competitors who are at railhead and those who are located in Los Angeles, Burbank and other points in the area enjoying lower rail board footage rates. This situation, according to the witnesses, is such that they cannot compete in their own immediate areas with retailers outside the area, particularly in Los Angeles, for the large volume lumber sales such as to tracts and subdivisions. One witness stated that he was unable to understand why he had to pay higher transportation charges than competitors in Los Angeles and

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The witnesses are owners, officers or employees of complainant retail lumber companies in Case No. 5727, American Lumber Co., et al. vs. Arcata and Mad River Railroad Co., et al., which case is presently before the Commission.

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Under the provisions of Item No. 210 series of Minimum Rate Tariff No. 2, when a lower aggregate charge results, rates in said tariff may be used in combination with the rail common carrier rate for the same transportation. The appropriate distance rate is determined from the constructive mileage from the origin or destination point not at railhead to the nearest team track. Where the point involved and the team track are in the same incorporated city, the rate for the distance 0-3 miles may be used. It is the latter which is referred to as the "off-rail charge."

Santa Ana when the trucks delivering lumber to those points from the north coastal area had to pass by his door, and why he should be required to pay an extra charge for the truck theoretically passing by his yard to go to the nearest team track and back to his yard.

The rail lines, the California Trucking Associations, Inc., and a number of carriers of lumber were opposed to the rate expert's proposal. The California Trucking Associations, Inc., urged that the rate structure for the transportation of lumber be considered on a state-wide basis. It contends that a piecemeal solution to the over-all problem could cause a severe disturbance of existing competitive relationships between producers in Humboldt and Mendocino Counties and producers in other parts of the state.

Prior to further comment on the evidence and making findings and conclusions thereon, there are certain motions made at the hearing which were referred by the presiding officer to the Commission that should be ruled upon. The motions of the California Trucking Associations, Inc., and the Northwestern Pacific Railroad Company and Southern Pacific Company for dismissal of the instant phase of Case No. 5432 on the grounds that evidence respecting the cost of performing transportation of lumber between the points involved is not of record is denied. The motion of counsel for the retail lumber dealers in southern California for the setting aside of the submission of this phase of the proceeding for the purpose of receiving a cost study which he requests the Commission to direct its staff to undertake is denied.

Conclusions

It is apparent that a situation exists where the minimum rates for the transportation of lumber by highway carriers are greater for a shorter distance than for a longer over the same route. This in itself is not unusual in that often, in order to allow all

forms of transportation to fairly compete, carriers having circuitous routings are authorized to depart from the long- and short-haul provisions of the Constitution of the State of California. The peculiarity here is that in many cases the rates from a more distant point and from a nearer point are the same and from a point in between said points the rates are higher. Also, at points along the direct route, or a route no more circuitous than the rail route, the rates are higher for the shorter distances than for the longer.⁷ The record shows that this is not a desirable situation. While under the provisions of Decision No. 31606, as amended, common carriers are authorized to depart from the long- and short-haul provisions of the Constitution in assessing the established minimum rates, the evidence of record here shows that the unique circumstances related herein justify that the minimum rates from the points on the aforementioned highway routes should not exceed the combination of the rail rate from the more distant point and the "off-rail charge" which is the rate applicable for the distance of 3 miles or less.

The rate expert's proposal, a suggested remedy to the aforementioned situation, goes beyond the problem of the points located on the direct highway routes and proposes the establishment of an origin territory which would include most of Humboldt and Mendocino Counties. Long- and short-haul problems of the character related above are not presented at many of the points in the proposed

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The rail carload rates on lumber to Los Angeles from Eureka, Fort Bragg, Willits, Ukiah and Cloverdale are the same. The "off-rail charge" at such points is the same so that under the provisions of Item No. 210 series when lower aggregate charges result, the combination of the rail rate and the "off-rail charge" becomes the minimum rate for the transportation of lumber from shippers not at railhead at all of these points. Higher minimum rates apply at Boonville, Comptche, Caspar Camp and Garberville, yet each one of the latter points is situated between two of the points mentioned above and is intermediate between at least one of those points and Los Angeles.

origin area. The rate expert proposed rates which in a number of instances are lower in volume and effect than the present minimum rates, or combinations of rates authorized in Item No. 210 series of the tariff, from points served by the rail lines. The proposal is not supported by cost evidence nor is there sufficient evidence respecting competition at all of the points in the proposed origin area which would support the adoption of the proposal.

Upon consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds that Minimum Rate Tariff No. 2 should be amended to provide that whenever lower aggregate charges result for the transportation of lumber and forest products from points on and along U. S. Highway No. 101 between Eureka and Longvale, State Highway No. 1 between its intersection with State Highway No. 128 and Fort Bragg, State Highway No. 128 between its intersection with State Highway No. 1 and Cloverdale, State Highway No. 20 between Noyo and Willits, and unnumbered highway between Mendocino and Ukiah via Comptche and Orrs, by a combination of the published rail carload rate on lumber from Eureka, in the case of points on U. S. Highway No. 101 between Eureka and Longvale, and from Fort Bragg, in the case of points located on and along the other mentioned highways, and the applicable distance rate contained in said Minimum Rate Tariff No. 2 for a distance of 3 miles or less may be applied in lieu of the rates set forth in said minimum rate tariff; and further, that where the point of origin is not located on or along said highways that the combination of the rail carload rate on lumber from Eureka or Fort Bragg, as the case may be, and the distance rates set forth in said minimum rate tariff for the

mileage determined in accordance with the provisions of the tariff from the point of origin to the nearest point on said highways may be applied. The Commission is of the opinion and finds that the rates and charges resulting from such amendment to the tariff will be just, reasonable and nondiscriminatory minimum rates for the transportation of lumber from the aforesaid points in Humboldt and Mendocino Counties.

The California Trucking Associations, Inc., was opposed to the rate expert's proposal on the grounds that competitive relationships of the different lumber producing areas of the state may be seriously disturbed. The rates found reasonable herein will not present this problem as the rates will be no lower than the present minimum rates from other points in the aforementioned counties from which lumber is regularly shipped. The rail lines were opposed to the rate expert's proposal because it would affect the ability of the railroads to retain lumber traffic at points where they compete with highway carriers. The rates herein found reasonable will not alter or change in any way the competitive positions of the rail lines and the highway carriers at competitive points. The rate adjustments will occur only at points not served by the railroads.

The contentions of the lumber retailers of southern California involve the different level of the railroad carload board footage rates on lumber at certain points in the southern part of the state and the applicability of the "off-rail charge" in combination with the rail rates at points served by the rail lines. The difference in the levels of the rail carload lumber rates to the points involved is not an issue which is covered by

this proceeding.⁸ The Commission has not heretofore established minimum carload rates for the transportation of lumber by railroads. Such rates became involved in the matter of the establishment of minimum rates for highway carriers because of the alternative application of common carrier rate provisions in the minimum rate tariff and because of Section 3663 of the Public Utilities Code.⁹

The matter of the application of the "off-rail rates" in combination with rail carload rates to shipments consigned to receivers not at railhead at points served by the rail lines is not confined to the transportation of lumber but is involved in the application of minimum rates to the transportation of all commodities covered by Minimum Rate Tariff No. 2 and other minimum rate tariffs. The rule respecting such combinations is of long standing and predates Minimum Rate Tariff No. 2. The instances recited by the witnesses where one receiver pays a higher rate than his neighbor when like shipments are delivered to both by the same carrier is not necessarily an unjust discrimination prohibited by law. It is a well-established principle that prejudice and discrimination is a question of fact to be determined in the light of all the relevant circumstances and conditions, and that

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It should be noted that in Case No. 5727, American Lumber Co., et al. vs. Arcata and Mad River Railroad Co., et al., which is presently before the Commission, has as one of its principal issues the rail rates here alleged to be discriminatory. The lumber retailers herein are complainants in Case No. 5727.

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Section 3663: In the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points.

to be unlawful it must be unjust and undue.¹⁰ An important consideration in establishing minimum rates is the affording to all agencies of transportation the opportunity to fairly compete with one another.¹¹ In order that the rail lines and the highway carriers have a fair and more equal opportunity to acquire and maintain a share of traffic at competitive points, it has been found necessary to provide in the minimum rate structure for the combination of the "off-rail rate" and the rail rates to traffic destined to receivers not located at railhead, or to put it in the terms of the statute, "beyond the regularly established termini of common carriers." The evidence offered by the lumber retailers is not persuasive that this balance between competing forms of transportation should be upset or discarded.

O R D E R

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

IT IS ORDERED:

(1) That Minimum Rate Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended) be and it is further amended by incorporating therein to become effective June 1, 1957, Fifth Revised Page 56-A Cancels Fourth Revised Page 56-A, which page is attached hereto and by this reference made a part hereof.

¹⁰ Re Tariff Suspension, 36 CRC 135, 137 (1931).

¹¹ Section 3662 of the Public Utilities Code provides:

"In establishing or approving such (minimum) rates, the Commission shall give due consideration any additional transportation service performed, or to be performed to, or beyond the regularly established termini of common carriers or of any accessorial services"

(2) That tariff publications authorized to be made by common carriers as a result of the order herein may be made effective on not less than five days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the tariff changes herein involved.

(3) That in all other respects the aforesaid Decision No. 31606, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 22nd day of APRIL, 1957.

John E. Mitchell
President
Roy G. Luter
Michael D. ...

Commissioners

Rex Hardy
Commissioner C. Lynn Fox, being necessarily absent, did not participate in the disposition of this proceeding.

Item No.	SECTION NO. 3		COMMODITY RATES (Continued) (In Cents per 100 Pounds)	
	LUMBER AND FOREST PRODUCTS, VIZ.: Lumber, Timbers and Veneering Minimum Weight 40,000 pounds (See Note 1).			
	FROM Production Zone (See Note 2)	TO Delivery Zone (See Note 3)		
		A (Hornbrook)	B (Yreka)	
	1 (Seiad)	13	13½	
	2 (Happy Camp)	16	16½	
	3 (Indian Creek)	16½	17	
	<p>NOTE 1.--(a) Rates are not subject to Item No. 85. The minimum weight applies to each unit of equipment.</p> <p>(b) Rates are intermediate in application from points located on or within one actual highway mile on either side of State Highway No. 96 between Hamburg and Gottville.</p> <p>(c) In the event the charge accruing under the rates provided in Section No. 2 or Item No. 690 of this tariff is lower than the charge accruing under the rates named herein the charge accruing under Section No. 2 or Item No. 690 will apply.</p> <p>NOTE 2.--Production Zones are as follows:</p> <p>(a) Zone 1 (Seiad) includes that area within ten actual highway miles on either side of State Highway 96 extending from Hamburg to Thompson Creek.</p> <p>(b) Zone 2 (Happy Camp) includes that area within three actual highway miles on either side of State Highway 96 between Thompson Creek and the point opposite the confluence of Elk Creek and the Klamath River.</p> <p>(c) Zone 3 (Indian Creek) includes that area within ten actual highway miles on either side of State Highway 96 between Thompson Creek and the point opposite the confluence of Elk Creek and the Klamath River except that area included in Zone 2.</p> <p>NOTE 3.--Delivery Zones are as follows:</p> <p>(a) Zone A (Hornbrook) includes that area within a radius of three air-line miles of the Southern Pacific Co. Depot at Hornbrook.</p> <p>(b) Zone B (Yreka) includes that area within a radius of six air-line miles of the intersection of Main Street and Miner Street, Yreka, and including all team tracks, side tracks, and spur tracks, together with loading areas, platforms and industries directly adjacent thereto, of the Southern Pacific Co. at Montague.</p>			

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LUMBER AND FOREST PRODUCTS, viz.: Forest Products and Building Woodwork, as described in Item No. 660.

(Applies only from points on and along U.S. Highway No. 101 between Eureka and Longvale, State Highway No. 1 between its intersection with State Highway No. 128 and Fort Bragg, State Highway No. 128 between its intersection with State Highway No. 1 and Cloverdale, State Highway No. 20 between Noyo and Willits, and unnumbered highway between Mendocino and Ukiah via Comptche and Orrs.)

Whenever lower aggregate charges result for transportation from points on or along the above-named highways by a combination of the published rail carload rate on lumber from Eureka, in the case of points on U.S. Highway No. 101 between Eureka and Longvale, and from Fort Bragg, in the case of points located on and along the other mentioned highways, and the applicable distance rate contained in this tariff for a distance of 3 miles or less, that combination may be applied to points of destination located at railhead in lieu of the rates otherwise applicable in this tariff. Also, where the point of origin is not located on or along said highways, the combination of the rail carload rate on lumber from Eureka or Fort Bragg, as the case may be, and the distance rate set forth in this tariff for the mileage determined in accordance with the provisions of this tariff from the point of origin to the nearest point on said highways may be applied to points of destination located at railhead in lieu of rates otherwise applicable. (Subject to Note 1.)

NOTE 1.—When point of destination is located beyond railhead add to the rate computed according to this item the distance rate provided in this tariff for the distance to point of destination from the team track or established depot to which the rail rate used applies. If the route from the team track or established depot to point of destination is within the corporate limits of a single incorporated city, the rates provided in this tariff for transportation for distances of 3 miles or less, or rates established for transportation by carriers as defined in the City Carriers' Act, whichever are lower, shall apply from team track or established depot to point of destination.

Addition) Decision No. 54887
 & Reduction)

EFFECTIVE JUNE 1, 1957

Issued by the Public Utilities Commission of the State of California,
 San Francisco, California.

Correction No. 713