

ORIGINAL

Decision No. 56449

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AMERICAN LUMBER COMPANY, a)	
corporation, et al.,)	
)	
Complainants,)	Case No. 5727
vs.)	
)	
THE ARCATA AND MAD RIVER RAILROAD)	
COMPANY, et al.,)	
Defendants.)	

F. W. Turcotte and J. O. Goldsmith, for complainants and for B. H. Holdren and A. A. Beals, dba Rialto Lumber Co., and R. A. Boyd, C. E. Darnell and C. W. Lovesea, dba Boyd-Darnell Lumber Co., intervenors.

Charles W. Burkett, Jr., and John M. Smith, for defendants except Tidewater Southern Railway Company.

Robert Alan Thompson, for The Atchison, Topeka and Santa Fe Railway Company, defendant.

Henry Sause, Jr., for Sause Bros. Ocean Towing Co., intervenor.

O P I N I O N

The instant proceeding was commenced by twenty-eight retail and wholesale dealers of lumber maintaining places of business at Arcadia, Arlington, Bloomington, Camarillo, Canoga Park, El Monte, Elsinore, Fillmore, Hewitt, Moorpark, Monrovia, Northridge, Ojai, Oxnard, Raymer, Redlands, Riverside, San Bernardino, San Fernando, Santa Paula, Santa Susana, Sun Valley and Van Nuys in the Los Angeles Basin Area, and at Arvin, Bakersfield, Banning, Biola, Buttonwillow, Carlsbad, Clovis, Corcoran, Delano, Delmar, Encinitas, Fresno, Hemet, Kerman, McFarland, Mendota, Modesto, Oceanside,

Palm Springs, Paso Robles, Porterville, Santa Maria, Shafter, Solano Beach, Taft, Terra Bella, Victorville and Wasco, California. Two dealers in forest products maintaining places of business at Rialto and Riverside intervened in the proceeding on behalf of the complainants. Complainants and intervenors on behalf of complainants will hereinafter be referred to jointly as complainants.

The complaint in this proceeding was filed February 9, 1956.

It alleges as follows:

(1) That the rates maintained and assessed by the defendants for the transportation of forest products, including lath, lumber, pickets, posts, shakes, shingles, stakes and ties from Groups 5, 6, 7, and 8 points, as defined in Pacific Southcoast Freight Bureau Tariff No. 48-U, Agent J. P. Haynes, to complainants' destination points as hereinabove stated, are, and for the future will be, relatively unjust and unreasonable in violation of the provisions of Section 451 of the Public Utilities Code of the State of California;

(2) That defendants unduly prefer complainants' competitors located at Los Angeles and vicinity, Glendale, Burbank, North Hollywood, Pasadena, Santa Ana, Santa Barbara, Ventura and San Diego, and their destination points, to the prejudice and injury of complainants and their respective destination points, by according complainants' said competitors and their destination points a lower basis of rates, or rates resulting in lower charges for the same quantity of forest products moving from the same origin points than

contemporaneously maintained and assessed on complainants' shipments destined to the same general territory, in violation of Section 453 of the Public Utilities Code of the State of California;

(3) That defendants, by maintaining a lower basis of rates and charges to San Diego, Los Angeles, Pasadena, Glendale, Burbank, Ventura and Santa Barbara than contemporaneously applies from the same origins for the transportation of the same commodities to the intermediate destinations where complainants operate and maintain their lumber yards and sales offices, unduly prefer complainants' competitors and their destination points to the undue prejudice of complainants and their respective destination points, in violation of Section 453 of the Public Utilities Code; and

(4) That the circumstances and conditions under which defendants were authorized by the Commission to maintain rates or charges which result in greater compensation in the aggregate for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, have ceased to exist and that said rates are maintained without valid reason or excuse.

Complainants seek an order commanding the defendants to cease and desist from the aforesaid alleged violations, and establishing in lieu of the rates now published, just, reasonable and nonpreferential rates. Reparation or damages are not sought.

Defendants deny the allegations of the complainants.

Sause Bros. Ocean Towing, Inc., a contract carrier of lumber by vessel between Crescent City and ports in southern California, intervened in the proceeding, opposing the position of complainants. It contends that there is vigorous competition among vessels and railroads for the transportation of lumber between the points involved and urges that the rates of the defendants not be lowered.

Public hearings were held before Examiner Jack E. Thompson on November 28 and 29 and December 5, 1956 at Los Angeles, November 30, 1956 at San Bernardino, and January 29, 1957 at Eureka. Both oral and documentary evidence was received and the case was taken under submission on June 18, 1957 upon the filing of concurrent briefs.

Defendants publish rates in cents per 1,000-board-foot measure,^{1/} as well as rates in cents per 100 pounds for the transportation of lumber from Groups 5, 6, 7 and 8 points,^{2/} hereinafter called the origin area, to points and places in southern California. The rates from the origin area to the points where complainants operate their lumber yards and to the points alleged by complainants to be unduly preferred by defendants are set forth in Appendix "A" attached hereto. The grievances appear to center about the rates per MBF published by defendants.

^{1/} 1,000-board-foot measure will hereinafter for convenience be abbreviated to MBF.

^{2/} Groups 5, 6, 7 and 8 include points served by railroad in Humboldt, Mendocino and Sonoma Counties extending generally from Petaluma to Korbek.

On May 24, 1935 there became effective, in California, Coastwise Lumber Conference Freight Tariff No. 2-B, C.R.C. No. 6, rates per MBF for the transportation of lumber and lumber products by vessel from Humboldt Bay ports to Port San Luis, Santa Barbara, Ventura, Hueneme, San Simeon, Los Angeles Harbor, Long Beach and San Diego. On June 29, 1935, defendants published rates per MBF from Eureka, Arcata and other points to southern California. The rates were non-intermediate in application. Authority to depart from the long and short haul prohibitions of the Constitution and of the statute was granted by the Commission, June 28, 1935. In their application for such authority, defendants stated that the rates were intended to meet the rates of the competing carriers by water at ports and to meet the combination of the rates by water and the "going" truck rates to inland points. According to the application, the rates published by defendants were developed from the total of the vessel rate, \$5.50 per MBF in the case of Los Angeles Harbor, \$1.25 per MBF for wharfage and handling at the destination port, and the "going" truck charges per MBF from the destination port to the inland points.^{3/} In 1936, defendants added to the list

^{3/} A summary of the "going" truck rates from Los Angeles Harbor and the rates published by defendants in 1935 to certain points follows. All rates are in dollars per MBF.

<u>Destination</u>	<u>Truck Rate</u>	<u>Rail Rate</u>
Los Angeles (South of Washington St.)	\$0.75	\$8.00
Los Angeles (North of Washington St.)	1.00	8.00
Burbank, Whittier and Santa Ana	1.00	8.00
Pasadena	1.25	8.50
Duarte	1.50	8.50
San Dimas and Pomona	1.75	9.00
Ontario	2.00	9.00
Guasti and Riverside	2.25	9.50
Colton and San Bernardino	2.50	9.50
Redlands	2.75	9.50
San Diego	-	8.50
Santa Barbara	-	8.00
Ventura	-	8.00
Oxnard	-	8.50

of destinations covered by the MBF rates. The rate of \$8.00 was made applicable to North Hollywood, \$8.50 was made applicable to points in the San Fernando Valley, \$9.00 was made applicable to Fillmore, Moorpark, and points in that general area, and \$9.50 was made applicable to Elsinore and to points north of San Diego to Oceanside. Since 1938, the rates have been increased by various percentages pursuant to authorities granted the rail lines in proceedings involving general increases in rail rates.

It appears from the record that the water carriers who were parties to California Coastwise Lumber Conference Tariff No. 2-B discontinued operations some time during World War II or prior thereto and that the tariff has been canceled. It further appears that, during the period from World War II to 1953, there was little or no movement of lumber by vessel from Humboldt Bay and Crescent City to ports in southern California. At the present time there are at least four and perhaps five operators of vessels transporting lumber from Crescent City and Humboldt Bay to Los Angeles Harbor, Long Beach and San Diego.^{4/} The following tabulation shows the amount of water-borne tonnage of lumber moving from Humboldt Bay and Crescent City to southern California ports from 1953 to 1956.

^{4/} W. R. Chamberlain Co., Oliver J. Olson Company, Sause Bros. Ocean Towing Co., Inc., Pacific Barging Co., and an operator identified only as "Lapillata".

<u>Port to Port</u>		<u>Tons per Calendar Year</u>			
<u>From:</u>	<u>To:</u>	<u>1953</u>	<u>1954</u>	<u>1955</u>	<u>1956^{a/}</u>
Humboldt Bay	- Los Angeles	-	7,149	43,699	64,645
"	" - Long Beach	-	3,642	5,995	5,184
"	" - San Diego	-	-	1,649	-
Crescent City	- Los Angeles	97,263	157,072	155,905	135,392
"	" - Long Beach	1,778	18,026	20,038	11,038
"	" - San Diego	-	10,240	21,168	17,754

a. Statistics incomplete for 1956. The figures shown represent the known tonnage which moved prior to November 1.

During the period 1954 to 1956, there were a number of interruptions in rail service from the origin area. The following tabulation shows the periods of interruptions and the tonnage of lumber moving by vessel from Humboldt Bay to southern California ports during the months shown.

<u>Periods of Interrupted Rail Service</u>	<u>Lumber Moving by Vessel</u>	
	<u>Tons</u>	<u>Months</u>
Nov. 11 - Dec. 6, 1954	10,791	Nov.-Dec. 1954
June 30 - July 28, 1955	17,542	July 1955
	19,995	August 1955
December 22, 1955 - February 6, 1956	None	December 1955
	None	January 1956
February 6 - March 15, 1956 ^b	7,593	February 1956
	15,199	March 1956

b. Interruptions not continuous.

According to the evidence of record, since 1942 there was one shipment of lumber by water from Oregon to Port Hueneme. Other than this shipment, lumber moving by vessel has not been received at any port in southern California, other than San Diego Harbor, Los Angeles Harbor and Long Beach Harbor, since 1942. The record indicates that there are not adequate facilities at Santa Barbara or Ventura for receiving lumber from vessels. According to the testimony, sometime ago a number of retailers were approached by a

person who stated that he was arranging to provide facilities at Port Hueneme for the receiving and transshipment of lumber; however, the proposed service was not carried out. At the hearing on January 29, 1957, the vice president of Sause Bros. Ocean Towing Co., Inc. testified that his company had contracted to deliver a load of lumber to Port Hueneme on February 10, 1957. Whether the delivery was accomplished is not a matter of record in this proceeding.

The vessels presently transporting lumber between the origin area and southern California purport to be contract carriers. In their schedules of rates filed with the Interstate Commerce Commission, some of the carriers maintain rates for the transportation of lumber from Humboldt Bay or Crescent City to points in southern California other than San Diego, Long Beach and Los Angeles harbors. At least two of the operators show Santa Barbara as a port they will serve. None of the carriers has ever transported any shipments to Santa Barbara and none of them has ever been asked to do so.

In the sale of lumber in volume to tract developments and subdividers; complainants in the area bounded generally by Ventura, Moorpark and San Fernando on the north, Redlands, Ferris and Elsinore on the east, and approximately the southern boundary of Orange County on the south, encounter severe competition from retailers and wholesalers at Los Angeles Harbor. The dealers in the harbor area have docks and receive from vessels shipments of lumber consigned from California, Oregon and Washington. The substantial portion of shipments received by vessel are from Oregon ports.

In the sale of lumber other than to tract developments, complainants in the general area outlined above encounter competition from dealers in areas immediately surrounding their communities. Retailers in the San Fernando Valley encounter competition from retailers in Los Angeles, Burbank and North Hollywood. Retailers in Canoga Park and Santa Susana compete with each other and with retailers as far away as Ventura, Los Angeles and those in the San Fernando Valley. In the sales, other than volume sales, each retailer apparently has his own trading area which overlaps those of other retailers in surrounding communities.

The area extending from Oceanside to San Diego appears to be an identifiable competitive area, not only in the sale of lumber in volume to tract developers but also in sales other than to the "walk-in trade".

Complainant offered no evidence concerning competition in the sale of lumber by retailers and wholesalers at the following points: Arvin, Bakersfield, Biola, Buttonwillow, Clovis, Corcoran, Delano, Fresno, Kerman, McFarland, Mendota, Modesto, Paso Robles, Porterville, Santa Maria, Shafter, Terra Bella, Victorville or Wasco.

Conclusions

Complainants allege, among other things, that the rates maintained by defendants for the transportation of lumber and related articles from Groups 5, 6, 7 and 8 points to complainants' destination points are relatively unjust and unreasonable in violation of Section 451 of the Public Utilities Code.

The evidence shows that the rates on a cents-per-100-pounds basis maintained from said origin points to all of the destination points in issue compare favorably with, and in most instances are more favorable than, those maintained from other lumber origins in California to the same destinations. Rates on the MBF basis apply only from Groups 5, 6, 7 and 8 origins to the southern California destinations; and these rates alternate with the weight rates between the same points. That is to say; the rates on a cents-per-100-pounds basis are never exceeded, and the MBF rates apply when lower charges result, depending upon the board measurement and weight of the lumber in each shipment. Thus, to all of the southern California destinations generally, the rates on a cents-per-100-pounds basis from the north coastal origins are relatively favorable, and even lower MBF rates are available according to the circumstances.

It may be that by their allegation that the rates in issue are relatively unjust and unreasonable in violation of Section 451 the complainants intended to refer only to the relationship between the MBF rates to their destinations and the MBF rates to other southern California destinations. All of the MBF rates are made relatively low by design in order to meet water competition, and an allegation that any of them is unreasonably high contrary to Section 451 cannot be sustained. Complainants' real concern clearly is with the relationships between the MBF rates. The issue, therefore, is one of alleged preference and prejudice in violation of Section 453.

Stated most simply, what complainants seek is an equality of rates to complainants' destinations throughout the entire Los Angeles Basin with the rate to Los Angeles Harbor and points grouped therewith; and an equality of rates to complainants' destination points in San Diego County with the rate to the cities of San Diego and National City. Complainants say that the equalization of rates will be satisfactory to them whether it be accomplished by increasing the rates to the allegedly preferred points, reducing the rates to complainants' destination points, or establishing a new rate to each of the two destination territories herein involved.

Complainants' case rests fundamentally upon the premise that there has not been in recent years, and is not now, a sufficient movement of lumber by water to warrant the continuance of Section 460 relief to the defendant railroads. This premise is not substantiated by the evidence. To the contrary, during the first ten months of 1956 (the latest period of record) 234,013 tons of lumber moved by water from northern California to the ports of Los Angeles, Long Beach and San Diego. This tonnage is the approximate equivalent of 8,000 railroad carloads. While the interruptions in rail service during recent years may have contributed to the resurgence of steamer and barge operations, such operations are not, as alleged by complainants, dependent upon interruptions in rail service. The evidence shows conclusively that defendants' water competition is real and substantial.

The maintenance by the defendants of lower rates on an MBF basis to the ports than to the intermediate inland destinations is justified by the water competition which they encounter at the ports. On this record, therefore, it is clear that the Commission cannot reasonably require the defendants to accord to the complainants that rate equality which the complainants seek.

Parenthetically, it may be observed that rail rate equality would not necessarily relieve complainants' asserted competitive difficulties. The major lumber dealers at the ports are a primary competitive factor throughout the Los Angeles Basin. These dealers receive much of their stock by water from northern California and Oregon, and the water-borne lumber from Oregon predominates. The principal root of complainants' competition is beyond the jurisdiction of this Commission.

A subsidiary allegation of the complaint is that unlawful preference and prejudice exist by reason of the fact that defendants' "port" rates are applicable at some non-port points (such as Santa Monica, Burbank, Los Angeles and Santa Ana) but not at complainants' various destinations. The grouping of contiguous interior points with the ports for rate purposes, when establishing nonintermediate rates, is not exceptional. The assailed rate adjustments were published under appropriate authorizations from this Commission, and similar relief has been accorded under similar circumstances in other instances. (For a discussion and history of the policy, see San Pedro Chamber of Commerce v. The Atchison, T. & S.F. Ry., 34 C.R.C. 341, 346.) Unlawful preference and prejudice may not be presumed from the fact that the defendants, in meeting water competition at the ports, have established the port rates to certain interior points.

The record is replete with testimony concerning the costs and advantages and disadvantages of shipping and receiving lumber by rail and by steamer or barge, and the costs of inland transportation to and from the ports. Various of the charges are unregulated, variable, and subject to change. Nevertheless, the record establishes convincingly that defendants' present MBF rates to the ports of Los Angeles, Long Beach and San Diego are no lower than necessary to meet their water competition.

In a general way, at least, defendants' several higher MBF rates to interior points in the destination areas herein involved are designed to meet the competition of water rates to the ports plus truck costs beyond. Whether a precise evaluation of the competition of water-borne lumber moving through the ports to interior destinations in southern California would warrant adjustments in the rail MBF rates to various interior destinations is a matter which we need not, should not, and practicably could not, determine herein. Various upward or downward rate revisions at various interior destinations are not sought by the complainants in any event; and the public interest would not be served by our undertaking to adjust the rail rates to each destination throughout the Los Angeles Basin according to various and variable competitive circumstances, some of which are unregulated and unknown.

There remain for consideration the long-and-short-haul departures in defendants' MBF rates to Ventura and Santa Barbara, which rates are lower than those maintained to directly intermediate rail points. There is some testimony concerning the possibility of water-borne movements to Ventura, Santa Barbara, and Port Hueneme. On the whole, the record is fully convincing that there is no present or prospective movement of lumber or related articles by water carrier to any port in southern California other than Los Angeles, Long Beach and San Diego harbors, and possibly Port Hueneme. The record is not wholly conclusive as to Port Hueneme, but a finding of fact on that point is not necessary, inasmuch as the defendants have not established water-compelled MBF rates to Port Hueneme. The absence of any movement to Ventura or Santa Barbara, and the absence of adequate facilities at such points for the receiving, handling and reshipment of lumber requires the conclusion that defendants do not directly encounter actual water competition at those points.

On this record the Commission concludes and finds that the defendants do not encounter substantial competition in the form of water-borne movements to or through the ports of Santa Barbara or Ventura. The water competition upon the basis of which the defendants were authorized more than 20 years ago to establish MBF rates to Ventura and Santa Barbara lower than those maintained to directly intermediate rail points is no longer present in a degree which would warrant a continuation of these departures. The defendants will be required to remove these long-and-short-haul departures.

Correction of the MBF rates as published to Ventura and Santa Barbara necessarily will require that the defendants reconsider and possibly readjust other MBF rates to which they are closely related. To the extent that rate increases may be involved, the defendants will be under the necessity of filing an appropriate application pursuant to Section 454 of the Public Utilities Code. The following order will provide for a reasonable time within which the defendants shall make the necessary rate adjustments.

In all other respects complainants have not shown that the rates complained of are unjust, unreasonable, unduly preferential, unduly prejudicial, or otherwise unlawful.

Defendants' brief requests oral argument, stating: "We wish to appear at argument before the full Commission, so that there may be no misunderstanding of our position." Defendants have had full opportunity to make their position clear. Oral argument is unnecessary, and will be denied.

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 the defendants are hereby directed, within sixty days after the effective date of this order, to remove by reductions, or to file a formal application for authority to establish increased rates which will remove, the long-and-short-haul departures now existent in certain rates currently maintained to Ventura and Santa Barbara which are lower than those maintained to directly intermediate points via the same line or route, as specified more particularly in the foregoing opinion.

2. That defendants are hereby directed to serve upon the parties of record in this proceeding copies of all filings made pursuant to the preceding ordering paragraph.

3. That defendants' request for oral argument is denied.

4. That, except as provided in the preceding ordering paragraphs, the complaint in this proceeding is dismissed.

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

Dated at San Francisco, California, this 1st day of April, 1958.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioners

APPENDIX A
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Carload Rail Rates Applicable for Transportation of Lumber
and Forest Products from Groups 5, 6, 7 and 8 Points (1)

<u>To</u>	<u>Rates in Cents</u>	
	<u>(2)</u> <u>Per 100 Lbs.</u>	<u>(3)</u> <u>Per MBF</u>
Modesto	39*	-
Mendota	47*	-
Kerman	47*	-
Biola	47*	-
Fresno	47*	-
Clovis	47*	-
Corcoran	54*	-
Porterville	56	-
Wasco	56	-
Shafter	56	-
Delano	56	-
McFarland	56	-
Terra Bella	56	-
Bakersfield	56	-
Buttonwillow	59	-
Taft	59	-
Arvin	56	-
Paso Robles	56	-
Santa Maria	59	-
Santa Barbara	56	1503
Port Hueneme	57	-
Ventura	56	1503
Ojai	60	1691
Santa Paula	56	1597
Fillmore	56	1691
San Fernando	56	1597
Sun Valley	56	1597
Oxnard	56	1597
Camarillo	56	1691
Moorpark	56	1691
Santa Susana	56	1691
Northridge	56	1597
Raymer	56	1597
Hewitt	56	1597
Burbank	56	1503
Canoga Park	56	1691
Van Nuys	56	1597
North Hollywood	56	1503
Glendale	56	1503
Los Angeles	56	1503
Los Angeles Harbor	56	1503

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<u>To</u>	<u>Rates in Cents</u>	
	<u>(2)</u> <u>Per 100 Lbs.</u>	<u>(3)</u> <u>Per MBF</u>
Pasadena	56	-
Arcadia	56	1597
Monrovia	56	1597
El Monte	56	1691
Bloomington	56	1786
Rialto	56	1786
San Bernardino	56	1786
Redlands	56	1786
Victorville	56	-
Banning	64	- -
Palm Springs	64	-
Hemet	56	1786
Arlington	56	1786
Elsinore	56	1786
Santa Ana	56	1503
Oceanside	56	1786
Carlsbad	56	1786
Encinitas	56	1786
Solano Beach	56	1786
Delmar	56	1786
San Diego	56	1597

- (1) Tariff: PSFB Tariff No. 48-U, Cal. P.U.C. No. 189.
 (2) Carload minimum, 50,000 lbs., except where asterisked.
 (3) Carload minimum, 20,000 board feet.
 * Carload minimum, 34,000 pounds.