

**ORIGINAL**Decision No. 50651

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Application No. 35877

Charles W. Burkett, Jr., and John M. Smith, for  
 J. P. Haynes, Agent, Pacific Southcoast Freight  
 Bureau, applicant.  
 Selwyn J. Sharp, for California Redwood Association;  
 Axel Larsson, for California Redwood Association  
 and Larsson Traffic Service; W. C. Cole, for  
 Willamette Valley Lumbermen's Association and  
 Southern Oregon Conservation & Tree Farm  
 Association, intervenors in support of the  
 application.  
 Reginald L. Vaughan and Garret McEnerney II, for  
 Cheney-Brand Lumber Company, Trio Lumber Company,  
 Cannon Ball Lumber Company, Al Thrasher Lumber  
 Company, Inc., Dolly Varden Lumber Company,  
 protestants.  
 Marcel J. Gagnon, for the Commission staff.

O P I N I O N

Rates for the transportation of lumber by railroad between points in California are named in Pacific Southcoast Freight Bureau Tariff No. 48-U, Cal. P.U.C. No. 189. In addition to rates on a weight basis for movements throughout the State, the tariff also provides rates applicable on "a per 1,000 feet board measure" basis between producing points in Humboldt, Mendocino and Sonoma Counties on the lines of the Northwestern Pacific Railroad and its connections and points in the San Francisco Bay Area and in Southern California. In this proceeding, authority is sought to revise a rule in the tariff which provides the method of computing the footage to be used in

calculating the transportation charges under the board feet rates. A public hearing of the application was held in San Francisco. The granting of the sought authority was supported by California Redwood Association, Willamette Valley Lumbermen's Association and Southern Oregon Conservation and Tree Farm Association. Seven lumber companies operating in and shipping from the producing area in question opposed the granting of the application.<sup>1</sup>

It appears that a clearer understanding of the problems involved in this proceeding will be afforded by a brief review of the background of the basis for determining the footage of lumber shipments handled under board feet rates. The tariff rule in effect for many years prior to May 30, 1953, did not specifically provide for lumber over one inch thick.<sup>2</sup> In Decision No. 22273 of April 2, 1930 (34 CRC 526), in re Charles Nelson Co., et al. v. Arcata and Mad River Railroad Co., et al., involving the aforesaid rule, the Commission held that the terms "per 1,000 feet" or "per 1,000 feet board measure" meant the number of feet contained in the rough lumber before it was surfaced or trimmed, when applied to shipments of either rough lumber or dressed lumber, or both.

The foregoing interpretation, however, was not incorporated by the carriers in the tariff rule in question and the rule remained unchanged until May 30, 1953, when it was amended by adding a sentence reading "Where thickness is over one inch, actual measurement will

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<sup>1</sup> The lumber companies are: Al Thrasher Lumber Company, Inc., Dolly Varden Lumber Company, Trio Lumber Company, Inc., Cannon Ball Lumber Company, Cheney-Brand Lumber Company, Western Studs, Inc., and Van Dyke & Davis, Inc.

<sup>2</sup> During that time the rule read as follows: "Rates shown herein on lumber per thousand feet, board measure, are for thicknesses of one inch. When thickness is  $\frac{1}{2}$  inch or less it will be considered as  $\frac{1}{2}$  inch. When thickness is over  $\frac{1}{2}$  inch and not over 1 inch, it will be considered as one inch."

apply." Controversies arose over the interpretation of the amended rule. The rail lines considered that under the changed rule rough lumber dimensions applied also on lumber more than one inch thick. Shippers and other interested parties argued that the amended rule authorized the use of the actual dimensions of the lumber shipped and not the rough lumber sizes. Thereafter, the rail lines sought and were granted authority to revise the rule specifically to provide for the use of rough lumber sizes in calculating the footage of shipments of rough, surfaced, finished or trimmed lumber.<sup>3</sup> It should be pointed out that shippers and other interested parties joined with the railroads in urging the Commission to authorize the establishment of the revised rule so as to afford a definite basis for the calculation of transportation charges under the footage rates. The authorized rule became effective December 6, 1953, in Tariff No. 48-U.

According to the record in the instant proceeding, a controversy arose over the meaning of the term "rough lumber sizes" employed in the revised rule. To eliminate the confusion, representatives of the rail lines and the lumber industry jointly developed a rule specifying in detail the dimensions of surfaced or finished lumber recognized as standard in the industry together with equivalent nominal rough lumber thicknesses on which transportation charges were to be calculated. The rule, reproduced in Appendix "A" hereof, became effective January 18, 1954, in Item 520 series of Tariff No. 48-U. It is still in effect and is the subject of another controversy which is before the Commission in the instant application.

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The revised rule authorized by Decision No. 49240 of October 27, 1953, in Application No. 34591, reads as follows:  
"On rough, surfaced, finished or trimmed lumber shipped subject to rates applicable on lumber per thousand feet, board measure, charges will be calculated on rough lumber sizes, except where rough lumber thickness is  $\frac{1}{2}$  inch or less, it will be considered as  $\frac{1}{2}$  inch and where thickness is over  $\frac{1}{2}$  inch and not over one inch, it will be considered as one inch."

The present difficulty involves the movement of surfaced or finished lumber, particularly the so-called two by four studs, on which the rail lines assert that the 2-inch nominal rough basis should be applied rather than the 1-3/4-inch nominal rough thickness in calculating the footage in connection with movements under board feet rates. To eliminate the confusion, authority is sought to adjust the tariff rule by reducing the maximum range of the thicknesses of finished or surfaced lumber on which the 1-3/4-inch rough basis applies from the present 1-19/32 inches to the proposed 1-17/32 inches and by making a corresponding increase in the range for the 2-inch thickness. A comparison of the portion of the present tariff rule applicable to such lumber and of the proposed tariff provisions are shown below:

<u>Actual Surfaced or Finished Thickness</u>	<u>Nominal Rough Thickness</u>
<u>Present</u>	
Over 1-13/32-inch to and including 1-19/32-inch . . . . .	1-3/4 inch
Over 1-19/32-inch to and including 1-26/32-inch . . . . .	2 inch
<u>Proposed</u>	
Over 1-13/32-inch to and including 1-17/32-inch . . . . .	1-3/4 inch
Over 1-17/32-inch to and including 1-26/32-inch . . . . .	2 inch

Evidence in support of the granting of the application was introduced by a railroad traffic official and by representatives of California and Oregon lumber interests. According to the testimony of the rail witness, except for the nominal rough thickness of 1-3/4 inches, the tariff rule for calculating the footage on lumber shipments is in harmony with established and recognized standards of both the fir and redwood lumber industries. It was explained that the

nominal rough thickness of 1-3/4 inches is the standard in the pine lumber industry for surfaced boards of 1-19/32 inches thick. The witness asserted, however, that most of the movement under footage rates is of redwood or fir lumber and that there is very little, if any, movement of 1-3/4-inch pine from the producing points in question.

The rail witness stated that an appreciable amount of surfaced Douglas fir has appeared on California commercial markets from various producing points served by the Northwestern Pacific Railroad which has been surfaced 1/32 of an inch less than the 1-5/8 inches standard surfaced thickness of the industry, a practice referred to as scant sawing. The witness pointed out that the transportation charges on the scant-sawed lumber would be based on 1-3/4 inches nominal rough thickness under the tariff rule as compared with 2-inch thickness on fir lumber surfaced to the industry standard thickness. The difference affords the scant-sawed lumber a competitive advantage of about 12-1/2 percent in freight charges. Both the scant-sawed and industry-standard lumber are sold and charged for as 2-inch lumber. The rail witness asserted that the proposed rule change was designed to eliminate the competitive inequality in transportation charges that had developed under the tariff publication.

Witnesses, representing California and Oregon lumber manufacturers who market lumber in California, testified in support of the proposed change in the tariff footage rule. They introduced in evidence copies of publications showing the American Lumber Standard sizes and grades and the grading and dressing rules approved by the lumber industry for construction grades of fir lumber (Exhibit 1) and of California redwood lumber (Exhibit 2). According to the witnesses, lumber is bought and sold in accordance with the industry standards. The record shows that, for lumber sold and charged for

on the basis of footage for lumber of 2-inch nominal rough thickness (such as 2" x 4" and 2" x 6"), the standard actual surfaced thickness supplied to the buyer is 1-5/8 inches for fir lumber and 1-3/4 inches for redwood lumber (1-20/32 inches and 1-24/32 inches in terms of the tariff rule). The record shows also that most of the lumber production in the area served by the Northwestern Pacific Railroad consists of fir and redwood with only insignificant amounts of different types of pine being shipped.

A traffic consultant acting as traffic advisor for the redwood lumber mills stated that it was essential that the industry have a tariff rule to observe in shipping which is subject to a uniform interpretation, that the rail proposal herein was based on industry nomenclature, and that it was consistent with past Commission decisions involving footage rules.

Evidence in behalf of protestants was offered by the president of a lumber company operating a mill in the Eureka-Arcata area. According to his testimony, the protestants produce 2 by 4 studs which they market mainly in the San Francisco and Los Angeles areas. Surfacing of the studs to 1-19/32 inches thick, which is below the industry standards, has been done for some years past, the witness said, and has been accepted generally by the buyers. Assertedly, the purpose of the so-called scant sawing is to gain advantage through freight charges and to do a smoother job of surfacing. It was indicated that the practice is provided for in the grading and dressing standards for some grades of lumber.

The witness asserted that the proposed change in the tariff footage rule would result in an increase in freight charges of about one-seventh above the present levels. For his operations, he estimated that the increase would amount to from \$250 to \$300 per day,

based on the daily movement of four to five carloads of studs. He calculated that the increase in the rate to the Los Angeles market would amount to about \$2.10 per thousand board feet. The added cost of moving surfaced lumber, he stated, would influence the mills to ship rough lumber from the producing points, with the surfacing being done in the destination area to the detriment of the economy of the producing territory. He expected that a considerable amount of lumber traffic would be diverted to other forms of transportation if the proposed basis were adopted.

#### Conclusions

In re Charles Nelson Co., et al. v. Arcata and Mad River Railroad Co., et al., 1930 (34 CRC 526), the Commission found that it was the general custom of the lumber industry to determine the number of board feet of surfaced or finished lumber and to sell and charge for such finished product on the basis of the dimensions of the rough lumber. As previously stated, the Commission held that the terms "per 1,000 feet" or "per 1,000 feet board measurement" meant the rough lumber footage when applied to shipments of either rough lumber or dressed lumber, or both, for transportation purposes. The record shows that the rail lines have clarified and refined their tariff regulations affecting the calculation of the footage of lumber shipments so as to reflect industry practices and to maintain conformity with the Commission's decisions on the subject. The rule change now proposed is designed to eliminate the uncertainty which has risen in connection with the movement of scant surfaced lumber.

According to the evidence, studs produced by the protestants scant surfaced to 1-19/32 inches thick are marketed in competition with the studs produced by other mills surfaced to the thicker industry standards of 1-5/8 inches for fir and 1-3/4 inches for redwood. The studs surfaced to approved standards are identified by the trade by the nominal rough dimensions before surfacing, finishing or trimming, i.e., 2 inches by 4 inches, and are sold on the basis of the rough footage. As to the scant-surfaced studs, the record clearly shows that protestants and their brokers and wholesalers regularly classify such product as 2 inch by 4 inch studs and offer them for sale and invoice and are paid for them on such nominal rough dimensions, the same as is done with industry standard studs. It is well settled that the manufacturer's description and offering of an article for sales purposes also fixes its identity for transportation purposes.<sup>4</sup> The rule change proposed herein reflects long-established industry practice and would afford the lumber industry competitive equality as to the footage on which the transportation charges are assessed.

Upon consideration of all of the evidence of record, the Commission is of the opinion and finds that the proposed amendment of Item No. 520 series of Tariff No. 48-U as proposed in the application filed in this proceeding is justified.

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<sup>4</sup> Typical of such holdings are: J. B. Ford Company v. Michigan Central Railroad Company, et al., Docket 3242 (19 ICC 507, 510) of November 14, 1910. Glidden Company v. AC & Y Railway Company, et al., Docket 19756 (153 ICC 684, 686) of April 17, 1929. Norge Corporation v. Long Island Railroad Company, Docket 27220 (220 ICC 470, 474) of March 24, 1937. Shell Petroleum Corporation v. Abilene & Southern Railway Co., et al., Docket 24602 (191 ICC 147, 148) of February 8, 1933.



O R D E R


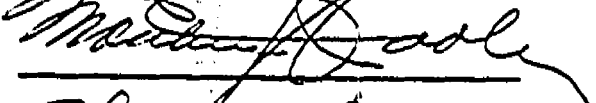
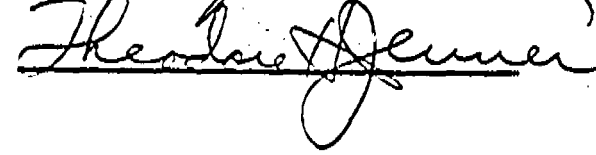
Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that J. P. Haynes, Agent, Pacific Southcoast Freight Bureau be and he is hereby authorized to amend, on not less than five days' notice to the Commission and to the public, Item 520 series of his Tariff No. 48-U, Cal. P.U.C. No. 189, as proposed in the application filed in this proceeding.

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

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

Dated at San Francisco, California, this 6<sup>th</sup> day of May, 1958.

  
 \_\_\_\_\_ President  
  
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 \_\_\_\_\_ Commissioners

Peter E. Mitchell

Commissioner S. C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX "A"

RULES AND REGULATIONS

Item	Subject	RULES
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On lumber shipped subject to rates applicable on lumber per thousand feet, board measure, charges will be calculated as follows:  
 (a) On surfaced or finished lumber of dimensions shown in Column 1 below charges will be calculated on nominal rough thickness shown in Column 2 below:

		COLUMN 1	COLUMN 2
		<u>Actual Surfaced or Finished Thickness</u>	<u>Nominal Rough Thickness</u>
		1/2 inch and less. . . . .	1/2 inch
		Over 1/2 inch to and including 1 inch. . . . .	1 inch
		Over 1 inch to and including 1-5/32 inch. . . . .	1-1/4 inch
		Over 1-5/32 inch to and including 1-13/32 inch. . . . .	1-1/2 inch
		Over 1-13/32 inch to and including 1-19/32 inch. . . . .	1-3/4 inch
		Over 1-19/32 inch to and including 1-26/32 inch. . . . .	2 inch
520-B	RATES ON LUMBER WHEREON RATES ARE NAMED PER 1000 FEET BOARD MEASURE	Over 1-26/32 inch to and including 2-1/4 inch. . . . .	2-1/2 inch
		Over 2-1/4 inch to and including 2-3/4 inch. . . . .	3 inch
		Over 2-3/4 inch to and including 3-1/4 inch. . . . .	3-1/2 inch
		Over 3-1/4 inch to and including 3-3/4 inch. . . . .	4 inch
		Over 3-3/4 inch to and including 4-1/8 inch. . . . .	4-1/2 inch
		Over 4-1/8 inch. . . . .	Apply next full inch measurement

(b) On surfaced or finished lumber charges will be calculated on nominal width computed to next full inch, including measurement of tongue and groove, if any.

(c) On rough lumber charges will be calculated on nominal rough lumber sizes, except where rough lumber thickness is 1/2 inch or less, it will be considered as 1/2 inch, and where thickness is over 1/2 inch and not over 1 inch, it will be considered as 1 inch.