

Decision No. 58419

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the investigation)
 and suspension by the Commission)
 on its own motion of reduced rates)
 published in Pacific Southcoast)
 Freight Bureau, Agent, Tariff No.)
 48-U, M. A. Nelson, Tariff Publish-)
 ing Officer, for the transportation)
 of lumber and its products, in)
 carloads, from and to certain)
 California points.)

Case No. 6110

(Appearances are listed in Appendix A)

O P I N I O N

By Supplement No. 88 to Pacific Southcoast Freight Bureau, Agent, Freight Tariff No. 48-U, M. A. Nelson, Tariff Publishing Officer, the railroads filed, to become effective May 21, 1958, reduced carload rates for the transportation of lumber and lumber products between points in California. This supplement also contained similar reduced rates applicable on interstate traffic from points in Oregon and California to points in California and Arizona.

Petitions for suspension were received from the California Forest Products Shippers' Association, the Boards of Supervisors of Humboldt and Shasta Counties, the Humboldt County Board of Trade, the Chambers of Commerce of Eureka, Del Norte, Fortuna, Garberville, Mendocino, Ukiah, Yreka, and Redding, and the California Lumber Truckers' Rate Committee, numerous highway carriers, and the Southwest Pine Association. These petitioners alleged, among other things, that the proposed reduced rates are unjust and unreasonable, in violation of Section 451 of the Public Utilities Code; are below the costs of competing carriers, in violation of Section 452 of the Code;

are unduly preferential and prejudicial, in violation of Section 453 of the Code; and are otherwise unlawful within the meaning of Sections 728 and 731 of the Code. As a result of these petitions, by order dated May 20, 1958, this Commission suspended the reduced intrastate rates until September 18, 1958; and by order dated September 10, 1958, extended the suspension to March 18, 1959. The similar reduced interstate rates were suspended by the Interstate Commerce Commission.^{1/}

Eleven days of public hearing were held before Examiner William E. Turpen at San Francisco and Los Angeles during November, 1958. Oral argument was held before Commissioner Theodore H. Jenner and Examiner William E. Turpen at San Francisco on December 23, 1958. The matter was submitted January 12, 1959, upon the filing of concurrent briefs.

Shortly before the date of the oral argument, the reduced interstate rates became effective December 20, 1958, at the end of the statutory period of suspension permitted by the Interstate Commerce Act. The decision of the Interstate Commerce Commission concerning the lawfulness of the reduced interstate rates had not been issued at that time. Accordingly, even though the record in the instant proceeding was not complete, at the oral argument on December 23, 1958, respondents renewed their motion for immediate vacation of the suspension.^{2/} The motion was supported by the intervenors and by counsel for the California Forest Products Association. It was opposed by counsel for the California Lumber Truckers' Rate Committee.

Decision No. 57753, dated December 26, 1958, in this proceeding, vacated the suspension of the intrastate rates. That decision pointed out that, although the record was not complete and although determination of the reasonableness of the suspended rates

^{1/} Interstate Commerce Commission I. & S. Docket No. 6933.

^{2/} This motion was first made by a petition filed by respondents on June 5, 1958, and made orally at the hearing on November 19, 1958. No action had been taken on these motions.

could not yet be made, the evidence in the record indicated that continuance of the suspension of the reduced intrastate rates, while substantially reduced rates are applicable on interstate shipments from Oregon to California markets, might cause great damage to lumber producers located in northern California; and it appeared to be in the public interest to vacate the suspension pending further order of this Commission. In view of this decision, no further action on the aforementioned motions is necessary.

The General Situation

The discussion of the evidence of record will be clearer if we first briefly outline the positions and contentions of the various parties.

Respondents, who are the railroads operating in California, contend that they have steadily lost lumber traffic; that the proposed rates are well above out-of-pocket costs; and that the reduced rates will stop the loss of traffic. They contend that whatever action is taken by the Interstate Commerce Commission with respect to the reduced interstate rates has no bearing on the California intrastate rates, and that the only issue before this Commission is the question of the lawfulness of the California intrastate rates here in question.

The intervenors in this proceeding comprise 28 wholesale and retail lumber yards located in the southern half of the state.^{3/} Their position generally is that they want a reduction in rates; and in particular, they contend that the reductions here in issue would help improve the competitive position of those yards located some distance from the harbors.

Protestant California Lumber Truckers' Rate Committee is a group of highway carriers engaged primarily in the transportation of

^{3/} Sometimes hereafter referred to as the southern yards.

lumber by truck.^{4/} This protestant contends that unless the truckers would meet the reduced rail rates, they would lose all the lumber hauling business, and that if they did meet the lower rates, they would be operating at a loss. Either action, they contend, would force them out of business and result in a cessation of lumber hauling by highway carriers.

The California Forest Products Association is an organization consisting of a number of lumber mills and producers located in the northern part of California.^{5/} Their primary contention is that the previously existing differential between the Oregon rates and the California rates must be maintained to enable them to remain competitive in the California market. Their position was thus stated as being opposed to the intrastate reduction if the interstate reduction is not allowed to become effective, but in favor of the intrastate reduction if the interstate reductions are permitted to go into effect. In the latter eventuality, they argued, the railroads should be required to publish intrastate rates even lower than those here in issue so as to preserve the previously existing competitive relationship. They also stated that in the event the lower interstate rates become effective and the California rates are not reduced, the California mills will be unable to market their lumber and consequently would be forced to stop operations.

Respondents' Proposal and Evidence

A general freight traffic manager of the Southern Pacific Company testified on behalf of respondents as to the considerations that led to the publication of the reduced rates. He stated that an investigation made by the railroads showed that over the past ten

^{4/} Sometimes hereafter referred to as the truckers.

^{5/} Sometimes hereafter referred to as the California mills.

years the number of intrastate rail cars of lumber terminated by the major railroads had shown a great decline.^{6/} This period, according to the witness, was one of rapid economic growth in the State of California. The carriers then decided, the witness said, that only by a reduction in rates could they hope to forestall further diversion of rail traffic and recover some of the lost traffic. He stated that certain general and specific considerations led the railroads to decide on the rate levels published. These considerations, according to the witness, include the convenience factor in loading and unloading trucks, as compared to rail cars, a higher cost to the shipper in loading rail cars, and the slower time of transit by railroad.

Although a few reductions were made in the present rates subject to a minimum weight of 34,000 pounds, in general, two new scales of lower rates were established subject to minimum weights of 60,000 and 70,000 pounds. Examples of the former rates and the rates here under investigation are shown below in Table 1.^{7/}

TABLE 1
COMPARISON OF FORMER RATES AND RATES
UNDER INVESTIGATION (IN CENTS PER 100 LBS.)

From	To	Former Rate	Rates Under Investigation		
		Min. Wt. 34,000 Lbs.	Min. Wt. 34,000 Lbs.	Min. Wt. 60,000 Lbs.	Min. Wt. 70,000 Lbs.
Eureka	San Francisco	39	39	33	30
	Fresno	53	50	42	39
	Salinas	47	47	42	39
	Los Angeles	62(1)	62(1)	50	45
	San Diego	62(1)	62(1)	55	50
Redding	San Francisco	43	39	33	30
	Fresno	53	50	42	39
	Salinas	48	48	42	39
	Los Angeles	67(2)	67(2)	55	50
	San Diego	67(2)	67(2)	60	55
Placerville	San Francisco	36	36	29	26
	Fresno	38	38	32	29
	Salinas	44	44	-	-
	Los Angeles	61	61	49	44
	San Diego	63	63	54	49

(1) Min. weight 50,000 lbs.

(2) Min. weight 40,000 lbs.

^{6/} The witness stated that in 1948 the number of cars terminated was 57,833, while in 1957 this had dwindled to 31,307 cars.

^{7/} The rates are set out in detail in Exhibit 8.

The manager of Southern Pacific's Bureau of Transportation Research introduced in evidence a series of exhibits developing the out-of-pocket costs of providing the service.^{8/} Unit costs were first developed for various factors, such as maintenance of way and structures (not including depreciation), locomotive costs, both on the basis of mileage and fuel usage, and similar items. Most of these unit costs were developed on a system-wide average basis, and in many instances involve allocations from total expenses. From these unit costs as a basis, gross ton-mile-costs for through freight trains and local freight trains were developed for each engine district. In the development of the gross-ton-mile costs, specific costs were developed for the particular district involved, wherever such data could be obtained. The use of system-average costs included a weighting so as to give effect to the particular conditions existing in the district involved. Costs per carload were then developed by adding the various costs per thousand gross ton-miles for each district traversed from point of origin to destination, and adding costs for switching, terminal costs, and loss and damage. When divided by the minimum weight, the out-of-pocket cost per 100 pounds was obtained. A few examples of the out-of-pocket costs, as developed, compared with the rates under investigation, are shown in Table 2.^{9/}

TABLE 2

COMPARISON OF COSTS AND RATES
(In cents per 100 pounds)

<u>From</u>	<u>To</u>	<u>60,000 Lbs.</u>		<u>70,000 Lbs.</u>	
		<u>Rate</u>	<u>Cost</u>	<u>Rate</u>	<u>Cost</u>
Eureka	Stockton	33	26	30	23
	San Francisco	33	27	33	24
	Fresno	42	31	39	27
	Los Angeles	50	43	45	38
Weed	Stockton	29	18	27	16
	San Francisco	33	23	30	21
	Fresno	42	23	39	20
	Los Angeles	55	35	50	31
Placerville	San Francisco	29	20	26	18
	Los Angeles	49	32	44	28

^{8/} "Out-of-pocket costs" were defined by the witness as those costs which vary with changes in traffic handled.

^{9/} Comparison of the out-of-pocket costs and rates for both 60,000 lbs. and 70,000 lbs. minimum weight from five points of origin to eleven destinations each are shown in Exhibit 12.

Although more discussion will be given to the matter later in this opinion, it is appropriate at this time to mention that protestants contended that the out-of-pocket costs, as developed by respondents' witness, were understated. Protestants objected to the use of system-wide average unit costs, the factor used in determining allocation of maintenance of ways and structures, and the exclusion of items such as ad valorem taxes, depreciation on road property, and return on investment.

Officials of the Yreka Western Railroad and the Sierra Railroad, which are short-line railroads connecting with the Southern Pacific in the northern California lumber producing areas, testified that lumber forms the bulk of their traffic. They stated that there has been a steady decrease in the yearly number of carloads of lumber handled over their railroads. The witnesses stressed the necessity of stopping the decline of lumber shipments on their railroads.

Several shippers and receivers of lumber testified for respondents in support of the reduced rates. In general, these witnesses indicated that over the past several years a diminishing percentage of their lumber shipments have been moving by rail. They were of the opinion that the reduced rates would reverse that trend.

Intervenors' Evidence

As previously mentioned, 28 wholesale and retail lumber yards located in the southern part of the state intervened in support of the reduced rates. Officials of a number of these yards testified. In general their testimony showed that during the past few years the proportion of lumber received by rail has decreased. Many of these witnesses stated that they preferred rail delivery and that they believed that the reduced rates would increase the rail proportion of shipments. Some of them stated that the reduced rates would help

their competitive position, as some of their competitors are so located as to enjoy the benefit of lower board-foot freight rates.^{10/} Others said that they face competition from lumber yards located at the harbor and which receive lumber by ship at rates lower than the rail rates. These witnesses felt that the reduced rates would enable them to increase their business.

Protestants' Evidence

The California Lumber Truckers' Rate Committee is composed of approximately forty certificated and permitted highway carriers doing most of the California intrastate for-hire lumber hauling. Counsel for the truckers contended that the reduced rates would have the effect of virtually assuring the demise of the trucking firms who engage in the transportation of lumber. A number of the lumber truckers testified. Their testimony was to the general effect that shippers would not employ the trucks unless they meet the rail rates, and that if the truckers do meet the reduced rail rates, they will be operating at such heavy losses that they cannot remain in business. The trucker witnesses presented operating statements for the year 1957 and the first half of 1958. These statements also showed estimates of revenue reductions if the reduced rail rates are met. With such estimated deductions, the operating statements indicated that heavy net losses would result. The witnesses testified that most of their transportation service consists of lumber hauling with very little backhaul traffic available.

A certified public accountant introduced in evidence, on behalf of protestants, a study he had made of average truck costs for the transportation of lumber. The costs were figured for an average

^{10/} The railroads maintain some rates in cents per 1,000 board feet. These rates were established to meet water competition and vary according to the rail location of the destination point. These rates are not in issue in this proceeding.

load of 46,000 pounds of lumber southbound and for both a 10 per cent and a 20 per cent backhaul. These costs, as developed by the witness, are shown in Table 3.

TABLE 3

Average Truck Costs for Transporting Lumber
(In cents per 100 pounds)

<u>From</u>	<u>To</u>	<u>10% Backhaul</u>	<u>20% Backhaul</u>
Redding	Oakland	26.8	24.6
Redding	Los Angeles	71.2	65.2
Eureka	Oakland	45.4	41.6
Eureka	Los Angeles	97.1	89.0

The cost and operating evidence was introduced by protestants in support of their position that Section 452 of the Public Utilities Code prohibits a common carrier from establishing a lower than a maximum reasonable rate which is less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as is required by the Commission and a finding by it that the rate is justified by transportation conditions. Protestants claimed that their cost studies showed that the cost of transportation of lumber by truck is greater than the reduced railroad rates here in question.

In his brief, counsel for protestants argued that respondents' out-of-pocket costs are understated by failing to include a number of items that have been included by the Interstate Commerce Commission in its reports and studies. Using this information, counsel for protestants claims that the out-of-pocket costs for Southern Pacific should be increased by 28 per cent, and those for Northwestern Pacific by 53 per cent.

Northern California Mills' Evidence

The California Forest Products Association occupied a unique position in this proceeding. As previously stated, their main concern was that the pre-existing differential in rates between the Oregon mills and the northern California mills be preserved. Accordingly,

their primary position was that there should be no change in any of the lumber rates, from either Oregon or California. On the other hand, the California mills maintain that it is essential for their continued existence that any reduction in the Oregon rates permitted by the Interstate Commerce Commission must be allowed in like volume (in cents per 100 pounds) in the rates applicable from northern California points. Under this position, the mills contend that if the full amount of the reduction proposed on the Oregon rates is allowed by the Interstate Commerce Commission, this Commission should require the railroads to establish rates on intrastate traffic even lower than those in issue in this proceeding.

A tariff expert introduced exhibits on behalf of the California mills to show that the reduction in rates from Oregon points amounted to up to 14 cents per 100 pounds greater than the reductions in rates from California points. Other witnesses stated that the resultant decrease in the differential in freight charges would deprive the northern California mills of the geographic advantage which it must have to sell successfully in the California market.

Witnesses for the California mills, including a professor of forestry, testified as to the differences between the lumber produced in California and that produced in Oregon. According to the testimony, in general, climatic conditions result in the Oregon timber having a more even growth and a larger percentage of higher grade lumber than California timber. As a result, lumber of the same grade can be produced cheaper in Oregon. As a further handicap, California lumber weighs more per board foot than Oregon lumber. The witness pointed out that because lumber is sold on a thousand board-foot basis, when shipped to eastern markets the freight cost is higher for California lumber than Oregon lumber. As a result of these factors, according to the witnesses, California mills must have a considerable

freight-rate advantage in order to compete on a delivered price basis with the Oregon mills. The witnesses from the northern California mills were of the opinion that the reduced rates, as proposed by the railroads in this proceeding, would result in their being unable to compete with the Oregon mills for the California market.

Conclusions

The first question to be settled is whether or not the reduced rates here in issue are unreasonable. It has long been recognized that there is a zone of reasonableness within which common carriers may exercise discretion in establishing their rates. The lower limits of that zone are fixed, generally, by the point at which the rates would fail to contribute revenue above the out-of-pocket cost of performing the service.^{11/} Table 2, supra, shows that the reduced rates are above the costs developed by the Southern Pacific by a considerable margin. The question thus resolves itself into the acceptability of the railroad's cost estimates.

As previously mentioned, protestants objected to the use of system-wide average unit costs. We are fully aware that it is virtually impossible, in an operation as large and diversified as that of Southern Pacific, to keep detailed cost records for every segment. In many instances averages must be used. In a study such as this, when such average costs are used in connection with factors peculiar to a particular segment or territory, a reasonably accurate picture is obtained. Even if local costs entirely could be obtained (which would be difficult if not impossible), we doubt whether the final results would be much different. Protestants also contended that the railroad's cost estimates were understated by the failure to include ad valorem taxes, depreciation on road property, and any return on

^{11/} See Investigation of Reduced Rates on Cement, 50 Cal. P.U.C. 622, 632 (1950).

investment. We agree with the railroad in its contention that these particular items are not a necessary part of the out-of-pocket costs, as used in a proceeding of this kind.

It may well be that some adjustments in the estimated costs might be justified. However, the Commission is of the opinion that the magnitude of such adjustments would not be sufficient to change our conclusion that the reduced rates would still be above the out-of-pocket costs of transporting lumber by a comfortable margin. The Commission therefore finds and so concludes that the rates under investigation in this proceeding are above a minimum reasonable level and therefore are not unreasonable nor unjust.

The next point at issue is the contention of protestants that under Section 452 of the Public Utilities Code, the reduced railroad rates are unlawful because they are below the cost of the transportation of lumber by truck. That section of the code permits the authorization of such rates if, after a showing, the Commission finds that the rates are justified by transportation conditions. The evidence is clear that the number of intrastate lumber shipments transported by respondents has declined to a marked extent over the past ten years. The decline is even more striking in the case of the short-line railroads located in the northern California lumber producing areas. The testimony of a number of shippers and receivers of lumber clearly shows that the trend during the past few years has been away from rail shipments. The evidence plainly leads us to the conclusion that, under the rates in effect prior to those involved in this proceeding, the railroads have been unable to compete on an equal basis with other forms of transportation. It is also apparent that the reduced rail rates will provide the railroads an opportunity to halt the decline in lumber traffic and probably increase the amount of rail lumber shipments. As the reduced rates are clearly above the out-of-pocket costs, no burden will fall on other railroad traffic.

In fact, any increase in lumber tonnage will help contribute towards the rail-overhead burden. The public will therefore benefit from the lower cost of shipping lumber.

In regard to the assertion that the trucking costs are higher than the reduced rail rates, we have said before:

"Although the statutory policy of this state is clearly against the continuation of destructive rate cutting practices, it is plainly not intended that this Commission should prevent the railroads from according the public the benefit of reduced rates when they have shown that they can operate more economically than other carriers; that the Commission should base rail rates upon truck costs; or that it should fix minimum rates for all carriers based upon the costs of the highest cost agency of transportation. Neither truck nor rail carriers are entitled to have an 'umbrella' held over them if it appears that their services do not fill an essential public need". (Re Alcoholic Liquors, 43 C.R.C. 25, 36.)^{12/}

The evidence of record shows that shippers and receivers usually can use either rail or truck service. The evidence shows that in many cases trucks are preferred because of convenience, speed of transit, or for other reasons. When the truck and rail rates are the same, these factors favor the truck. If additional service from the truck operator is considered more valuable, the trucker may charge and the shipper may pay a higher rate. The highway carrier is not required to charge the same rates as the railroad. We therefore find and conclude that the reduced rail rates are justified by transportation conditions.

The allegations of prejudice and preference appear to be concerned entirely with the relationship of interstate rates to the intrastate rates in issue in this proceeding, and the issues thus raised are beyond the jurisdiction of this Commission. Connected with this is the argument of the northern California mills that we should require respondents to publish even lower rates so as to maintain the pre-existing differentials between Oregon and California origin points. As pointed out by respondents, this is not a proceeding to fix maximum reasonable rates. If any party is of the opinion

^{12/} See also Southern Pacific Co. v. Railroad Commission, 13 Cal. 2d 89, 103.

that the rail rates are higher than maximum reasonable rates, a suitable complaint can be filed.

Upon careful consideration of all of the facts and circumstances of record it is concluded, and we hereby find, that the reduced rail carload rates here involved are not unreasonable, discriminatory, nor in any other respect unlawful, and that they are justified by transportation conditions. As the order of suspension has been previously vacated, it is now only necessary to discontinue this investigation.

O R D E R

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

IT IS ORDERED that Case No. 6110 be and it is hereby discontinued.

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

Dated at San Francisco, California, this 12th day of May, 1959.

E. L. Fox
President

Theodore H. James

Commissioners

Commissioner Everett C. McKenna, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

A P P E A R A N C E S

C. W. Burkett, Jr., and John MacDonald Smith of Southern Pacific Co.; Frederick G. Pfrommer of The Atchison, Topeka and Santa Fe Railway; Walter G. Treanor of Western Pacific Railroad; Clair W. MacLeod of California Western Railroad; Respondents.

Turcotte & Goldsmith by F. W. Turcotte, for Peoples Lumber Co., Dill Lumber Co., Sunland Lumber Co., Myrtle Avenue Lumber Co., San Fernando Lumber Co., Center Lumber Co., American Lumber Co., Chandler Lumber Co., Arrowhead Lumber Co., Mullin Lumber Co., Boyd-Dainell Lumber Co., Lumber & Builders Supply Co., Pierce Lumber Co., Reynolds Lumber Co., Tarzana Lumber Co., Arcadia Lumber Co., Inland Lumber Co., Encinitas Lumber Co., Seeman Lumber Co., Reserve Warehouse, Inc., Geo. Pike Lumber and Supply, Builders Market, Rialto Lumber Co., John Suverkrop Lumber Co., Brey-Wright Lumber Co., Yosemite Lumber Co., King Lumber Co., and Krik Lumber Co.; Intervenors in support of Respondents.

Marvin Handler for California Lumber Truckers' Rate Committee, Protestant.

Berol & Silver by Edward M. Berol and Bruce R. Geernaert, for California Forest Products Assn.; Ralph Hubbard for California Farm Bureau; C. R. Nickerson for Pacific Coast Tariff Bureau; James Quintrall, Arlo D. Poe and J. C. Kaspar for California Trucking Associations, Inc.; R. J. Blich for Fairhurst Lumber Company; Interested Parties.