

ORIGINAL

Decision No. 53820

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
PACIFIC SOUTHCOAST FREIGHT BUREAU
for authority to increase certain
rates on lumber to Ventura and
Santa Barbara, and for alternative
relief under Section 460, Public
Utilities Code.

Application No. 40244

John MacDonald Smith, for Pacific Southcoast Freight
Bureau, Applicant.
Turcotte & Goldsmith, by F. W. Turcotte, for various
wholesale and retail lumber companies, protestants.

O P I N I O N

The above-entitled application was filed pursuant to an order issued in Case No. 5727. That proceeding involved the complaint of a number of retail and wholesale dealers of lumber maintaining places of business in southern California against certain rates maintained by the railroads on lumber and forest products. The rates in question were nonintermediate in application and were published in cents per 1,000-board-foot measure. They applied on shipments from points in the Redwood Empire Area to named points in southern California, and were originally established to meet competition of vessel shipments. Complainants contended that the rates as maintained by the railroads unduly preferred complainants' competitors by according such competitors a lower basis of rates than enjoyed by complainants.

Decision No. 56449, dated April 1, 1958, in Case No. 5727, found that, except for the rates to Ventura and Santa Barbara, complainants had not shown that the rates complained of were unjust,

unreasonable, unduly preferential, unduly prejudicial, or otherwise unlawful. It also found that the water competition upon the basis of which the rates to Ventura and Santa Barbara were established was no longer present in a degree which would warrant a continuation of the departures at these points. The defendant railroads were thereby ordered to correct the situation either by appropriate reductions or by filing an application seeking increases so as to remove the long- and short-haul departures at Ventura and Santa Barbara, as specified in the opinion of Decision No. 56449.

In accordance with the above referred to order, the Pacific Southcoast Freight Bureau, on behalf of the railroads, filed the instant application on July 10, 1958. The application was amended on August 8, 1958. In the meantime, a few days before the effective date of Decision No. 56449, the complainants in Case No. 5727 filed a petition for rehearing. Application No. 40244 and the petition for rehearing in Case No. 5727 were held in abeyance pending the outcome of a related matter.^{1/} The petition for rehearing was denied by Decision No. 58753, dated July 14, 1959.

Public hearings in Application No. 40244 were held before Examiner William E. Turpen at Santa Barbara on November 9 and 10, 1959. The proceeding was taken under submission on February 2, 1960, upon the filing of concurrent briefs.

The rates in question presently are \$15.03 per thousand board feet to both Ventura and Santa Barbara. The application, as amended, requests relief in the alternative. The first alternative seeks authority to cancel the board-foot rate to Santa Barbara, in

^{1/} Case No. 6110, which involved the suspension and investigation of reduced lumber rates in tariffs filed by the railroads. This proceeding was decided by Decision No. 58419, dated May 12, 1959.

which case the present rates in cents per 100 pounds would apply, and to increase the Ventura rate to \$15.97. The second alternative seeks authority to increase the Santa Barbara rate to \$16.91, and to retain the \$15.03 rate to Ventura.

As previously stated, in Decision No. 56449, it was found that the water competition at Ventura and Santa Barbara was no longer present in a degree to warrant continuation of the board-foot rates at those points based on that competition. The evidence of record in this proceeding contains nothing to cause the Commission to change that conclusion. The record shows that, although it is physically possible to handle lumber into Santa Barbara and the vessel operators quote rates to Santa Barbara, movements of lumber over the dock at Santa Barbara have been inconsequential. Applicant attempted to justify retention of the water-compelled rate at Ventura by showing that actual competition exists through the Port of Hueneme, which is located approximately ten miles south of Ventura. The record shows that although a considerable quantity of lumber has passed through the Port of Hueneme during the past several years, such shipments seem to have stopped by April, 1959. A lumber dealer located in Ventura testified that although he has received a number of shipments through the Port of Hueneme none of them had originated in the territory served by the railroad applicants. The record does not show the points of origin of other lumber shipments received at this port. We find and conclude that no cause has been shown to justify long- and short-haul departures at Ventura, or any other point, due to vessel competition through the Port of Hueneme. From the above conclusions it would appear that the board-foot rates at both Ventura and Santa Barbara should

be cancelled. However, the record discloses that there are other circumstances which affect the level of the rate at Ventura.

The rates involved in Case No. 5727, excluding Ventura and Santa Barbara, range from \$15.03 per 1,000 board feet at Los Angeles, Long Beach and San Diego harbors, and certain nearby points, to \$15.97 and \$16.91 at points distant from the harbors. Decision No. 56449 stated that the higher rates were designed to meet the competition of water rates to the ports plus truck costs beyond. That decision found that no adjustments should be made in these rates and that they had not been shown to be unjust, unreasonable, unduly preferential, unduly prejudicial, or otherwise unlawful. The record in this proceeding shows that the \$15.97 rate applies at a number of points adjacent to Ventura, both north and south of Ventura on the main line, and on the Ojai branch line. It is clear that establishment of a higher rate at Ventura than at the communities immediately adjacent thereto could result in undue prejudice to consignees located at Ventura. It therefore follows that establishment of the \$15.97 rate at Ventura is warranted.

Protestants in this proceeding were 14 retail and wholesale lumber dealers, who were some of the complainants in Case No. 5727. Their position was stated by counsel as follows: "Appearing as protestant insofar as the application seeks to increase any lumber rates at either Santa Barbara or Ventura, and a protestant insofar as the applicant seeks any Section 460 relief at either point, but in favor of retaining the \$15.03 rates at Santa Barbara and Ventura, if made applicable at all intermediate points, otherwise a protestant there."

Prior to the hearing being set in Application No. 40244, counsel for protestants filed, on July 27, 1959, a written "Motion

to Make Application More Definite and Certain". Protestants contended in this document that the application stated no justification for the sought relief. As the Commission's Rules of Procedure do not require an application to set forth therein justification for a sought authority, no action was taken on the motion prior to the hearing being held. In view of the conclusions reached hereinbefore, the motion will be denied.

At the start of the hearings, protestants objected to the receipt of any testimony on the grounds that the application did not state facts sufficient to warrant the granting of any relief, and that the application does not comply with the order in Case No. 5727, and that, accordingly, the applicant is in contempt of the Commission and is not entitled to seek any relief from the Commission. The examiner correctly overruled the objection and proceeded with the taking of evidence. As previously stated, the order in Case No. 5727 required applicant to take one of two actions:

(1) To reduce rates at intermediate points so as as to remove the long- and short-haul departures at Ventura and Santa Barbara; or

(2) To file an application to establish increased rates so as to remove the long- and short-haul departures at Ventura and Santa Barbara based on water competition at those points.^{2/}

Applicant chose the second of these courses of action. As previously discussed, the record shows that establishment of the rate of \$15.97 per 1,000 board feet at Ventura is in effect cancellation

^{2/} Although the order in Decision No. 56449 does not express it in these words, it says "as specified more particularly in the foregoing opinion". The opinion states, in effect, that the departures which should be discontinued are those based on water competition at Ventura and Santa Barbara.

of the present rate based on water competition through Ventura and establishment of a rate equal to that applicable at points adjacent on all sides, and based on water competition through Los Angeles, these rates having been approved in Decision No. 56449. It is thus clear that Application No. 40244 satisfies the order in Case No. 5727.

At the conclusion of the hearing, counsel for protestants moved for dismissal of the application on the grounds, first, that no special case had been established which would warrant the maintenance of nonintermediate rates at Ventura or Santa Barbara, and, second, that no justification had been shown for any increase in rates at either point. As previously discussed, the evidence shows that a special case exists which would warrant a nonintermediate rate at Ventura so as to provide an equality of treatment with nearby points. It is also obvious that the increases here involved are necessary to satisfy the order of the Commission in Case No. 5727 and are justified. Protestants' motion to dismiss the application will be denied.

Along with this motion, protestants requested an adjourned hearing to prepare and present evidence to show, in effect, that water competition at the Port of Hueneme, Ventura, or Santa Barbara does not now exist, and also to show that the protestant lumber dealers located at intermediate points taking a higher rate would be adversely affected by a lower nonintermediate rate applicable at Ventura. It is apparent from the previous discussion that our opinion with respect to the water competition at the Port of Hueneme, Ventura, or Santa Barbara warranting special rate treatment would not be changed by any additional evidence that could be presented by protestants. The finding of a special case warranting the establishment of a nonintermediate rate at Ventura is based on the existence of the same

rate at immediately adjacent points. The relationship between the rates at these immediately adjacent points and the rates applicable at the intermediate points serving the protestant lumber dealers was found in Case No. 5727 to be not unjust, unreasonable, unduly preferential, unduly prejudicial, or otherwise unlawful. Such evidence as might be presented by protestants to show an alleged adverse effect at the higher rated intermediate points is outside the scope of this proceeding, and is, in effect, an attempt to reopen matters that were finally disposed of in Decision No. 56449, in Case No. 5727. We affirm the examiner's denial of protestants' request for an adjourned hearing.

The record shows that the board-foot rates and the rates per 100 pounds alternate, so that whichever basis produces the lower charge is applicable.^{3/} The record also shows that the rate of \$15.03 per 1,000 board feet produces lower charges on lumber weighing 3,342 pounds and over per 1,000 board feet. Cancellation of or increase in the \$15.03 rate would therefore result in increases only on the minority of shipments that weigh 3,342 pounds and over per 1,000 board feet. The rates in cents per 100 pounds now applicable at Ventura and Santa Barbara were found reasonable in Decision No. 58419, dated May 12, 1959, in Case No. 6110, previously referred to.

It is our opinion, and we so find, that applicant should be authorized to cancel the rate of \$15.03 per 1,000 board feet at Santa Barbara; to increase the rate from \$15.03 to \$15.97 per 1,000 board feet at Ventura; and to publish the rate at Ventura as non-intermediate in application. We further find that the resulting increases are justified and that the rates will be reasonable.

^{3/} The rates per 100 pounds presently applicable to both Ventura and Santa Barbara are as follows:

76 cents, minimum weight 34,000 pounds
62 cents, minimum weight 50,000 pounds
50 cents, minimum weight 60,000 pounds
45 cents, minimum weight 70,000 pounds

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:

(1) That Pacific Southcoast Freight Bureau be and it is hereby authorized to publish and file, on not less than ten days' notice to the Commission and to the public, changes in the nonintermediate board-foot rates named in Pacific Southcoast Freight Bureau Tariff No. 48-U, applicable from Groups 5, 6, 7 and 8, by cancelling the rate to Santa Barbara, and by increasing the rate to Ventura from \$15.03 to \$15.97 per 1,000 board feet.

(2) That authorizations previously granted applicant to deviate from the provisions of Article XII, Section 21, of the State Constitution, and Section 460 of the Public Utilities Code in connection with the present nonintermediate rates to Santa Barbara and Ventura, referred to in the opinion herein, be and they are hereby cancelled.

(3) That common carriers parties to Pacific Southcoast Freight Bureau Tariff No. 48-U, in establishing and maintaining the rate of \$15.97 to Ventura, authorized in paragraph (1) above, be and they are hereby authorized to depart from the provisions of Article XII, Section 21, of the State Constitution, and Section 460 of the Public Utilities Code, and that schedules containing the rates published under this authority shall make reference to this order.

(4) That, except to the extent hereinabove granted, Application No. 40244 be and it is hereby denied.

(5) That the various motions made by protestants in this proceeding, and referred to in the opinion, be and they are hereby denied.

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

Dated at San Francisco, California, this 22nd day of March, 1960.

Lawrence A. Page
President
John L. G. [unclear]
William H. [unclear]
C. [unclear]
Theodore J. [unclear]
Commissioners