

Decision No. 60642**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
 the rates, rules and regulations, charges,)
 allowances and practices of all common)
 carriers, highway carriers and city car-)
 riers relating to the transportation of)
 any and all commodities between and within)
 all points and places within the State of)
 California (including, but not limited)
 to, transportation for which rates are)
 provided in Minimum Rate Tariff No. 2).)

Case No. 5432
 (Order Setting Hearing
 dated April 9, 1957)

Frank Loughran, for U. S. Plywood Corporation;
Milton A. Walker, for Fibreboard Paper
 Products Corporation; Ralph B. Herlan, for
 California Manufacturers Association;
J. C. Kaspar, A. D. Poe and J. X. Quintrall,
 for California Trucking Associations;
 interested parties.
Armand Karp, for Callison Truck Lines, Inc.,
 respondent.
William C. Bricca, Hector Anninos and M.J.
Gagnon, for the Commission's staff.

O P I N I O N

By its Order Setting Hearing dated April 9, 1957, in Case No. 5432, the Commission initiated formal consideration of the question as to whether the use of rail rates for highway transportation from or to the plant of the Mutual Plywood Corporation at Fairhaven, Humboldt County, and from and to other industrial plants and shipping areas under similar circumstances and conditions, is authorized under the provisions of Items Nos. 200, 210, 220 and 230 series of Minimum Rate Tariff No. 2. The record shows that subsequent to the issuance of the above-mentioned order Mutual Plywood Corporation was acquired by, and merged into, U. S. Plywood Corporation.¹

¹ The corporation operating the plant here in issue, whether before or after the merger, will sometimes be hereinafter referred to as "Mutual".

Public hearing of this phase of Case No. 5432 was held before Examiner Carter R. Bishop at San Francisco on February 10 and 11, April 27 and June 24, 1959. Evidence received at the hearing related solely to the question at issue as it relates to the Mutual plant at Fairhaven. With the filing of concurrent briefs the matter was taken under submission on August 14, 1959.

Issuance of a decision in this phase of Case No. 5432 has been held in abeyance during the intervening months following submission, pending the issuance of a decision on rehearing in a related matter. By Decision No. 60128, dated May 17, 1960, in Case No. 5432, the Commission found, on rehearing, that the definitions of "point of origin" and "point of destination" as set forth in Item No. 10 of Minimum Rate Tariff No. 2 apply in connection with the aforementioned Items Nos. 200 to 230 of that tariff, and, as a matter of clarification, specifically amended the latter group of items to so provide.² By Decision No. 60450, dated July 28, 1960, the Commission denied a petition for rehearing of Decision No. 60128. The conclusions reached in said Decision No. 60128 bear directly on the disposition to be made of the question presented in the instant phase of Case No. 5432.

Items Nos. 200 through 230 of Minimum Rate Tariff No. 2 provide in essence for the use of common carrier rates in lieu of those set forth in Tariff No. 2, when such common carrier rates produce a lower aggregate charge for the transportation of the same kind and quantity of property between the same points.

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The question decided by Decision No. 60128, supra, was first formally considered ex parte in Decision No. 57108, dated August 18, 1958. Petitions for rehearing were filed by various parties. Rehearing was held on December 15, 1958, following which Decision No. 58182 was issued on March 24, 1959. Petitions for rehearing of that decision also were filed and granted. Rehearing of Decision No. 58182 was held on November 17 and 18, and December 11, 1959. Concurrent briefs were filed, with submission of the matter on March 10, 1960, following which the aforesaid Decision No. 60128 was issued.

Effective August 29, 1958, pursuant to the aforesaid Decision No. 57108 (Footnote 2, supra) Items Nos. 200 through 230 were amended in effect to provide that, for the purposes of those items, all points within a single industrial plant or shipping or receiving area of one consignor (or of one consignee) should be considered as one point of origin (or of destination). These amendments in effect provided also that an industrial plant should include only contiguous property which should not be deemed separate if intersected only by public street or thoroughfare.³

The foregoing minimum rate tariff amendments, which were made specifically as tariff clarification, have been continuously in effect since their initial publication and their propriety was reaffirmed by the Commission in the aforesaid Decision No. 60128 of May 17, 1960.

At the hearings in the instant phase of Case No. 5432, Mutual took the position that the use of rail rates in connection with movements via highway carriers from or to the Mutual plant at Fairhaven is authorized by the tariff provisions here in issue. It was the view of the Commission's staff that the use of rail rates was not so authorized. Counsel for each introduced evidence and offered argument in support of the respective positions.⁴ Representatives of a highway common carrier, a shipper, and of the California Trucking Associations also participated in the development of the record.

³ The provisions in question are specifically included in the definitions of "Point of Origin" and "Point of Destination" as set forth in Item No. 10 series of the minimum rate tariff. The amendments of Items Nos. 200 through 230, mentioned above, stated that the provisions of those items should be subject to said definitions of "Point of Origin" and "Point of Destination".

⁴ Evidence on behalf of Mutual was adduced through the supervisor of traffic of U.S. Plywood Corporation and through three transportation consultants with broad experience in transportation rates. The staff's evidence was presented by an associate transportation representative and by an associate transportation rate expert.

Findings and Conclusions

The record shows and we hereby find the following to be facts:

1. Mutual owns and operates a plant for the manufacture of plywood at Fairhaven, an unincorporated community located on Humboldt Bay about two miles south of Samoa (also an unincorporated community).

2. The plant structure at Fairhaven is adjacent to a public highway, extending to and beyond Samoa. Said structure is also adjacent to water transportation facilities, via which logs are received for the manufacture of plywood.

3. A standard gauge spur track extends from said structure at Fairhaven to a connection with the rails of the Northwestern Pacific Railroad Company⁵ at Samoa, a distance of approximately two miles. Except that it crosses two public roads near the Mutual plant structure, the track is located for the entire distance on a private right of way approximately 50 feet in width. Near the Fairhaven end of this spur track a passing track has been constructed by Mutual at its own expense. Also, at Fairhaven a short storage track is connected with the aforesaid spur track. That portion of the main spur extending from the plant structure for about 100 yards was built in 1950 by Mutual as a connection with the remainder of the two-mile spur, which had previously existed for other purposes.

4. While Mutual does not own the two-mile spur track, nor the 50-foot private right of way on which the latter is laid, Mutual was granted, under an agreement dated May 12, 1950, as amended June 27, 1953, the permanent and perpetual right, license and privilege to use said track and to move railroad cars over said track for the service of its plant at Fairhaven.

5. Mutual possesses two industrial-type locomotives that it uses to transport freight cars, which are loaded generally with plywood, from the plant structure at Fairhaven to the interchange

⁵ Hereinafter referred to as "Northwestern".

track with Northwestern at Samoa, and to transport cars from said interchange to said plant structure, and for other purposes. Interchange of cars with Northwestern at Samoa is provided for in an agreement with that road dated March 29, 1954. The plant locomotives are manned by full-time employees of Mutual.

6. Because of limited car storage facilities at the plant structure Mutual finds it necessary, as soon as cars are loaded with plywood, to move them from the plant to temporary storage locations anywhere along the two-mile spur track. Similarly, inbound loads of veneer and plant supplies are thus temporarily stored.

7. Mutual carries on car-cleaning operations of inbound empties at points all along the two-mile spur. Also, dunnage is reclaimed at various points on the spur.

8. There is a planked loading area on the spur track near the Northwestern interchange at Samoa, and adjacent to the public highway. On many occasions heavy machinery has been unloaded from rail cars by Mutual at said planked area.

9. The operations variously described above entail several movements by Mutual's locomotives each working day over the entire two-mile spur.

10. Locomotives of Northwestern do not move over the two-mile spur beyond the aforementioned interchange area located at Samoa. Although, under the agreement of May 12, 1950, mentioned above, parties other than Mutual may be accorded the right to operate over the two-mile spur, said spur has been used exclusively, at least since 1953, by Mutual. Under Mutual's interchange agreement with Northwestern, the placing of rail cars on the interchange by the latter constitutes delivery to Mutual, and similar action by Mutual constitutes delivery to Northwestern.

11. Under the aforementioned 1950 agreement, the entire responsibility of maintaining the two-mile spur track rests with

Mutual. That company is currently engaged in a tie replacement program and has replaced approximately one half of the line with heavier rail.

12. The rights held by Mutual Plywood Corporation under the aforementioned agreements of 1950, 1953 and 1954 were assigned to U. S. Plywood Corporation when the former company was acquired by the latter.

13. All of the foregoing physical, contractual and operational facts and circumstances have prevailed continuously since March 29, 1954, the date of the interchange agreement (and most of them prior to that date).

Based upon the foregoing findings, and after careful consideration of all the evidence and argument of record, we are of the opinion and hereby further find that:

14. Mutual's plant site at Fairhaven, together with the two-mile spur track and private right of way on which it is located, extending from said plant site to the interchange track with Northwestern at Samoa, constitutes a "single industrial plant" as that expression is used in the definitions of "Point of Origin" and "Point of Destination" set forth in Item No. 10 series of Minimum Rate Tariff No. 2, and as said definitions relate to the provisions of Items Nos. 200 through 230 series of said tariff; and, consequently, that:

15. The use of rail rates in connection with highway carrier movements from or to the Mutual plant at Fairhaven is authorized, and has been continuously so authorized since March 29, 1954, under the provisions of Items Nos. 200, 210, 220 and 230 series of Minimum Rate Tariff No. 2.

Minimum Rate Tariff No. 2 contains no definition of "single industrial plant" or of "shipping or receiving area". Witnesses for Mutual and for the Commission's staff offered their own definitions of the terms. We have not deemed it necessary to frame definitions of said terms in order to reach a conclusion relative to the question here in issue. In his brief, counsel for the staff set forth suggested definitions of "industrial plant" and "shipping area" for incorporation in Minimum Rate Tariff No. 2. If definitions of these terms are to be included in the tariff in question the matter should first be made the subject of a public hearing, at which all interested parties would be accorded the opportunity of being heard.

In his brief, counsel for Mutual argued that apparently any conclusion reached in this phase of Case No. 5432 could be of small general significance as a guide concerning general application of the Minimum Rate Tariff No. 2 and that such conclusion would not relate to any specifically performed transportation but rather to hypothetical transportation which could or might be performed.⁶ This phase of Case No. 5432 grew out of differences of opinion as between shippers, carriers and the Commission's staff regarding the proper answer to the question propounded in the Order Setting Hearing dated April 9, 1957. While no specific shipments have been brought into issue herein, the conclusions herein reached will serve as a very real guide to the determination of applicable minimum rates and charges on shipments originating or terminating at Mutual's Fairhaven plant, both for the future and for the past statutory period. It is true, of course, that the conclusions herein reached are predicated

⁶ Counsel for Mutual also suggested that this proceeding be dismissed without opinion, and that, if the Commission believes it necessary, an informal opinion be issued which would generally express its legal conclusion as to the meaning of the expression "single industrial plant". Such an opinion would, of course, be that of the staff and not the Commission, which acts only in formal matters. The suggestions will not be adopted.

on evidence relating only to the situation at the Fairhaven plant and are not governing as to minimum rate application at industrial plants located elsewhere in the State.

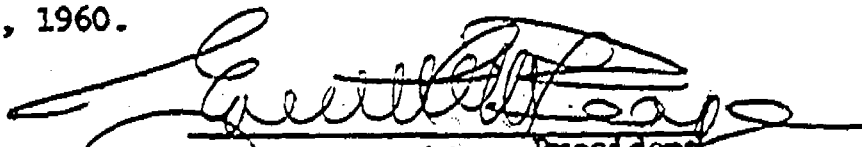
In view of the fact that the question embraced by this phase of Case No. 5432 has been resolved herein insofar as it relates to the Fairhaven plant and since no evidence has been offered regarding the circumstances surrounding transportation from or to industries at other locations, it appears that this phase of Case No. 5432 should be discontinued.


Therefore, good cause appearing,

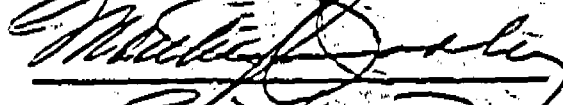
IT IS ORDERED that the phase of Case No. 5432 embraced by the Commission's Order Setting Hearing dated April 9, 1957, is hereby discontinued.


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

Dated at San Francisco, California, this 30th day of August, 1960.



President






Commissioners

Commissioner Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.