

ied

Decision No. 67356

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FIBREBOARD PAPER PRODUCTS CORPORATION,)

Complainant,)

vs.)

SOUTHERN PACIFIC COMPANY,)

Defendant.)

Case No. 7308
(Filed March 29, 1962)

SUPPLEMENTAL OPINION.

This proceeding involves switching charges maintained by defendant for the transportation of carload shipments of plaster-board from complainant's plant at Southgate (Patata) to points within defendant's switching district at Los Angeles. The complaint alleges that the switching charges assessed were and are higher than the charges for line-haul service on identical shipments from the same origin to Industrial, the next station on defendant's line beyond the Los Angeles switching limits. Detailed discussions of the complaint, defendant's answer and the situation involved are set forth in Decision No. 66115, dated October 1, 1963, in this proceeding. It is not necessary to restate the detail here.

In brief, complainant contended that the "unit" principle adopted by the Interstate Commerce Commission should apply; that is that all points within the switching limits of a station are deemed to be the same point. Complainant contends that under this principle all points in the switching district are intermediate to Industrial, and that therefore the lower line-haul rate to Industrial should apply on shipments to all points in the switching district.

Decision No. 66115 found that Los Angeles and Industrial are adjacent, that defendant's tariff rule provides that rates will apply to directly intermediate points and that as there is no intermediate point involved here defendant's tariff rule does not apply to the transportation here involved. However, the decision found that the Owens Park Lumber Company is located on the same line and route and in the same direction as Industrial on movements from Fibreboard's plant at Southgate, and ordered reparation on such shipments.

On October 16, 1963, complainant filed a "Petition for Modification and Re-Argument", contending that under the policy set forth in Decision No. 66115 applicable switching charges cannot be determined from the tariffs alone, a physical inspection of the tracks being necessary to resolve questions of intermediacy. The petition again urged adoption of the "unit" principle.

On January 28, 1964, the Commission issued its Order Granting Re-Argument for the limited purpose of receiving concurrent written briefs from the parties and from the Commission staff discussing the following question:

"Question: Whether the long- and short-haul provisions of the California Constitution and Public Utilities Code are applicable to shipments from the Fibreboard Plant in Zone 8 of Southern Pacific Company's Los Angeles switching limits to:

- "(1) Owens Park Lumber Company (Zone 5).
- "(2) the other destination points located within the Los Angeles switching limits, whether or not on the same line or route as Industrial."

Briefs were filed by Fibreboard Paper Products Corporation and by Southern Pacific Company, and the matter taken under submission on February 27, 1964.

In its brief on re-argument Fibreboard again advocated adoption of the "unit" rule as the only satisfactory answer to determining if a plant in the switching district is intermediate to other points or plants. Complainant discussed a number of examples showing how plant locations can be located in relation to the through tracks and illustrating the difficulty of determining whether or not a particular industry is intermediate to others.

Defendant, in its brief, repeats its previous arguments that switching charges should not be compared with line-haul rates. Switching charges are constructed in a different manner than line-haul rates and applied in a different fashion. Defendant also argues that whereas the unit principle as set out by the Interstate Commerce Commission applies at a switching district intermediate between two other points, the situation here is entirely different as the shipments are from the switching district to a point just outside the district and the district is not intermediate.

The California Supreme Court has stated that Section 21, Article XII, of the Constitution (which contains the long- and short-haul rule) does not apply where two different types of service are involved, with rates established for each kind of service by different and reasonable methods. ^{1/} Further review of the record in this proceeding shows that the line-haul rate and the switching charges involved here are for different services and should not be compared. Accordingly, our finding in Decision No. 66115 that the long- and short-haul provisions were violated with respect to shipments to Owens Park Lumber Company was in error.

^{1/} Pasadena v. Railroad Commission, 192 Cal. 61, 66 (1923).

Upon reconsideration of the matter we find that the switching charges and the line-haul rates involved in this proceeding are for different types of services and that the long- and short-haul provisions of Article XII, Section 21 of the California Constitution are not applicable. In view of this finding, further discussion of the "unit" principle is not necessary. We therefore conclude that the order in Decision No. 66115 should be revoked and the complaint dismissed.

O R D E R

IT IS ORDERED that:

1. The order in Decision No. 66115, dated October 1, 1963, in Case No. 7308, is hereby revoked.
2. The complaint, Case No. 7308, is hereby dismissed.

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

Dated at San Francisco, California, this 10th day of June, 1964.

William L. Bennett
President

George H. Throckmorton

Frederick B. Hallock
Commissioners