UNITED STATES MARITIME COMMISSION

No. 569

NATIONAL CABLE AND METAL CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

Submitted November 5, 1940. Decided January 23, 1941

Rates charged on automobile battery cables from Los Angeles Harbor, Calif., to Norfolk, Va., and Philadelphia, Pa., found inapplicable. Applicable rate determined. Complaint dismissed.

Earl W. Cox for complainant.

W. M. Carney, M. G. de Quevedo, and *H. S. Brown* for defendant and intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This case was presented under the shortened procedure. Complainant's petition for oral hearing, received after issuance of the examiner's proposed report, is hereby denied. The conclusions recommended in the proposed report are adopted herein.

By informal complaint filed December 20, 1939, and subsequently by formal complaint, it is alleged that defendant's rate of 90 cents per 100 pounds for the transportation of automobile terminals or cables from Los Angeles Harbor, Calif., to Norfolk, Va., was unreasonable, inapplicable, and unlawful in violation of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933. Reparation is requested.

Luckenbach Steamship Company, Inc., intervened alleging that it had transported a shipment of the same commodity from Los Angeles Harbor to Philadelphia, Pa., on which complainant has refused and failed to pay the legally applicable freight charges.

The evidence and argument relate solely to the legally applicable rate. Rates will be stated in amounts per 100 pounds.

The articles under consideration were seven different styles of battery cables with terminals attached, for use in automobiles. They were made of 133 strands of copper wire, tinned for protection against corrosion; five of the styles of cables are insulated with rubber and have steel armor covers; the other two styles are not insulated or covered. Welded to one end of each cable is a terminal made from 100 percent lead alloy, with a small cadmium plated iron bolt inserted for pressure purposes; at the other end is a lug made of copper, cadmium coated. The cables shipped via defendant, described and billed as "Battery Cables with Terminals," ranged from 5 to 93½ inches in length, and weighed 31,880 pounds. Shipment was made January 19, 1938, consigned to Bowes "Seal Fast" Corp., Indianapolis, Ind., and moved by rail from Norfolk to destination. Charges of $172.15 were prepaid on February 3, 1938, at a rate of 54 cents. The billing was later revised from 54 to 90 cents, and the additional charge of $114.77 was paid October 15, 1938. Complainant contends that the rate of 90 cents was inapplicable and that the applicable rate was 54 cents.

The shipment via Luckenbach Steamship Company was made to the same consignee. It moved December 11, 1937, weighed 29,710 pounds, and charges thereon of $160.43 were prepaid at a rate of 54 cents. Subsequently the billing was revised from 54 to 90 cents and balance due bill for $106.96 was issued which complainant has not paid.

The applicable tariff, Alternate Agent Wells' Eastbound Tariff SB–I No. 7, contained no specific rate on the article shipped, but by Rule 55 it provided that where no specific commodity rate applicable to a commodity was named in that tariff but a specific commodity rate was named in R. C. Thackara's Westbound Tariff SB–I No. 6 for the article, the rate named in the westbound tariff would be applicable to eastbound shipments of that article.

The rate originally assessed was published at fifth amended page 290 of Alternate Agent Wells' SB–I No. 6, as follows:

Item 3785—Wire, cable, etc., viz:
Cable, copper, with or without insulation.
Cable (copper), electric, lead covered and/or armored, in coils or on reels.
Cable, wire, brass, bronze, or copper.
Strand, wire, brass, bronze, or copper.
Terminals, cable, or wire.
Minimum weight, 24,000 pounds.

The rate upon which the charges were corrected appeared at second amended page 107, as set forth below:

Item 485—Brass, bronze, copper, yellow metal, monel metal goods, nickel, nickel silver or nickel alloy, plain, chromium or nickel-plated, not silver-plated, viz:
Terminals (automobile battery), with or without connecting cables, insulated or not insulated, in boxes.
Minimum weight, 30,000 pounds.

Complainant argues that the fact that the cables had lead alloy terminals attached, eliminates the application of the 90-cent rate for the reason that that rate is restricted to automobile battery terminals of brass, bronze, etc. Defendant and intervener do not challenge complainant's statement that the terminals are not made of the metals referred to in Item 485.

According to them the entry covering automobile battery terminals was inserted in that item to apply on these specific articles, it being understood that the terminals were made of the metals named in the caption. They concede that the establishment of the entry under that caption was in error because complainant's terminals were made of a different metal than that named in the caption, but feel that the specific designation in the item, while contrary to the caption, is specific enough to cover the article in question. They state that until receipt of complainant's memorandum and supporting affidavit, Item 485 was regarded as being properly applicable, and that it is the most specific designation in the tariff.

In support of its position that the 54-cent rate in Item 3785 is the only proper rate, complainant shows that the articles shipped are known in the trade as "cables"; that the trade name for the terminals which are welded to the cables is "Bowes Seal-Fast KoRoDless Metal Terminals"; that the word "terminals" is defined in Funk and Wagnalls' New Standard Dictionary as pertaining to or creative of a boundary or end; a terminating point or part; a terminus; end; and that "cable" is defined as any heavy wire rope; also a similar support made by binding together parallel wires. Defendant and intervener argue that the entries in Item 3785 apply only to cable by itself; strand by itself, or terminals by themselves; but that there is no provision in the entries of the item, in the item itself, or in the tariff which would authorize application of the rates named in that item to a battery cable when made of wire with the terminals attached. In other words, they say that item would apply on the separate articles but not on the combined articles, and therefore that Item 3785 was inapplicable and could not have been applied to complainant's shipments.

The exceptions of complainant to the proposed report insist that its shipments were of "Terminals, cable or wire"; that the tariff does most assuredly name terminals, cable or wire, in every sense of the words; that the commodity is specified in Item 3785; that the word "Cables" is not used in the tariff, and that therefore the articles under consideration are terminals, cable or wire, and that we should so find.

Complainant's witness was unable to locate any manufacturer of automobile cables selling or shipping terminals without being connected to the cable. Its testimony and exhibit picturing the several styles of its battery cables, demonstrate that these are articles manu-

factured from certain of the commodities described in Item 3785. In this respect cable, strand and terminals are raw materials or component parts which when combined in a process of manufacture, become separate and complete articles of a type essentially different from the constituent parts. A product made from another product by a manufacturing process cannot itself be correctly described as the commodity from which it is derived, and to contend that item 3785 accurately describes, for instance, 24-inch lengths of insulated cable, armored, to one end of which a lead alloy terminal has been welded and having a copper lug at the other end,[1] clearly distorts the item.

Defendant and intervener argue that if the specific naming of the metals in Item 485 precludes application of that rate to articles made of any other metal, then the rate in Item 3695 should be applied here as unquestionably the articles shipped were automobile parts. This is named at fourth amended page No. 285 as follows:

> Item 3695—Vehicle (self-propelling) parts and equipment, viz: Automobile parts, metal (not including accessories which are not integral parts of an automobile), n. o. s.
>
> Rate $1.15 per 100 pounds for Any Quantity.

Complainant's testimony and exhibit admit of no dispute that the articles shipped were parts or equipment, of metal, for self-propelling vehicles, which are not otherwise specified in the governing tariff.

In interpreting a tariff the terms used must be taken in the sense in which they are generally understood and accepted commercially, and neither carriers nor shippers should be permitted to urge for their own purposes a strained and unnatural construction. Tariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carriers controls, for the shipper cannot be charged with knowledge of such intent or with carriers' canons of construction. A proper test is whether the article may be reasonably identified by the tariff description. Applying these principles to the facts of this case it is apparent that the rates in both Items 485 and 3785 are not applicable to the battery cables shipped by complainant but that under the circumstances Item 3695 is the only item accurately descriptive of complainant's commodity.

We conclude and decide that the rates assessed against complainant's shipments were inapplicable; that the rate of $1.15 per 100 pounds as published in Item 3695 of Alternate Agent Wells' Westbound Tariff SB–I No. 6, is the applicable rate, and that the shipments were undercharged.

An order dismissing the complaint will be entered.

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[1] Described in complainant's exhibit I as being for use in all 4 and 6 cylinder model Chevrolets, exc. Std. '35, 1925–36.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of January A. D. 1941.

No. 569

NATIONAL CABLE AND METAL CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 567

CITY OF MOBILE, ET AL.[1]

v.

BALTIMORE INSULAR LINE, INC., ET AL.[2]

Submitted August 28, 1940. Decided February 4, 1941

Tariff U. S. M. C. No. 1, filed on behalf of defendants by Agent G. A. Meyer, Item 26 thereof, and exceptions thereto, under which on shipments from interior origins to Puerto Rico combination of inland-ocean rates are equalized via all ports, found not published as required by section 2 of the Intercoastal Shipping Act, 1933; said tariff, item and exceptions, and practices thereunder, found unjust and unreasonable in violation of section 18 of the Shipping Act, 1916; and as observed, to result in undue and unreasonable preference and prejudice as between localities in violation of section 16. Cancelation ordered.

S. P. Gaillard, Jr., for complainant; *Roscoe H. Hupper* and *Burton H. White* for Baltimore Insular Line, Inc., Bull Insular Line, Inc., and New York & Porto Rico Steamship Company; *Robert E. Quirk* for Lykes Brothers Steamship Company; and *T. M. Stevens* for Waterman Steamship Corporation, defendants. *William C. Rigby* for People of Puerto Rico; *W. L. Thornton* for Port of New York Authority, Merchants Association of New York, Shippers Conference of Greater New York, Maritime Association of New York and Boston Port Authority; *Rene A. Stiegler* for Board of Commissioners of the Port of New Orleans and St. Louis Chamber of Commerce; *Rene A. Stiegler* and *E. H. Thornton* for New Orleans Joint Traffic Bureau; *J. K. Hiltner* for United States Pipe & Foundry Company and Newark Chamber of Commerce; *Doss H. Berry* for Port Commission of Beaumont; *D. A. Simmons* and *H. B. Cummins* for Houston Port & Traffic

[1] The Department of State Docks and Terminals, State of Alabama; Mobile Chamber of Commerce.

[2] Bull Insular Line, Inc., Baltimore Insular Line, Inc., Lykes Bros. Steamship Co., Waterman Steamship Corporation, and The New York and Porto Rico Steamship Co.

Bureau; *O. G. Richard* and *A. A. Nelson* for Board of Commissioners of the Lake Charles Harbor and Terminal District; *F. G. Robinson* for Galveston Chamber of Commerce and Galveston Cotton Exchange and Board of Trade; *Charles R. Seal* for Baltimore Association of Commerce; and *S. H. Williams* for Joint Executive Transportation Committee of Philadelphia Commercial Organizations, interveners.

Report of the Commission

By the Commission:

Exceptions filed to the examiner's proposed report were orally argued. Our conclusions differ somewhat from those recommended by the examiner.

Complainants allege that a practice of defendants, under Agent G. A. Meyer's Tariff U. S. M. C. No. 1 whereby on shipments to Puerto Rico the combination of the inland rates from point of origin to seaboard and ocean rates beyond are adjusted so that the lowest combination via any United States port served by a defendant will apply via any other port from which any defendant regularly maintains service, is unduly preferential and prejudicial and unjust and unreasonable in violation of sections 16 and 18 of the Shipping Act, 1916.

Bull Insular Line, Inc., and Baltimore Insular Line, Inc., maintain weekly sailings from New York, N. Y., and Baltimore, Md., respectively. Jointly, they have a sailing from Charleston, S. C., and Jacksonville, Fla., every 3 weeks. Porto Rico Line operates a weekly service from New York; it also maintains a weekly sailing from New York to San Juan only with combination passenger and cargo vessels. Lykes maintains a weekly service from Lake Charles, La., fortnightly sailings from Galveston and Houston, Tex., and on alternate weeks from Beaumont, Tex., and a monthly service from Orange and Port Arthur, Tex. Waterman operates a regular weekly service from New Orleans, Mobile, and Tampa. There is no competition between defendants at any origin port except New York.

Defendants, through their Agent, G. A. Meyer, have filed tariff schedule U. S. M. C. No. 1 containing an item numbered 26 (see Appendix), entitled "Port Equalization," which authorizes a deduction of 3 cents per 100 pounds from published rates on C. L. and L. C. L. traffic to Puerto Rico moving via New York, N. Y., and originating at points located on railroads or parts thereof named in the item, subject to specific exceptions published in connection with particular commodities listed in other portions of the tariff. The 3-cent deduction represents the generally recognized differential between inland rail rates from interior origins to New York and Baltimore, Md. On L. C. L. shipments certain additional allowances or deductions are

made to cover cost of transfer at New York, as provided for in paragraph (b) of the item or in connection with individual commodities. The item provides that the total deduction in any rate shall not exceed 30 percent of the published ocean rate.

By so-called exceptions to Item No. 26 published in individual rate items, defendants have extended the application of port equalization to traffic moving via New York from origins in Georgia, Tennessee, the Carolinas, and other states in Southern Territory, and from origins as far west as Denver, Colo., not located on any railroad named in Item No. 26, and to traffic moving from interior points via Baltimore, Charleston, S. C., and Jacksonville, Fla., and various United States Gulf ports. Exceptions should be no broader in scope than the provisions to which they are published as exceptions. Therefore, the publication under the guise of exceptions of deductions from local rates on shipments moving via New York from origins not located on any railroad named in Item No. 26 and on traffic which does not move via New York, are not proper exceptions. It follows that the tariff is not published as required by section 2 of the Intercoastal Shipping Act, 1933, as amended.

Deductions from published rates on flour, rice, barley, wheat, cereals, corn meal, hominy, and flax of interior origin, with few exceptions, have been published independently of Item No. 26. Amounts intended to apply as deductions from local rates in some cases are published only as "differentials." That term is not sufficiently descriptive of the use intended. The tariff therefore is ambiguous.

Porto Rico Line, Bull Insular, and Baltimore Insular Lines, and Waterman solicit business from shippers located at points in West Virginia, Central Freight Association Territory, and points north and west thereof. From some points inland rates to seaboard favor Atlantic ports; in other instances, such rates favor Gulf ports. For instance, on refrigerator motors and units of Dayton, Ohio, origin, lower rates apply to North Atlantic ports, but Waterman equalizes routes to New Orleans and/or Mobile by making reductions in its ocean rate ranging from 20 to 34 cents per 100 pounds. Waterman also equalizes against North Atlantic ports on shipments from Greenville, Muskegon, and Niles, Mich., and from Kendallville, Ind. The same or similar articles are manufactured at Evansville, Ind., from which point inland rates favorable to the Gulf are equalized on shipments moving via New York and Baltimore. Other instances of like character could be cited. Bull Insular and Baltimore Insular Lines equalize against Waterman on traffic originating in Southern Territory; and Waterman and Lykes equalize against each other on traffic from origins tributary only to Gulf

ports. Equalization favorable to ports served by Lykes are limited in number, but equalizations against such ports are numerous. Waterman serves both New Orleans and Mobile, yet there are few published equlizations via Mobile. Waterman concedes that it obtains traffic from areas naturally tributary to ports served by other defendants. For instance, it draws traffic from Waycross, Ga., a point nearer Jacksonville, Fla., and equalizes New Orleans with Texas ports on traffic from San Antonio, Tex., notwithstanding shipments must move through Houston to reach New Orleans. There are also deductions from local rates on traffic which originates at ports. For instance, carriers operating from New York draw traffic which originates at Baltimore and at Charleston. Traffic originating at Port St. Joe, a port served by Waterman, also moves through Jacksonville. The conference agreement does not authorize equalization on traffic from ports.

It is apparent from the foregoing that there are no geographical limitations upon the practice and that, as one defendant stated "everything is equalized against everything." Many of the published equalizations from areas in which two or more of defendants solicit for business reflect retaliatory action against equalizations which may have been previously published by a competitor.

Defendants operate jointly under a conference agreement approved in 1938 pursuant to section 15 of the Shipping Act, 1916. The agreement states that—

> Rates will be modified so as to make the through rate on merchandise originating at interior points of the United States to port of destination via any United States Atlantic or Gulf port, from which a service is regularly maintained, equal to the through rate from the same interior point to the same destination via any other United States Atlantic or Gulf port, from which a service is regularly maintained, except that the maximum absorption will not exceed 30% of the basic ocean freight rate.

Under the Agreement uniform local rates for each commodity transported have been established for application from all ports by all carriers. While Waterman and Lykes originally signed the agreement, they now are opposed to the equalization practice. Waterman states present practices under the tariff foster uneconomic transportation, destructive competition between carriers and unnecessary dissipation of carrier revenue, and that knowledge that rates will be drastically reduced results in local rates higher than might be necessary without such reductions.

The Atlantic Carrier Group contends that Gulf carriers need not equalize if they do not desire to do so, but when the former group equalizes on traffic from Southern States and other areas having lower inland rates to ports they do not serve, obviously

failure of the latter group to equalize when inland rates favor Atlantic ports would result in the loss of much traffic which now moves through Gulf ports. Gulf carriers are unable to have the equalization practice discontinued, or even modified, through the Conference, since a unanimous vote of members present at a meeting is required before any change can be made in the agreement or in rates, charges, rules, or practices. Interveners representing Baltimore and Gulf ports west of New Orleans join other interests in opposing continuation of the practice.

Defendants operating from Atlantic ports move that the complaint be dismissed on the ground that a port is not susceptible to undue preference or prejudice. They cite *Texas and Pacific Ry. Co.* v. *United States*, 289 U. S. 627, a case involving a rail rate adjustment by the Interstate Commerce Commission, in which the court defined the word "locality" as used in section 3 of the Interstate Commerce Act. The court said:

> The word "locality" has its proper office as denoting the origin or destination of traffic and the shipping, producing, or consuming areas affected by rates and practices of carriers. The term was, however, not intended to cover a junction, way station, a gateway, or a port as respects traffic passing through it.

Defendants fail adequately to consider one point influencing the court's decision. With respect to traffic moving by rail en route to destinations beyond seaboard, ports are neither origins of the traffic nor shipping, producing or consuming areas affected by the rates; they are merely transshipping points. As to water transportation, a port also is a transshipping point, but it is something more. It is an area affected by the port-to-port rates established by the carrier. It is also the place at which, either actually or constructively, the contract of affreightment is executed. Therefore, a port becomes for the water movement a point of origin and under the court's decision, is within the term "locality" even though shipments have received prior rail transportation under an independent contract. Respondents argue that the failure of Congress to amend section 16 of the Shipping Act when section 3 of the Interstate Commerce Act was amended specifically to include a port, port district or gateway, supports their position. Because of the distinction aforementioned that failure also can be urged with equal force in opposition to their contention. They also question the right of complainants to file a complaint. But the City of Mobile and Mobile Chamber of Commerce, organizations created under state authority, are persons as defined by section 1 of the Shipping Act. Such organizations are, therefore, proper complainants under section 22. The Department of State Docks and Terminals also is a proper complainant. It it is also urged that port organiza-

tions representing Lake Charles, La., and Beaumont, Houston, and Galveston, Tex., should not have been permitted to intervene on the ground that their intervention unduly broadens issues. Similar objection also was interposed to the intervention of the Boston Port Authority and the Baltimore Association of Commerce. Boston has little, if any, interest, but other intervening interests are vitally affected, and their admission as parties to this proceeding tends to eliminate multiplicity of complaints. No new issues are raised and carriers cannot claim surprise, for many of the protested interventions were granted prior to hearing.

The lawfulness of tariffs publishing port equalization to the extent here in issue has not previously been presented for determination. In *Puerto Rican Rates*, 2 U. S. M. C. 117, we found that a tariff rule identical in substance with the above quoted provision of the conference agreement did not conform to the requirements of section 2 of the Intercoastal Shipping Act, 1933, as amended. The tariff under consideration was filed effective October 20, 1939, pursuant to that finding. Such publication, as amended, initially disclosed in tariff form the extent of the practice. Port equalization prevails in some offshore trades but, contrary to contentions of some defendants, it is not generally practiced by ocean carriers.

It is complainant's position that the North Atlantic carrier group should not solicit traffic from origins on and west of the generally recognized Chicago-Indianapolis-Cincinnati line. They show that inland rate structures are the result either of voluntarily established rates which, because not suspended or attacked by complaint, have continued in effect, or which through proper proceedings have been specifically prescribed or found justified by the Interstate Commerce Commission.[3] Our attention also is directed to export rates[4] to Gulf and South Atlantic ports lower than domestic rates to such ports and lower from common origins than are applicable to the North Atlantic, established after due consideration of factors inherent in the transportation service to, facilities for handling cargo at, and ocean services available from the respective ports. It is their position that the development and maintenance of a port depends upon traffic from inland areas naturally tributary thereto, as well as that which originates at Seaboard; that the equalization practice nullifies inland rate structures through the diversion of traffic to ports to which higher rates ordinarily would apply; and that established, prescribed or ap-

[3] 128 I. C. C. 349: *Consolidated Southwestern Cases*, 123 I. C. C. 203; 160 I. C. C. 355; 205 I. C. C. 301; 213 I. C. C. 83; 225 I. C. C. 401.

[4] While traffic between the United States and Puerto Rico is domestic commerce, export rates of rail or other carriers filed with the Interstate Commerce Commission are applicable thereto.

proved inland rates should be left undisturbed. They contend that action by defendants designed to divert traffic indirectly challenges the lawfulness of inland rate structures, and they urge that since both the Interstate Commerce Commission and the Maritime Commission are agencies of Congress, one such agency should not permit nullification of rate relationships established or approved by the other. All opponents of the practice join complainants in this contention.

Complainants are especially interested in structural steel, iron and steel articles and pipe and fittings which are manufactured within the State of Alabama in the Birmingham district. They claim the natural route is through Mobile because of the distance factor and more frequent sailings there available. Bull Insular and Baltimore Insular Lines, in an attempt to equalize the infrequent service from Charleston with Waterman's more frequent service from Mobile and New Orleans shrink their ocean rate from Charleston, S. C., by the exact amount of the difference between the inland rates to that port and to Mobile. From some origins inland rates to New Orleans and Mobile are the same; yet Waterman shrinks its rate only from New Orleans to equalize the rates via Northern ports. Shippers are thereby deprived of their choice of routes via New Orleans or Mobile, and Mobile is deprived of an opportunity to compete. Such action is unduly prejudicial to Mobile and unduly preferential of New Orleans in violation of section 16 of the Shipping Act, 1916.

Houston interests state they are particularly affected by equalizations through New Orleans because the latter port can draw traffic from Southern, Central and Western Trunk Line Territory while Houston can draw little traffic except from origins in the Southwest. Galveston is similarly situated. The Texas and Pacific Ry. Co. and Louisiana and Arkansas Lines have voluntarily established rate parity to New Orleans and Texas ports, but it is said that rates from southwest interior origins generally favor the Texas ports. This appears particularly true with respect to flour. Waterman equalizes rates via New Orleans with combinations available via Galveston from in excess of 200 origins of flour or grain in Kansas, Oklahoma and Texas by shrinking its local rate from New Orleans from 1 to 12 cents, dependent upon the origin and the route to seaboard. In some instances the shrinkage represents the difference between an established rail export rate to a Texas port and a rail domestic rate to New Orleans, notwithstanding the existence of the same export rates to both ports. On shipments from Carnegie, Okla., via Frisco Lines and Texas and New Orleans R. R. Co. to New Orleans, milled at Sherman, Tex., the shrinkage is 8 cents. It is said that the export rate does not apply via that route, and that the difference in rates via

established routes would be less than 8 cents. On flour via New Orleans, milled at Galveston, from wheat of Ames, Okla., origin, a shrinkage of 8 cents in ocean rate is arrived at by the use of a 43-cent domestic rate from Ames to New Orleans as against an alleged 35-cent export rate to Galveston. The export rate from Ames to New Orleans is said to be 36 cents. Because of the foregoing, defendant Lykes and Texas port interveners state a substantial quantity of flour has been diverted from Texas ports to New Orleans. If any deduction in the local rate on traffic moving via New Orleans is warranted such deduction must be based on differences between applicable export rates over established routes from a common origin to both Texas ports and New Orleans. The use of a difference between an export rate to one port and a domestic rate to another port, or between other unlike rates to different ports, as a basis for reductions in port-to-port rates, is, in the circumstances, an unreasonable practice.

Respondents maintaining service from New York and Baltimore also equalize inland rates to those ports on shipments of oats, flour, corn, wheat, barley, cereals, farina, glucose, hominy, oat meal, and flax originating at approximately 800 points in Iowa and points in Minnesota and South Dakota when milled in transit at Cedar Rapids, Iowa; on corn meal, wheat, flour, and corn from 22 origins in Illinois and 120 origins in Indiana when milled at Indianapolis, Ind.; and from Minneapolis, Minn., when milled at Milwaukee, Wis. From 22 origins in Illinois different deductions apply, dependent upon whether the milling point is Decatur or Indianapolis. In addition to deductions based on milling points, there also are differences in deductions dependent on the point of origin of the basic grain. On shipments of cotton piece goods, finished, from origins in Georgia, South Carolina, North Carolina, and Tennessee, via New York or Baltimore, deductions differ not only with each point of origin but also upon whether shipments move to seaboard via truck, all-rail or rail-water routes. Such varying deductions result in innumerable port-to-port rates for substantially similar transportation. The diversion through New York by means of "equalization" of traffic, which by reason of a substantially more favorable geographical position is naturally tributary to south Atlantic ports served by Bull Insular, and Baltimore Insular Lines or to Gulf ports served by Waterman, is uneconomic and unnecessarily wasteful of carrier revenue.

On shipments of flour, corn, and wheat of Iowa and South Dakota origin, moving via a North Atlantic port; and on shipments of finished cotton piece goods of Georgia, South Carolina, North Carolina, and Tennessee origins routed via New Orleans or Mobile, there

are deductions in ocean rates which exceed the maximum of 30 percent established by the conference agreement. Other instances of like character appear throughout the tariff. Except on shipments via New York from origins on designated railroads, the tariff does not establish a maximum deduction, but the conference agreement provides a maximum of 30 percent of the local ocean rate. Consequently, all published exceptions in excess of 30 percent are made without section 15 authority.

On passenger automobiles shipped from various origins in Michigan, Indiana, Wisconsin, and Ohio, moving via New York, New Orleans, and Mobile, deductions from a 19-cent per cubic foot local rate are published in cents per 100 pounds. Obviously, it is not possible to ascertain from the tariff the applicable port-to-port rate. The same difficulty exists with respect to other commodities when measurement rates are charged, due to the optional weight or measurement rate system which defendants have established. On commercial units and chassis of from 1½ ton capacity to 7 tons or more, of Springfield, Ohio, and Fort Wayne, Indiana, origin, deductions ranging from $6 to $28.75 per unit will be made on drive-away deliveries to carrier's pier at New York in not less than 2 units. If single units are delivered only 80 percent of the published deductions will be made. Elsewhere in the tariff there are deductions ranging from .02 to .40 cents or more per 100 pounds on shipments of commercial units and chassis via New York of the same origins, unrestricted as to means of transportation to the port, number of units delivered, or manner of delivery, published on a sliding scale weight basis per unit up to and exceeding 18,000 pounds. Published deductions and rates resulting therefrom on shipments of Fort Wayne and Springfield origins are conflicting. A deduction on drive-away deliveries to a carrier at Baltimore of $2 per unit will be made only on vehicles up to and including one ton originating at Springfield. Variable deductions on a similar sliding scale weight basis also are published for application on shipments via New York, Baltimore, Mobile, or New Orleans of commercial units and chassis from various interior manufacturing points. Apparently defendants' intention was to make deductions of 2 cents or more per 100 pounds, but the tariff does not so state. Defendants' tariff would result in more than 100 different port-to-port rates on vehicles, from each origin. Such a system of rate making is not only confusing, ambiguous, and impossible of intelligent interpretation, but unreasonable. It requires users of the tariff to obtain information not published in the tariff, and to make innumerable mathematical calculations to determine what the applicable rate will be. Such a tariff does not comply with the requirements for clarity and certainty in rate

publication contemplated by the Act. These and other publications resulting in numerous different port-to-port rates on the same commodity for substantially similar transportation raise the question whether there should be more than one such rate on shipments of interior origin lower than the local rate. To prohibit more than one rate in every instance might be somewhat arbitrary, but certainly it is unreasonable to have a large number of such rates.

Lake Charles, La., is in the center of the rice producing area of southwestern Louisiana, the average distance from mills being 58.4 miles as compared with an average of 174.6 miles to New Orleans. Inland rates from ten origins of rice to Lake Charles are lower than to any other port. Prior to October 1, 1939, rates via New Orleans and Lake Charles were equalized from all origins. Waterman now equalizes only from Abbeville, Crowley, Jennings, and Kaplan. Shippers at such points have a choice of routes at equal rates but shippers at other origins, similarly situated in respect to distances and inland rate to Lake Charles, are not accorded like treatment. New Orleans interveners cite *Board of Commissioners of Lake Charles Harbor and Terminal District* v. *N. Y. & P. R. SS Co.*, 1 U. S. S. B., 154, decided in 1929, in which no unlawfulness was shown concerning the equalization of rates on rice of inland origin via Lake Charles and New Orleans. They state that Lake Charles was not then served by the carrier operating from New Orleans and contend that since Waterman now does not serve Lake Charles no preference or prejudice can result. We do not agree. The interveners overlook the fact that equalization via New Orleans is now restricted to four origins as was not the case when the decision cited was rendered. The susceptibility to undue preference and prejudice is apparent, but no shipper of rice complained of injury. Consequently the record does not warrant a finding of unlawfulness under section 16. This situation, however, is analogous to the attempt of carriers operating from New York hereinbefore discussed, to draw to those ports traffic from origins substantially more favorably situated geographically to other ports.

Waterman does not confine its equalization practices to rail rates alone, but also equalizes the rail and water routes to New Orleans on shipments of rice originating at or trucked to New Iberia, La., and likewise rail and barge routes to New Orleans from origins in eastern Arkansas. Interveners representing the Port of New Orleans, and carriers operating from Atlantic ports, oppose equalization of differentials between rates by different modes of transportation to the same port. Such an equalization is not within the scope of the conference agreement. All-rail rates from such origins to both Lake Charles and New Orleans are the same and, therefore, no basis exists for equalization under the agreement. Lykes also makes deductions

in its ocean rate from Lake Charles, Houston, and Galveston. When shipments move via Houston and Galveston they are routed through Beaumont. Lykes does not shrink its ocean rate from Beaumont. Consequently that port is denied an opportunity to compete for traffic and is therefore unduly prejudiced in violation of section 16. Equalization by Waterman and Lykes against each other is inconsistent with their position that equalization of inland rates is an unlawful practice.

Baltimore Association of Commerce directs attention to indefiniteness and ambiguity in section (b) of Item 26. (See appendix.) Because paragraph (b) names only minimum and maximum allowances, the specific amount which will be allowed on a particular shipment cannot be determined, and consequently shippers cannot ascertain what port-to-port rate will apply. This situation is complicated further by exceptions published in the commodity rate section of the tariff. It is also impossible to determine from the tariff whether the origin of any shipment is located on a railroad named in either paragraph (e) or (f). We have herein found that such indefiniteness in tariffs does not comply with the publication requirement of the Intercoastal Shipping Act, 1933. That applies with full force to this situation.

Rates from inland points to seaboard of rail or other carriers are based on quantity, there being L. C. L. and frequently two or more C. L. rates on each commodity. Recognition by defendants of the resulting differentials produces ocean rates lower on small quantities than are charged on larger quantities of the same article, with the amount of the rate increasing as the specified minimum weights increase. In this respect the practice results in an unreasonable tariff. Except on bulk commodities, to which the equalization rule does not apply, local rates are uniform on all shipments. Tariffs of ocean carriers rarely name rates based on quantity unless there exist competitive rail or other inland carrier rates between common origins and destinations based on quantity. There is no such situation in this trade.

Many other instances of objectional features of defendants' present tariff could be cited. However the foregoing appears sufficiently illustrative.

Defendants Porto Rico Line and Bull Insular and Baltimore Insular Lines urge that the practice should not be condemned because of the length of time it has been observed, the fact that shippers and consignees generally have become accustomed to it, and that ports and businesses have been built thereon. However, they offered little evidence. Tariff rules, and practices thereunder, if otherwise objectionable cannot be upheld for any of the stated reasons. The contention also is made that since the rule results in shippers paying

the same amount via any port, and affords carriers and ports an equal opportunity to attract traffic, no unlawfulness exists. They cite *Port Differential Investigation*, 1 U. S. S. B. 61. At page 71 of that decision the contention of New York and other port interests that rail-water rates should be equalized via Atlantic and Gulf ports was considered and dismissed on jurisdictional grounds.

Island interests urge that continuance of equalization not only is desirable, but necessary, in order that the delivered cost of merchandise might be the same to all, thus permitting a consignee to compete with others in the same business. Even with equalization the suggested result could not be achieved. All purchasers do not patronize the same manufacturer and the combination of inland-ocean rates is different for each origin.

The Port of New York Authority and allied interests contend that those opposing the practice seek to subordinate the interests of shippers to the interests of ports, and that their position is conflicting because they favor practices of rail carriers whereby through rates via various through routes are equalized. We do not concede that defendants' equalization practices are the outgrowth of factual situations similar to those faced by rail carriers or that the same necessity for equalization exists in ocean transportation. The Port of New York Authority admits that the present practice may warrant some curtailment because of the absence of geographical limitations. Such curtailment can best be initially effected by voluntary action of the carriers themselves.

All proponents of equalization urge that we do not condemn equalization in principle and that we adhere to our decision in *Intercoastal Rate Structure*, 2 U. S. M. C. 285. In that case we found particular equalization rates unreasonable, without prejudice to the establishment of reasonable rules designed only to equalize rates where necessary in view of the applicable rail rates to the ports. We said:

> * * * it appears that the present port equalization rates are primarily designed by the various respondents to entice a larger share of the business away from their competitors. The question put before us is not the lawfulness of port equalization as a rate-making principle, but whether the present port equalization rates are reasonable. The record in this proceeding shows that the present rates are ambiguous in their application and may be unjustly discriminatory as between commodities and localities. To this extent, they further confuse an already complicated competitive struggle and should be declared unreasonable.

The lawfulness of port equalization under a particular tariff rule is presented here. In the case cited the practice was more limited in scope than in this case and the shrinkage in local rate in no instance amounted to 30 percent. A further important distinction is that in the Puerto Rican trade there is no actual competition with trans-continental and joint rail-water routes from inland points. As in *Inter-*

coastal Rate Structure, *supra*, defendants' rule and tariff also are designed to permit each of them to entice a larger share of business from its competitor. If there was justification to find the equalization rates in intercoastal trade unreasonable, greater justification for a similar finding exists in this instance.

Proponents urge that rates resulting from the rule apply as proportional rates on through traffic and that in view of the decision in *Proportional Westbound Intercoastal Rates on Cast Iron Pipe*, 1 U. S. S. B. B. 376, and *Intercoastal Rate Structure*, *supra*, such rates are not unlawful. Rates under consideration in those cases were published as single-factor proportionals. We recognize that proportional rates in water transportation may be proper in some instances, but it must not be presumed that every rate which is lower than the corresponding local rate is a lawful proportional rate. Except when delivery costs at ports are relied upon differentials between defendants' local rates and the alleged proportional rates do not reflect any competitive cost or other transportation factor in the transportation service which defendants actually perform. A carrier undertaking to establish proportional rates should be prepared to prove some such relationship. Except Lykes, each defendant stipulated that the amount of traffic obtained by the practice and the aggregate of the shrinkages in local rates was substantial. This stipulation was entered subsequent to expressed reluctance by defendants favoring equalization to disclose the amount of traffic diverted from other ports by the practice and the financial result thereof. Such reluctance, when considered in the light of evidence of record regarding unnecessary dissipation of revenue and knowledge that a large part of the Puerto Rican traffic originates inland gives rise to an inference that local traffic may be unduly burdened. Obviously respondents have given little consideration to the cost of transporting shipments originating at inland points as compared with costs of transporting similar shipments originating at the ports.

The contention that inland rates to seaboard, whether voluntarily established or prescribed or approved, should not be nullified cannot be entirely ignored. We could not prescribe a rule or regulation designed solely to equalize inland rate differentials. Carriers may do many things which we could not compel, but that privilege is not unlimited. To permit continuation of unrestricted solicitation by carriers for business through condonation of a practice whereby unfavorable inland rates are overcome would wholly ignore the right of a port to traffic to which it may be entitled by reason of its geographical location. Such right appears fundamental under statutes designed to establish and maintain ports. Under section 8 of the

Merchant Marine Act, 1920, we are required to recognize territorial regions and zones tributary to ports and should there exist rates to seaboard which, among other things, do not recognize the natural direction of the flow of traffic recommendations may be made to the Interstate Commerce Commission for such action as it deems necessary. The contention has been made that section 8 has no relation to rate regulatory provisions of the Shipping Act, 1916. But to wholly ignore basic policies of Congress would be unwarranted.

We find that Item 26 of Agent G. A. Meyer's Tariff U. S. M. C. No. 1, published exceptions thereto, and practices thereunder are unjust and unreasonable, and that equalization as observed in the Puerto Rican trade results in an unreasonable tariff in violation of section 18 of the Shipping Act, 1916. We further find that equalization as practiced results in undue and unreasonable preference and prejudice between localities in violation of section 16 of the Shipping Act, 1916. We further find that the tariff item above mentioned, exceptions thereto and other tariff provisions do not comply with section 2 of the Intercoastal Shipping Act, 1933. An appropriate order will be entered.

APPENDIX

Item No. 26.—*Port Equalization.*—Rates named herein, except on cement, portland, in bags or barrels; coal, in bulk; fertilizer, n. o. s., in bulk; acid phosphate, in bulk; sulphate of ammonia, in bulk; sulphur and potash, in bags or bulk; will be subject to this rule and except as otherwise specified under individual commodities, the following differentials will be deducted from such rates on traffic as defined in this rule:

(a) On carload shipments of commodities, as defined above, which have moved in continuous railroad or other carrier movement from points, as defined in section E hereof, to the individual carriers, parties hereto, at New York for forwarding to ports in Puerto Rico served by the respective individual carriers as provided on page 5 of this tariff, a differential of three (3) cents per one hundred (100) pounds will be deducted from rates named herein unless otherwise provided for under individual commodities.

(b) On less than carload shipments of commodities as defined above, which have moved in continuous railroad or other carrier movement from places as defined in Section E hereof to the individual carriers, parties hereto, at New York for forwarding to ports in Puerto Rico served by the respective individual carriers as provided on Page 5 of this tariff, a differential of three (3) cents per one hundred (100) pounds will be deducted from the rates named herein, unless otherwise provided for under individual commodities,

in addition to which the following allowances will be made to cover cost of transferring less than carload shipments from railroad or other carriers' terminals to the loading terminals of the individual carriers.

Shipments, except commercial and passenger automobiles, transferred from railroad or other carriers' terminals to the loading terminals of the individual carriers located in New York, actual cost of transfer but not in excess of twenty-three (23) cents per one hundred (100) pounds, subject to minimum of one dollar and fifty cents ($1.50), except that when transfer of less than carload shipments can be performed by rail carriers' lighters at the minimum lighterage charge of $8.32 an amount not to exceed this figure will be allowed to cover transfer to carrier's loading terminals.

Shipments of commercial and passenger automobiles on which the inland rate does not include delivery to vessel an allowance of five (5) dollars per unit will be made to cover cost of transfer from railroad or other carrier's terminal to the loading terminals of the individual carriers located in New York.

(c) Shipments consisting of pieces or packages weighing in excess of 6,000 pounds moving to New York by rail on which the inland railroad rates do not include heavy lift charges, an allowance of 55 cents per ton of 2,000 pounds on the gross weight of the piece or package will be made in addition to the inland differential, as provided for under sections "A" and "B" of this rule or as provided for under individual commodities.

(d) Differentials and allowances will be made only when claims for such differentials or allowances are supported by a copy of the inland bill of lading or arrival notice or freight bill, and the total allowances shall not exceed 30 percent of the basic ocean rate.

(e) Except as otherwise provided for herein or under individual commodities the application of this rule is restricted to shipments moving to the individual carriers, parties herto, in a continuous railroad or other carrier movement when such shipments have originated at points as follows:

All points located on the:

1. Akron, Canton & Youngstown Railway Co.
2. Ann Arbor Railway Co.
3. Atchison, Topeka & Santa Fe Railway, Northeast from Hutchinson, Kans.
4. Baltimore & Ohio Railroad Company, subsidiaries and leased lines, west of Kane, Pa., DuBois, Pa., and Cumberland, Md.
5. Bessemer & Lake Erie Railroad Co.
6. Chesapeake & Ohio Railway Company, west of Charleston, W. Va.
7. Chicago, Burlington & Quincy Railroad Co. (Burlington Route), and subsidiaries from Omaha, Neb., Duluth, Minn., and Minneapolis, Minn., eastward.

8. Chicago & Eastern Illinois Railroad, North from St. Louis, Mo., and Evansville, Ind., to Chicago, Ill.

9. Chicago, Rock Island & Pacific Railroad, Eastward from Sioux Falls, Minneapolis, Lincoln, and Omaha.

10. Chicago, Springfield & St. Louis Railway Co., South from Springfield, Ill., to St. Louis.

11. Chicago Great Western Railroad from Omaha, Neb., and Minneapolis, Minn., eastward.

12. Chicago, Indiana & Louisville Railway.

13. Chicago, Milwaukee, St. Paul and Pacific Railroad from Omaha, Neb., Sioux Falls, S. D., Duluth, Minn., and Minneapolis, Minn., eastward.

14. Chicago and North Western Railway Co. and subsidiaries from Omaha, Neb., Duluth, Minn., and Minneapolis, Minn., eastward.

15. Detroit, Toledo & Ironton Railroad Co.

16. Erie Railroad Company, subsidiaries and leased lines, west of Buffalo, N. Y., Niagara Falls, N. Y., Suspension Bridge, N. Y., and Corry, Pa.

17. Grand Trunk Western Railway, west of Buffalo, N. Y., Niagara Falls, N. Y., and Suspension Bridge, N. Y.

18. Illinois Central Railroad Co., from Sioux Falls, S. D., Omaha, Neb., St. Louis, Mo., eastward and northeastward of Cairo, Ill.

19. Louisville and Nashville Railroad from Evansville, Ind., eastward to Cincinnati, Ohio, and Maysville, Ky.

20. Minneapolis & St. Louis Railroad, Southeast from Minneapolis to Chicago, Peoria, and St. Louis.

21. Minneapolis, St. Paul & Sault Ste. Marie Railway, Southeastward from Minneapolis and Duluth, Minn.

22. New York Central Railroad Company, subsidiaries and leased lines west of Buffalo, N. Y., Niagara Falls, N. Y., Suspension Bridge, N. Y., and Jersey Shore Junction, Pa.

23. New York, Chicago & St. Louis Railroad Co., subsidiaries and leased lines, west of Buffalo, N. Y.

24. Pennsylvania Railroad Company, subsidiaries and leased lines, west of Buffalo, N. Y., Kinzua, Pa., Kane, Pa., Falls Creek, Pa., and Johnstown, Pa.

25. Pere Marquette Railway Co., west of Buffalo, N. Y., Niagara Falls, N. Y., and Suspension Bridge, N. Y.

26. Pittsburgh & Lake Erie Railroad.

27. Pittsburgh & West Virginia Railway Co.

28. Rock Island Southern Railway from Davenport, Iowa, South to Galesburg, Ill.

29. Southern Railway Eastward from St. Louis, Mo.

30. Toledo, Peoria & Western Railroad, Eastward from Keokuk, Iowa.

31. Wabash Railway Co., west of Buffalo, N. Y., and Niagara Falls, N. Y.

32. The Wheeling & Lake Erie Railroad Company.

(f) On less than carload shipments of commodities as defined above which have moved in continuous railroad or other carrier movement from points defined below to the individual carriers, parties hereto, at New York the allowances covering cost of transfer from railroad or other carriers' terminals to the loading terminals of the individual carriers, as provided for in Sections B and C will be deducted from rates named herein.

1. Baltimore & Ohio Railroad Company, Points in the State of New York east of Buffalo.

2. The Delaware, Lackawanna and Western Railroad Co., Points in the State of New York from Buffalo southeast to Binghamton and from Oswego southeast to Syracuse.

3. Erie Railroad Company, Points in the State of New York from Suspension Bridge and Salamanca eastward to Binghamton.

4. Lehigh Valley Railroad, Points in the State of New York east of Suspension Bridge.

5. New York Central Railroad Company, Points in the State of New York from Suspension Bridge eastward to Syracuse.

6. Pennsylvania Railroad Company, Points in the State of New York east of Buffalo and Salamanca.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of February A. D. 1941

No. 567

CITY OF MOBILE, ET AL.

v.

BALTIMORE INSULAR LINE, INC., ET AL.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That defendants be, and they are hereby, notified and required to cease and desist, on or before March 24, 1941, from the observance of Item 26 of Agent G. A. Meyer's Tariff U. S. M. C. No. 1, exceptions thereto, other tariff provisions relating to port equalization, and practices herein found unlawful; and

It is further ordered, That defendants be, and they are hereby, notified and required to cancel, effective on or before March 24, 1941, the said item, exceptions, and other tariff provisions of the character above mentioned, upon notice to the Commission and to the general public by not less than one day's filing and posting in the manner prescribed by the Intercoastal Shipping Act, 1933, as amended.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

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UNITED STATES MARITIME COMMISSION

No. 599

EMBARGO ON CARGO AT CAMDEN, NEW JERSEY

Submitted January 21, 1941. Decided February 4, 1941

Embargo by Pan-Atlantic Steamship Corporation on all commodities offered for transportation, to, from, and via Camden, N. J., found not unreasonable or unduly prejudicial. Proceeding discontinued.

R. A. Kearney for respondent.
Harry P. Mulloy for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This is a proceeding on the Commission's own motion concerning the lawfulness of an embargo by respondent Pan-Atlantic Steamship Corporation, a common carrier by water in interstate commerce, on all commodities offered for transportation to, from, and via Camden, N. J., effective January 23, 1941, "account delays being experienced," as stated by respondent. By our order of January 17, 1941, herein, respondent is required to show cause under sections 16 and 18 of the Shipping Act, 1916, as amended, why, in the public interest, the embargo should become effective. South Jersey Port Commission intervened at the hearing in opposition to the embargo.

Since 1934 respondent has operated a service between New Orleans, La., Mobile, Ala., Panama City, and Tampa, Fla., Philadelphia, Pa., Camden, N. J., Boston, Mass., and Baltimore, Md. It has served Baltimore only by transshipment arrangements with Ericsson Line, Inc., at Camden. Its vessles do not call at Camden northbound. Southbound they are scheduled to arrive from Boston at Philadelphia on Mondays and sail Thursdays, making the shift to Camden on Wednesdays and back to Philadelphia Thursdays. While loading at Camden, railroad freight originating west of Philadelphia is lightered from Philadelphia to shipside in order to utilize all of the hatches at the same time. In 1940 about 11,000 tons of such

cargo was lightered to Camden, averaging about 250 tons per week. During the same period about 21,000 tons of Baltimore freight was transshipped at Camden, while about 18,000 tons originated at Camden. Witness for respondent states that about 10 percent of all tonnage originating in the Philadelphia area comes from Camden.

Ericsson announced discontinuance of its service between Baltimore and Camden effective January 10, 1941. Thereafter it proposes to transship Baltimore traffic with respondent at Philadelphia. Respondent's embargo notice is dated January 13, 1941.

Respondent justifies the embargo by emergency conditions created by withdrawal of coastwise services of other lines during recent months and by Ericsson's discontinuance of the Camden call. With additional freight accumulating at both Gulf and Atlantic ports formerly carried by other lines, it has been unable to maintain schedules even when not calling at Panama City and Tampa. During the past several weeks, with vessels as much as three days behind schedule, it has had to leave between 200 and 300 tons per trip on the dock at Philadelphia. Before the outbreak of the present European war it was able to secure additional vessels to meet these emergencies, but none is available now. Since the war began it has added two vessels to its coastwise operations and has an understanding with railroads serving Philadelphia to re-route some freight to New York, where it maintains Gulf service, in an attempt to keep the service in question on schedule. In March 1940 the Philadelphia service included New York and New Bedford, but both ports have been eliminated in order to maintain schedules at Philadelphia. Respondent states that withdrawal of the Camden call is only temporary. Its rates have not been cancelled.

Witnesses for intervener point to the fact that abandonment of service at Camden will require shippers either to ferry or truck freight from New Jersey to Philadelphia involving not only loss of time and inconvenience, but additional cost of transportation. It is estimated that the additional cost would amount to about $20,000 annually. When in 1934 Pan-Atlantic began its Camden operations Mooremack Gulf Lines maintained a service between Camden and the Gulf. In March 1940 Mooremack Gulf sold its vessels and discontinued service leaving Pan-Atlantic as the only water carrier serving Camden and Gulf ports. In 1935 Pan-Atlantic originated 6,375 tons of local Camden traffic. In 1940, 18,772 tons of local Camden traffic was handled by respondent. The Camden interests urge that this increase in tonnage warrants continuation of the Camden service. The record leaves no question that the Camden port facilities are adequate and no delays have been experienced there.

Intervener relies on our opinion in Docket No. 597, *Embargo on Cargo between North Atlantic and Gulf ports.* In that case we found an embargo by Agwilines, Inc. (Clyde-Mallory Lines) on all commodities offered for transportation between North Atlantic ports and Gulf ports unreasonable and ordered it cancelled. The two cases are not similar. There Agwilines proposed by embargo to abandon completely its Gulf and North Atlantic operations without the filing of schedules cancelling its rates. In this case respondent does not intend to abandon its coastwise operations or to cancel any of its rates. Its embargo is based upon emergency conditions as outlined above.

We find that the embargo established by respondent is not unreasonable or unduly prejudicial. An appropriate order discontinuing the proceeding will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of February A. D. 1941.

No. 599

EMBARGO ON CARGO AT CAMDEN, NEW JERSEY

It appearing, That by order dated January 17, 1941, the Commission entered upon a hearing concerning the lawfulness of an embargo as described in said order;

It further appearing, That a full investigation of the matters and things involved has been had, and that said Commission, on the date hereof, has made and filed a report stating its couclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

(SEAL) (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 582

PATRICK LUMBER COMPANY

v.

CALMAR STEAMSHIP CORPORATION, ET AL.[1]

Submitted January 22, 1941. Decided February 4, 1941.

Complainant found to be unduly prejudiced by defendant's refusal to furnish cargo space accommodations.

William C. McCulloch for complainant.
Erskine Wood, M. G. de Quevedo, and *E. J. Karr* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Defendant filed exceptions to the report proposed by the examiner to which complainant replied. Oral argument by defendant was heard. The findings recommended in that report are adopted herein.

Complainant, Patrick Lumber Company, alleges that in June 1939, it made a verbal contract with defendant Calmar Steamship Corporation, whereby the latter was to transport approximately 900,000 feet n. b. m. of lumber from Coos Bay, Oreg., to New York Harbor; that a minimum quantity of 250,000 feet was to be shipped in August 1939, and each month thereafter; that defendant, notwithstanding numerous requests from complainant, refused to transport any of the said lumber while at the same time furnishing space regularly to other shippers with later and less definite reservations; and that eventually complainant had to ship said lumber by railroad to its damage in the amount of $11,839.39, which sum it seeks as reparation.

The prayer for reparation was withdrawn prior to the hearing.

Defendant filed a motion before the hearing to dismiss for lack of jurisdiction and, in the alternative, to make the complaint more definite and certain. Complainant answered. Defendant then filed a motion to strike the allegation of preference to other shippers because

[1] Swayne and Hoyt, Ltd., Agents.

of complainant's refusal to name them prior to the hearing. Both motions were properly denied by the presiding examiner.

Defendant sets up the existence of space shortage, complainant's alleged inability to ship when space was available, and the contention that no contract existed, as reasons for its failure to transport the lumber in question.

Witness Patrick, complainant's president, testified that the company had a contract, executed in April 1939, to deliver 1,500,000 feet of lumber to Interborough Rapid Transit Company at New York. It shipped 247,000 feet in July via Shepard Steamship Company from Coos Bay and 329,451 in August via Calmar [2] from Columbia River ports. This left 923,549 feet to be shipped from Coos Bay and the controversy arises from Calmar's refusal to transport this quantity.

Patrick states that at the solicitation of Calmar's agent Anderson, he began negotiations early in June [3] in regard to the Columbia River shipment. Anderson agreed to lift that parcel upon the condition that, according to Patrick, Calmar receive the remaining Interborough shipments from Coos Bay.[4] Patrick contends that his acceptance of this condition established the verbal contract alleged.

The gist of Patrick's testimony is that he importuned Calmar for space to move the Coos Bay lumber from early June 1939 through February 1940. Anderson usually responded that he was uncertain about space, that it was becoming increasingly "tight," but nevertheless he would try to secure it. Asked in June and again in July for 500,000 feet for August, Anderson thought he could get 250,000 feet for August and probably 250,000 for September. Patrick became insistent in September, and Anderson assured him he could get space either in September or October. In late September Anderson advised Patrick to rush preparation of the lumber for shipment because Calmar probably would not put any more ships in Coos Bay after the next one. By October Anderson was positive there would be no more calls at Coos Bay. Then Patrick solicited other lines for space. Unsuccessful, he turned again to Calmar, this time seeking loadings on Columbia River or Puget Sound, but without results. He renewed the request in November, asking for space in January or February if none were available in November or December. Upon Patrick's assurance that he would pay the increased rate then contemplated, Anderson replied that he would let Patrick know about space for January and February. The contract was becoming delinquent and early in November and

[2] Calmar confirmed the booking by letter dated July 27, 1939, and issued the contract thereon under date of September 9, 1939.

[3] In a letter to Anderson dated September 14, 1939, Patrick referred to these negotiations as starting in late July or early August.

[4] This stipulation was entirely arbitrary as a shipper's right to service is not to be conditioned upon the making of future shipments.

through December, Patrick shipped approximately 300,000 feet by rail. Finally, after further attempts to get space from Calmar in January and February, he forwarded the remainder, something over 600,000 feet, by rail, completing delivery in May 1940. Of the same tenor is the testimony of witness Brushoff, complainant's vice president.

However, Patrick's testimony cannot be wholly reconciled with a letter subpoenaed by defendant, dated August 25, 1939, addressed by Patrick to Coos Bay Logging Company, in reference to the Interborough order. He stated that because of the mill's delay in supplying the lumber, he lost space firmly engaged—with an unnamed line—for August 25 and that he had been unable to switch it to September. Moreover, he advised that "We have firm space engagement now with *another* steamship line for about October 15 for 500,000 feet net and are still endeavoring to secure 300,000 feet for September." [Italics supplied.] Patrick explains, somewhat vaguely, that "another steamship line" refers to Calmar and that space lost August 25 was a booking with Shepard. This is at variance with his testimony that he had only one contract with Shepard which had been completed in July, and is repugnant to his agreement made in June to ship all the Coos Bay lumber with Calmar. Counsel for Calmar asserts that the space referred to as being lost was on a Calmar vessel which called at Coos Bay on August 28, and hence the other line referred to was not the Calmar Line. If true, this indicates that Patrick, while contending that he had a contract with Calmar for 900,000 feet, had actually booked 500,000 feet of that amount with another line for loading October 15.

However, Patrick's letter to Calmar, for Anderson's attention, dated September 14, 1939, which is the only correspondence between the parties concerning the negotiations, tends to confirm Patrick's testimony that the booking of 500,000 feet for October 15 was with Calmar. He wrote: "On present line-up we will have 564,000 feet ready for about October 15 loading. Our space engagement for that loading was 500,000 feet only. Consequently, if that is all the space available we will hold the surplus over for a later shipment." He testified that Anderson's verbal answer to this letter was: "We will have it (a vessel) in there for 500,000 and we can forget the 64,000 because we can probably take that anyway." Whether the space forfeited was on a Calmar or a Shepard vessel, it is evident that complainant was not prepared to ship from Coos Bay in August.

Without doubt, Patrick was having difficulty accumulating stock for shipment. To begin with, he had an option with Shepard for 600,000 feet and could supply only 247,000. He wrote the mill on July 14 that he was engaging space for 300,000 feet to be loaded about August

25 and urged it to have that quantity ready. He stated "As we are now so far behind schedule, this loading as outlined must be adhered to." But, as stated in the letter of August 25, he lost this space because the lumber was not ready. And he was unable to transfer the space to September because of "past delays in having stock ready at agreed times." He added: "We are now badly behind schedule in our shipments and must have stock ready as vessel space is available." Although Interborough accepted Patrick's offer on November 27 "to ship at once by rail"—and the last shipment under the order was to be delivered in November—only 300,000 feet was shipped by rail in November and December. And the balance of approximately 600,000 feet was not completely delivered until May 1940. This, notwithstanding Interborough absorbed the extra cost for rail transportation and Patrick, according to his testimony, had abandoned hope for cargo space by November.

Coming now to the question of discrimination, the record shows that during the period involved, Calmar regularly served three other lumber dealers shipping out of Coos Bay, nearby Newport, Oreg., and Columbia River ports. From June 1939 to March 1940 both inclusive, one shipped 33 parcels ranging from 22,451 to 743,319 feet. Contemporaneously, another made 14 shipments, from Newport, ranging from 402,022 to 1,773,855 feet. The other made 8 shipments, 4 of which originated at Coos Bay and averaged something less than 1,000,000 feet.[5] It fairly appears from the evidence that Patrick was ready to ship from Coos Bay either on the *Oremar*, whose call of October 8 was scheduled on September 19, or the *Point Arena*, whose call of December 7 was scheduled on November 6. As stated, Calmar was advised on September 14 that 564,000 feet would be ready for about October 15 loading. Besides, the rail shipments began moving in November.

Defendant's rule [6] governing acceptance of cargo, insofar as pertinent, reads as follows:

> Subject to booking the minimum quantities set forth below, cargo will be accepted at any of the points and any of the terminals, piers, wharves and docks listed below provided vessel is scheduled for loading there and has available space for proper stowage of tendered cargo for the specific point and terminal, pier, wharf or dock of discharge and provided the vessel's scheduled time will permit such call.

Defendant contends that under this rule, its common carrier obligations extend only to scheduled ports of call. It states that the Coos Bay space on the *Oremar* and *Point Arena* was allotted to a shipper who had requested 3,000,000 feet in July 1939. Indeed, this shipper

[5] *Massmar* August 8, 829,662 feet. *Kenmar* August 28, 924,648 feet. *Oremar* October 8,996,266 feet. *Point Arena* December 7, 983,874 feet.

[6] Calmar Steamship Corporation's Terminal Tariff No. 1, S. B.–I. No. 4, Item No. 1 second amended p. No. 15.

testified: "I had practically a complete understanding with Calmar that they would furnish us a steamer for one million feet of lumber out of Coos Bay—at least one steamer a month—and that arrangement was made practically the first of the year." However, Calmar's traffic manager testified that actual bookings for space are usually issued 60 days prior to loading time. It should be noted here that on none of the shipments, including Patrick's from Columbia River, made prior to the latter part of October, did Calmar issue a written contract before date of loading. And so far as the record shows, none of them, except Patrick's, was confirmed by letter prior to loading.[1] It must be concluded therefore that Patrick's claim of a firm booking was as valid as that of the other shippers.

Anderson, who attended the hearing, was not called to refute Patrick's testimony.

Upon this statement of the evidence we make the following findings of fact: That defendant promised but refused to allocate space to complainant; that a space shortage existed; that complainant was prepared to ship at least in October; and that defendant preferred other shippers in the matter of cargo space accommodations.

It is unlawful for any common carrier by water "to make or give any undue or unreasonable preference or advantage to any particular person, or to subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever" (sec. 16, Shipping Act, 1916). The Supreme Court considered the obligation of a carrier, in times of car shortage, under the similar preference and prejudice clause of the Interstate Commerce Act in *Penna. R. R.* v. *Puritan Coal Co.*, 237 U. S. 121. Stating that the carrier was not liable for failing to transport more than it could carry, the Court added: "The law exacts only what is reasonable from such carriers—but, at the same time, requires that they should be equally reasonable in the treatment of their patrons. In case of car shortage occasioned by unexpected demands, they are bound to treat shippers fairly, if not, identically." This principle is amplified in *United States* v. *Baltimore & O. R. Co.*, 165 Fed. 113. There the Court stated that in times of stress "The only defense which the carrier can interpose in case of failure to comply with the request of the shipper is that * * * it has fairly and impartially prorated all of its car equipment."

It would be difficult to determine, except in the most general way, what a fair system or method of proration should be. Past performance of the shipper is not an equitable basis because such an allotment

[1] In response to the presiding examiner's request that defendant furnish for the record confirmations of bookings on the above-mentioned shipments, the written contracts were supplied.

would arbitrarily perpetuate the disadvantages a shipper might suffer. Nor is the common law principle of "first-come first-served" fair because it disregards the rights of the shipping public as a whole and tends to foster monopoly in favor of the large shipper. On the other hand, distribution in times of space stringency based upon the relative proportion in which shippers offer lumber on hand and conveniently located for prompt loading, taking into consideration the rights of small shippers, would seem to be just and reasonable. This principle recognizes a shipper's ability to do business and hence his right to demand space in times of shortage.

It is not clear what basis defendant used, but it is at once apparent that, in arranging the vessel itineraries and apportioning the space, it did not prorate the space and service in proportion to cargo offerings which were on hand and ready for loading. Its failure in this respect resulted in undue prejudice to complainant.

We find that defendant unduly prejudiced complainant in refusing to furnish the latter cargo space accommodations in violation of section 16 of the Shipping Act, 1916, as amended.

An appropriate order will be entered.

ORDER

At a session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of February A. D. 1941.

No. 582

PATRICK LUMBER COMPANY

v.

CALMAR STEAMSHIP CORPORATION, ET AL.

This case being at issue upon complaint on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondent Calmar Steamship Corporation be, and it is hereby, notified and required to cease and desist and hereafter to abstain from the undue prejudice in violation of section 16 of the Shipping Act, 1916, as amended, herein found.

By the Commission.

(SEAL) (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 573

PORT COMMISSION OF CITY OF BEAUMONT, TEXAS, ET AL. [1]

v.

SEATRAIN LINES, INC., ET AL. [2]

Submitted February 5, 1941. Decided February 7, 1941

Seatrain's absorption practice and conference authorization thereof found to be in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. Cease and desist order entered.

F. G. Robinson, D. H. Berry, J. H. Rauhman, Jr., J. L. Read and *H. B. Cummins* for complainants.

Parker McCollester, W. J. Mathey, E. K. Morse, Alfred J. Cooper, A. J. Pasch, D. B. Breen, F. J. Rolfes, L. J. McCalley, J. H. O'Dowd and *M. L. Wilcox* for defendants.

Robert E. Quirk, John K. Cunningham, O. G. Richard, E. H. Thornton for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions filed to the examiner's proposed report were orally argued. Our conclusions differ somewhat from those recommended by the examiner.

Complainants allege that the practice of Seatrain Lines, Inc. of absorbing various rail and other charges, and the action of the other defendants in authorizing such absorptions, is in violation of sections 15, 16, and 17 of the Shipping Act, 1916, as amended. The absorp-

[1] Houston Port and Traffic Bureau; Galveston Chamber of Commerce; and Galveston Cotton Exchange and Board of Trade.

[2] Florida East Coast Car Ferry Company; Standard Fruit and Steamship Company; and United Fruit Company.

tions assailed are of three types; (1) on traffic originating at inland points Seatrain will equalize via Texas City, Texas, the through rate applicable via other ports; (2) equalization will be made via Texas City against the through rate applicable via New York in the same manner that New York is presently equalized via New Orleans; and (3) on traffic originating at Houston, Galveston, and Beaumont, Texas, Seatrain will equalize the cost of making delivery to its vessels at Texas City as against steamer's side at Houston, Galveston, or Beaumont.

Complainants, except Beaumont, abandoned the allegations with respect to the unlawfulness of the first two practices mentioned; and since there was not sufficient evidence introduced to establish their unlawfulness, they will not be considered further.

Three motions to dismiss were made by defendants; (1) with respect to United Fruit, Standard Fruit, and Florida East Coast Ferry on the ground that they did not participate in the equalization of Texas City against Galveston, Houston, and Beaumont; (2) on behalf of all defendants with respect to the allegations of unlawfulness under section 16 on the ground that complainants have no standing under the doctrine enunciated in *Texas and Pacific Ry. Co.* v. *United States*, 289 U. S. 627 that a port is not susceptible to undue preference and prejudice; and (3) as to Seatrain on the ground that there was no evidence introduced to establish a violation of law by that carrier. The first motion is denied as the responsibility for rates and practices resulting from conference action falls upon all members jointly and therefore the conference in effect operates substantially as one carrier. *Commonwealth of Mass.* v. *Colombian S. S. Co.*, 1 U. S. M. C. 711. As to the second motion, the same issue was presented in Docket 567, *City of Mobile et al.* v. *Baltimore Insular Line, Inc., et al.*, 2 U. S. M. C. decided February 4, 1941, and was determined adversely to defendants' contentions. This motion is therefore denied.

A consideration of the merits requires that the third motion be denied.

Defendants are common carriers by water in foreign commerce operating in the United States Gulf and South Atlantic/Cuba trade, and are members of the Gulf South Atlantic Havana Steamship Conference operating under U. S. M. C. Agreement No. 4188, as amended. Lykes Steamship Company, also a common carrier by water in this trade, intervened on behalf of complainants. Lykes is an associate non-voting member of the conference under U. S. M. C. Agreement No. 4188–B, whereby it agrees to observe conference practices. In return, it is permitted to participate in conference contracts with shippers. The New Orleans Joint Traffic Bureau and the Board of Commissioners, Lake Charles Harbor & Terminal District also intervened in support of complainants.

Lykes and United Fruit accord weekly service from Galveston and Houston and semi-monthly serviee from Beaumont. Seatrain serves only Texas City direct with a semi-monthly serviee which began in March 1940. Its service to other Texas Gulf ports is to be accomplished by the equalization here in question.

Paragraph 1 of Agreement No. 4188 provides in substance that the parties thereto associate themselves for the purpose of fixing rates, rules, regulations, and practices. Paragraph 16 provides:

> The Conference may adopt rules and regulations providing for equalization of the through rates prevailing from interior points in the United States and Canada to Havana via any port.

Pursuant to the conference agreement, Port Equalization Circular No. 8 and Conference Tariff No. G–3–A were filed with the Commission. On December 12, 1939, the conference had a meeting at which Seatrain was authorized to make the absorption hereinbefore described at Texas City, on local Galveston, Houston, and Beaumont traffic. No amendment to paragraph 16 was filed, although Tariff No. G–3–A was amended and the conference action was recorded in the minutes of the meeting.

The principal commodities moving in this trade are rice, flour, cotton, lumber, shooks, packing house products, and agricultural products, rice being by far the most important. Galveston, for instance, in 1939, shipped 285,000 pockets of rice each weighing 100 pounds. Houston shipped 27,622 tons which amounted to 71.6 percent of its traffic to Cuba. Rice from Beaumont comprises 71 percent of its traffic.

The amount of equalization is figured by Seatrain in practically the same manner on all commodities. The equalization on rice is illustrative. Rice is grown in areas adjacent to the complaining ports. It moves into the port as rough rice, is there milled and reforwarded as local tonnage. Seatrain absorbs the difference between the cost of getting the rice from the mill to shipside at any of the three ports named and the cost of placing it on board Seatrain at Texas City. On rice moving from Galveston, for example, which is drayed to shipside, the total charges amount to 32.55 cents. The total charges via Texas City are 37.5 cents, the difference being 4.95 cents. Seatrain, however, absorbs 5.35 cents which includes a carloading charge of .4 cents which is not incurred on drayed traffic at Galveston. In the case of traffic from Houston and Beaumont, the absorption is 8 and 10 cents, respectively, less the applicable switching charges at these ports. The distance via rail to Texas City from Galveston, Houston and Beaumont is 14.2, 42.2, and 91 miles, respectively.

Seatrain's service differs materially from that offered by the break-bulk lines. It is conceded by all parties to be of a superior nature.

When using Seatrain, a shipper can load the car at his plant and further handling is eliminated until it is delivered at the consignee's place of business. Cargo handled by break-bulk lines must be transported to the dock, handled, loaded into the ship, unloaded at destination, again loaded into a car or truck and finally delivered at the consignee's place of business. Seatrain's terminal consists of a railroad spur and a patented loading crane which fastens to the loaded car, picks it up and deposits it on one of the tracked decks in the vessel. The loaded car is strapped to the deck and at the point of discharge is raised, run onto a railroad track and moved intact to the final point of destination. This difference in handling effects a saving to the shipper in packing goods and reduces loss and damage claims, and losses of business resulting from service delays.

While complainants introduced testimony as representatives of organizations of which shippers were members, they did not present any shipper as such. Their testimony was directed mainly to the effect of the absorption on the port and its facilitiies. However, defendants presented shippers who testified that Seatrain's service was of great benefit to them and in one case had opened up new markets. They testified that with equal costs they would always use Seatrain, but were not able to pay extra for the more valuable service. They also stated that more frequent service was required to meet the service given to their competitors at New Orleans and Atlantic ports.

The first question to be considered is the lawfulness of the conference action under section 15. Defendants contend that under authority of the first paragraph of the agreement, any rate-making action, including equalization as between ports, may be taken. Complainants contend that any equalization made is restricted by paragraph 16. From an examination of paragraphs 1 and 16 it would appear that the agreement, insofar as the question of equalization is concerned, is ambiguous. The carriers should amend the agreement to clearly define the true agreement between the parties.

The next question is the allegation that the absorption practice by Seatrain and the conference authorization thereof creates undue preference and prejudice and unjust discrimination. Insofar as this transportation is concerned, the complaining ports may be considered as consisting of three distinct interests, namely, the shippers, the port facilities and the carriers serving the ports. All of the shippers who testified were in favor of the absorption practice. Consequently, no finding is made that the law has been violated insofar as they are concerned.

Witnesses for the complaining ports testified that during the short period from April 2 to June 16, 1940, Seatrain handled 780,814 pounds or 390 tons of Galveston rice which represents an estimated yearly loss

of 1,716 tons or about 11 percent of the total tonnage handled by Lykes from Galveston. In all, Seatrain diverted some 2,673 tons of cargo from the three ports during this period. It was the considered opinion of these witnesses that the break-bulk lines could not long compete with Seatrain at an equality of rates, especially if the latter's service were expanded sufficiently to handle all available traffic.

In the *Mobile Case*, *supra*, we observed that:

> To permit continuation of unrestricted solicitation by carriers for business through condonation of a practice whereby unfavorable inland rates are overcome, would wholly ignore the right of a port to traffic to which it may be entitled by reason of its geographical location. Such right appears fundamental under statutes designed to establish and maintain ports. Under section 8 of the Merchant Marine Act, 1920, we are required to recognize territorial regions and zones tributary to ports, and should there exist rates to seaboard which, among other things, do not recognize the natural direction of the flow of traffic, recommendations may be made to the Interstate Commerce Commission for such action as it deems necessary. The contention has been made that section 8 has no relation to rate regulatory provisions of the Shipping Act, 1916. But to wholly ignore specific policies of Congress would be unwarranted.

This statement is even more applicable in the present situation where the absorption practice permits a carrier to reach into the port itself and draw therefrom the traffic which is local and therefore naturally tributary to that port. In *Contract Routing Restrictions*, 2 U. S. M. C. 220, we stated:

> We do not look with favor upon the attempt of carriers by artificial means to control the flow of traffic not naturally tributary to their lines.

We do not hold that the equalization practice in question results in undue prejudice to Lykes in the legal sense. However, a port and its transportation services are indissolubly linked together, are interdependent, and a practice harmful to one injures the other. Therefore, the diversion of traffic from the port and the consequent crippling of essential carrier services there, constitute undue prejudice and unjust discrimination against the port. This view is in complete harmony with the declared policy of the shipping acts which we administer, namely to further the development and maintenance of an adequate merchant marine. We take judicial notice of the recent abandonment and curtailment of essential water carrier services, which is accounted for in no small degree by indiscriminate rate-cutting through absorptions and otherwise. "Traffic raiding" through unsound methods of rate-making should be a thing of the past.

The practice of equalization is not condemned by us as a general principle. But here it creates an undue advantage which cannot be overcome by the break-bulk lines individually, except by resigning from the conference and precipitating a rate war which is a condition contrary to the best interests of the American merchant marine. An

absorption practice which would bring about such a result should be condemned.

We find that the practice of Seatrain of absorbing the difference between the costs of delivering cargo to Seatrain's vessels at Texas City and the costs of delivering local tonnage to shipside at Houston, Galveston and Beaumont, and the action of the other conference members in authorizing such practice, is in violation of sections 16 and 17 of the Shipping Act, 1916, as amended. The complaint in all other respects will be dismissed. An appropriate order will be entered.

UNITED STATES MARITIME COMMISSION

No. 514

INTERCOASTAL RATE STRUCTURE

No. 524

MIXED CARLOAD RULE—MCCORMICK STEAMSHIP COMPANY

Submitted December 10, 1940. Decided February 11, 1941.

Respondents' rules, regulations, and practices with respect to mixed carload shipments found unreasonable, without prejudice to the establishment of rules, regulations, and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines.

Additional appearances:

Gerald A. Dundon and *George E. Talmage, Jr.*, for respondents.

G. W. Albertson, *H. R. Fritz*, *R. W. Krantz* and *H. C. Larson* for interveners.

Ralph H. Hallett for the Commission.

REPORT OF THE COMMISSION ON FURTHER HEARING

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by respondent Calmar Steamship Corporation and certain interveners to which reply was made by respondents American-Hawaiian Steamship Company, Luckenbach Steamship Company, and Luckenbach-Gulf Steamship Company. Our conclusions agree with those recommended by the examiner.

In our original report herein, 2 U. S. M. C. 285, 307, 308, we found, in the matter of the lawfulness of granting the respective carload rates to various commodities shipped in quantities which are less than carload if the total of the combined commodities so shipped equal a carload minimum, that nothing is more confusing in the west bound intercoastal rate structure than the present mixing provisions

applied by respondents parties to the Wells and Calmar tariffs; that this is the result of intense competition and disregard of sound principles of rate making; and that a uniform mixing rule is needed, applicable over all intercoastal carriers with exceptions to meet the general needs of the shipping public. We further found that use of mixing provisions as an instrument of competitive bargaining between the lines does violence to intelligent rate making, opens the door for prejudice and preference, and deprives carriers of needed revenue from less-than-carload shipments.

These proceedings were set for further hearing for the sole purpose of determining a uniform general mixing rule with proper exceptions for application over all respondents' lines. At the further hearing it developed that, although repeated attempts had been made by some respondents and the Intercoastal Steamship Freight Association to effect an agreement between the lines on such a rule, no agreement could be reached.

The bulk of less-than-carload freight is carried by the A lines, American-Hawaiian and Luckenbach being the principal participants in that traffic. Their primary concern in mixing provisions is preservation of carrier revenue. According to exhibits of record 18 percent of all westbound tonnage carried by American-Hawaiian in 1939 was in less-than-carload quantities while 28 percent of all its westbound revenue for the same period was derived from less-than-carload traffic. The percentages for Luckenbach were 21 and 36 respectively. These two respondents assail the Calmar rule as being ruinous to carrier revenue. They offer a compromise plan generally preserving the Wells principle of limiting mixing to specific groups of commodities, as compared to the unrestricted mixing plan of Calmar, but adopting the Calmar principle of applying the respectively applicable carload rates to each commodity mixed as part of a carload. The present Wells mixing items provide, generally, that the mixed carload will be charged on a basis of the highest rated commodity in the carload at the highest minimum weight applicable to any article in the mixed carload.

Calmar, a B line, urges that its rule should be adopted by all respondents, contending that the Wells mixing items as well as the suggested compromise plan offers the privilege to a small percent of favored shippers, the inference being that they are unduly preferential or discriminatory. It contends that should its rule prevail, the entire trade would benefit from added traffic and hence greater revenue. Calmar transports large quantities of iron and steel, in carloads, loading at Philadelphia and Baltimore. In 1938 it transported 215,381 payable tons of freight, only 3,903 tons moving at less-than-

carload rates, while 18,102 tons moved under consolidating or mixing rules.

Baltimore Mail, an A line which did not begin to operate until August 1938, but which carried 9,449 tons at less-than-carload rates in that year, views the Calmar rule as a means of cutting rates below the minimum level of rates prescribed in the original report herein. It seeks a restrictive mixture rule based upon the exigencies of transcontinental rail competition through an amendment to our minimum rate order of April 9, 1940.

McCormick, a B line whose less-than-carload traffic is less than one-half of one percent of its total annual volume, shows how Calmar has been able to get a competitive advantage at Philadelphia and Baltimore through its mixing rule. For example, one shipper formerly manufacturing wheelbarrows and shipping over McCormick, in carload quantities, began the manufacture and shipping of lawn mowers as well as wheelbarrows. Under the Calmar mixing rule less-than-carload quantities of lawn mowers can move with wheelbarrows at the carload rate, whereas the Wells tariff to which McCormick is a party, makes no such provision. The result is that the shipper is now using Calmar exclusively. McCormick's position is that, while it does not advocate Calmar's rule, it must provide similar mixing provisions to be competitive.

Various shippers appeared and, for the most part, sought general application of the Calmar rule.

Respondent's carload, less-than-carload, and mixed carload rates owe their existence to railroad competition. The Interstate Commerce Commission and other authorities recognize that carload rates are an integral part of the American rail rate structure; the shipment unit of these rates is of a size which a great part of the country's shippers is prepared to make, so that their discriminatory effect and tendency to concentrate business is comparatively slight (*Carson, Pirie, Scott & Co.* v. *Atchison, T. & S. F. Ry. Co.*, 156 I. C. C. 329). Railroad carload transportation saves the carrier the cost of loading and unloading, and greatly reduces terminal costs and expenses in connection with receiving and delivering shipments. The possibility of loss and damage is reduced to a minimum. In addition, it has been found that the cost of hauling is less as to carload than for less-than-carload traffic (*Business Men's League* v. *A. T. & S. F. Ry. Co.*, 9 I. C. C. 318, 345). The equipment required to haul a given amount of less-than-carload traffic is materially greater than that necessary to haul the same amount of carload traffic. Packing requirements for carload movement are not so stringent as those required for less-than-carload transportation. These and other considerations such as value of service have been found to justify lower rates for carload

movement than for less-than-carload. Carload rates higher than less-than-carload rates are an anomaly requiring special justification.

The record is convincing that, were it not for railroad competition, the carload unit system of rates would have no place in ocean transportation. The water carrier performs all the service and bears the expense of loading and unloading and handling, whether or not the shipment is tendered in carload quantities. Neither the carload minimum weights nor the spread between the carload and less-than-carload rates is based on cost or value of services. The spread between steamship terminal costs of handling carload and less-than-carload traffic is not so great as that between railroad terminal costs of handling carload and less-than-carload traffic. It is true, however, that in the off-shore trades, under the weight or measurement system of rates, lower rates for certain minimum quantities are not uncommon and have been approved by the Commission.

In railroad transportation the usual rule governing mixed carloads is that the entire shipment shall be subject to the highest rate and the highest minimum weight applicable to straight carloads of any article in the mixture. This rule was followed by us in *Armstrong Cork Co.* v. *American-Hawaiian Steamship Company*, 1 U. S. M. C., 719. Since the original hearing herein the rail carriers in Official and Southern territories have adopted the Calmar principle of mixing due, it is testified, to motor carrier competition. The transcontinental lines have not modified their mixing provisions in like manner. A mixed carload by rail has all the incidents of a carload shipment noted above.

Respondents point to many dissimilarities between mixed carload transportation by rail and by water. By rail a professional consolidator handles carload shipments as any other shipper in the manner outlined above. By water, the consolidator does not assemble or load the carload as a unit. The carrier performs all the service of consolidation and distribution resulting in an operating expense greater than if the component parts of the consolidated car are handled as less-than-carloads. It is testified that a truck cannot haul a full carload, making more than one delivery at the wharf necessary to complete the load. Also the billing, identification and stowage of consolidated carloads by water present problems not encountered by railroads in mixed-carload traffic nor by water carriers in straight carload and less-than-carload shipments. A consolidation charge of 10 cents per 100 pounds applies over Calmar when the mixture consists of lots from more than one shipper. The Wells tariff has no similar provision but publishes a 10-cent per hundred pounds split delivery charge.

The contention of Calmar and various shippers that the Wells' system of mixtures by individual treatment of specific commodities is unduly prejudicial, unreasonably preferential and disadvantageous as between persons, localities or description of traffic is not without support (*Consolidated Classification Case*, 54 I. C. C. 1, 18). However, there is no specific proof of such unlawfulness with respect to any particular person, locality, or description of traffic, and the record therefore does not support a finding of undue prejudice or preference.

On the question of reasonableness of mixing provisions Baltimore Mail assails the Calmar rule or any rule of universal application as breaking down the entire less-than-carload rate structure with consequent loss of revenue. It takes the position that there should be no mixing provisions by water at all except where actual competition compels them. Calmar admits that its rule is more liberal than that maintained by transcontinental competitors. The Wells provisions also go beyond competitive rail rules due to the Calmar competition as to some commodities. American-Hawaiian and Luckenbach show by typical voyage studies that the Calmar rule results in substantial shrinkage of revenue. Calmar, while not admitting loss of revenue under its rule, maintains that if all respondents adopt it, the entire trade will gain added traffic which will make up for any loss of revenue. In further support of its rule Calmar points to the fact that recent trends in manufacturing and marketing are toward diversification of commodities handled and diminution of stocks kept on hand. It endeavors through its rule to enable eastern shippers to meet local competition on the Pacific coast. However, a west-coast witness describes this use of mixing as a means of "dumping" merchandise there to the disadvantage of western industries. Calmar points to the liberal mixing provisions now maintained by rail carriers in Official and Southern territories and to the transcontinental all-commodity rates as competitive factors which can best be met by respondents through adopting its mixing rule. Other respondents take the position that the intercoastal all-commodity rates authorized in the third supplemental order in this proceeding, dated September 25, 1940, will be sufficient to meet the competitive rail all-commodity rates and liberalized mixing provisions. Calmar also relies on the fact that practically all shippers of record support its rule. In view of the conclusions reached and the fact that no undue prejudice or preference has been shown, it is unnecessary to detail shippers' evidence. The record is convincing that shippers' support of Calmar's rule is due to savings in freight costs and desire to expand their sales on the Pacific coast in competition with local merchants there. One shipper located at Baltimore testifies that under the Calmar rule it is able to sell tea in San Francisco in competition with local dealers

although the source of the tea in each case is China and Japan. It is well settled that the law does not contemplate the equalization of natural advantages and disadvantages through an adjustment of freight rates (*The Paraffine Companies Inc.* v. *American-Hawaiian S. S. Co. et al.*, 1 U. S. M. C. 628).

It is clear that any liberalization of mixing provisions constitutes a lowering of freight rates on the commodities affected. Heretofore we have authorized the establishment of rates lower than the prescribed minima only upon petitions duly filed and heard, and the basis upon which relief has been authorized is, for the most part, transcontinental competition. It is apparent that respondents' rates and mixing provisions are predicated upon railroad competition. This record affords no reason why respondents should provide any more mixtures than are necessary to meet actual competition. Generally speaking, any broader or more liberal mixtures clearly cause an unreasonable and unnecessary loss of revenue. Any shipper who is prejudiced, or any respondent who can justify additional mixtures may gain relief through the filing of a complaint or a petition.

We find that respondents' rules, regulations and practices with respect to mixed carload shipments are unreasonable, without prejudice to the establishment of rules, regulations and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines. An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 11th day of February A. D. 1941.

No. 514

INTERCOASTAL RATE STRUCTURE

No. 524

MIXED CARLOAD RULE—MCCORMICK STEAMSHIP COMPANY

These cases being at issue on further hearing, and having been duly heard, and full investigation of the matters and things having been had, and the Commission, on the date hereof, having made and entered of record a report on further hearing stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents be, and they are hereby, notified and required to cancel, effective on or before May 1, 1941, all rules, regulations, and practices with respect to mixed carload shipments without prejudice to the establishment of rules, regulations, and practices which are not more liberal than those maintained by transcontinental rail and water-rail lines.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 574

ASSOCIATED TELEPHONE COMPANY, LTD.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted January 21, 1941. Decided February 11, 1941

Rate charged on complainant's shipments not shown to have been inapplicable. Complaint dismissed.

Earl W. Cox for complainant.

W. M. Carney, H. S. Brown and *M. G. de Quevedo* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

The shortened procedure was followed. Defendant filed exceptions to the examiner's report. Our conclusions differ from those recommended in the proposed report.

By informal complaint filed December 18, 1939, and formal complaint filed May 25, 1940, it is alleged that defendant's rates charged and collected on shipments of telephones and switchboards and parts thereof, viz: Pay station attachments, from New York, N. Y., to Long Beach, Calif., during February and March 1938, were inapplicable and unreasonable, in violation of section 18 of the Shipping Act, 1916, as amended, and sections 2 and 4 of the Intercoastal Shipping Act, 1933. Reparation is requested. No evidence was offered to support the allegation of unreasonableness, complainant relying solely on establishing overcharges. Rates will be stated in amounts per 100 pounds.

Charges were originally assessed at a less-carload rate of $1.15 which complainant contends is legally applicable. This rate applied, under Item 1100 of the tariff,[1] on

Electrical appliances, machinery and supplies, viz:
Electrical appliances n. o. s., classified 5th class and class "A" in carloads, under heading of Electrical appliances in western classification.

[1] Alternate Agent Wells' Westbound Tariff S. B. I. No. 6.

Under the heading of "Electrical Appliances" in Western Classification there is a carload rating of class "A" on "Telephones, Telephone Sets, or Parts, N. O. I. B. N." [2]

After inspection of the shipments on arrival the billing was changed twice, eventually the first-class rate of $4 being charged on all the shipments. Defendant's authority for this rate is an item in the classification,[3] under the heading "Electrical Appliances" reading as follows:

Telephone prepay attachments (pay stations), in boxes:	
L. C. L.	1st class.
C. L. minimum weight 30,000 pounds	3d class.

Therefore the question is whether the shipments consisted of "telephones, telephone sets, or parts," as contended by complainant, or whether they were "telephone prepay attachments (pay stations)" as contended by defendant. Complainant's Exhibit 2, described as a photostat copy of the identical article shipped, displays a self-contained dial operated pay station telephone complete with receiver and transmitter in one piece, with cord connection, dial, letters and numerals, and with apertures at the top for the deposit of nickels, dimes, and quarters. On the dial the abbreviations "Tel. No." are distinguishable, and affixed to the body of the unit below the dial are labeled instructions for its use. Testimony that Exhibit 2 is a photostat copy of the identical article shipped, however, is wholly at variance with the following statement in the informal complaint:

> In obtaining this classification (telephones and parts, Item 1100 L. C. L.) the shipper pointed out that these were not complete pay stations as it was necessary to add transmitters and receivers, which would be done at Long Beach before they would become pay stations.

According to defendant, the article shipped was not a complete telephone in that certain parts such as the receiver, transmitter, dial and other essential parts were not included in the shipment; these parts having to be added when the complete telephone was assembled. Defendant states that the prepay mechanism, together with the coin boxes, were enclosed in the shell which constitutes the outside of the complete telephone.

It will be observed that there is little probative evidence of a positive nature clearly describing the actual contents of the shipments. Hence it is impossible to determine the applicable rate.

Even though the record were adequate on this point, it affords no basis for the determination of whether overcharges were collected on the shipments. As stated, the rate of $1.15 was originally charged.

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[2] Item 26, page 146 of Consolidated Freight Classification No. 11.

[3] Item 22, page 146 of Consolidated Freight Classification No. 11—Western Classification ratings.

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Billing on the shipment made February 1, 1938, weighing 5,600 pounds, was first changed to $3 and on March 21, 1938, changed again to $4. The freight bill was paid February 21, 1938. Billing on the shipment made March 10, 1938, weighing 2,800 pounds, was changed to $4 and the freight bill was paid on March 31, 1938. Billing on the shipment made March 14, 1938, weighing 2,800 pounds, was first changed to $3 and later on March 22, 1938, to $4, but there is no evidence as to whether or when the freight charges were paid. Thus from an inspection of the freight bills it cannot be determined definitely whether any charges were paid at a rate higher than charged in the first instance.

An order will be entered dismissing the complaint.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 11th day of February A. D. 1941.

No. 574

ASSOCIATED TELEPHONE COMPANY, LTD.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 576

THE PORT OF BEAUMONT, TEXAS, ET AL.

v.

AGWILINES, INC. (CLYDE-MALLORY LINES), ET AL.

Submitted December 23, 1940. Decided February 13, 1941

Proportional rate on rice and rice products, in carloads, from Houston and Galveston, Texas, to north Atlantic ports, found inapplicable on shipments originating at Houston and Galveston. Complaint dismissed.

J. H. Rauhman, Jr., and *D. H. Berry* for complainants.

Julian M. King, *T. D. O'Brien* and *H. K. Sherfy* for defendants.

F. M. McCarthy, *T. A. Smith*, *C. A. Mitchell*, *O. G. Richard*, *J. H. Rauhman* and *D. H. Berry* for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report and replies thereto were filed. Our conclusions differ somewhat from those recommended by the examiner.

Complainants are The Port of Beaumont, Texas, the Beaumont Rice Mills, Inc., The Comet Rice Mills and The Tyrrell Rice Milling Company. Defendants are Agwilines, Inc. (Clyde-Mallory Lines), Lykes Coastwise Lines, Inc., Southern Pacific Company (Southern Pacific Steamship Lines "Morgan Line"), and Southern Steamship Company, common carriers by water in interstate commerce.

The complaint alleges that defendants illegally apply a proportional rate of 26 cents per 100 pounds on rice and rice products moving from Houston and Galveston, Texas, to north Atlantic ports in violation of section 18 of the Shipping Act, 1916, and that this practice is unduly prejudicial in violation of section 16 of that act. Complainants seek lawful application of rates on such traffic for the future.

Bay City Rice Mills, Inc., Southern Rice Sales Company, Inc., Orange Rice Milling Company, El Campo Rice Milling Company,

Louisiana State Rice Milling Company, New Orleans Joint Traffic Bureau, Board of Commissioners, Lake Charles Harbor & Terminal District and Bull Steamship Line intervened. A similar complaint was filed before the Interstate Commerce Commission, Docket No. 28509, and the two proceedings were heard together.

The primary question is whether the 26-cent proportional rate is applicable on shipments originating within the switching limits of Houston and Galveston and tendered to defendants in railroad cars. It is restricted to apply as follows:

> Applicable only as a proportional rate on traffic on which no transit privileges are accorded, moving via rail lines to Galveston or Houston, Texas, from points in Louisiana and Texas. Traffic routed via Southern Steamship Company will apply only from points in Texas.

Complainants maintain that when rice is milled, sacked, or stored at Houston or Galveston, a local rate of 33 cents is applicable. They regard the movement to the dock from a mill within the switching limits of those ports as merely a switching movement and not a line haul by railroad contemplated by the restriction above quoted. To the contrary, defendants contend that since the rice receives no transit privilege, the 26-cent proportional rate is applicable if it is delivered to the docks in rail cars. Defendants overlook the clause "moving via rail lines to Galveston or Houston", which clearly contemplates that the rate does not apply unless the shipments originate at interior points.

We find that the proportional rate of 26 cents does not apply on shipments originating at Houston or Galveston. Outstanding undercharges should be collected. In view of the conclusions reached it is unnecessary to consider the issue under section 16.

An appropriate order dismissing the proceeding will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 13th day of February A. D. 1941.

No. 576

THE PORT OF BEAUMONT, TEXAS, ET AL.

v.

AGWILINES, INC. (CLYDE-MALLORY LINES), ET AL.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 594

PILGRIM FURNITURE CO., INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

Submitted February 4, 1941. Decided February 13, 1941

Motion granted to dismiss complaint, praying for reparation because of damage to shipment and defendant's failure to carry shipment on specified voyage, on jurisdictional grounds.

Barney R. King, for complainant.
J. A. Stumpf, *H. S. Brown*, and *M. G. de Quevedo*, for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report. The conclusions recommended in the proposed report are adopted herein.

By complaint filed November 1, 1940, it is alleged that complainant made a shipment of furniture samples from New York, N. Y., to Seattle, Wash., via defendant's line in July 1940; that defendant failed to follow shipping instructions that the shipment go forward on a specified sailing; that as a result the furniture did not arrive at destination in time for the particular use for which it was intended. Violations of sections 14 and 18 of the Shipping Act, 1916, are alleged. Reparation is requested.

The facts alleged in the complaint were established by complainant and admitted by defendant at the hearing. Defendant, however, entered a special appearance and filed a motion to dismiss the complaint on the ground that it failed to state a cause of action within the purview of the statutes administered by the Commission.

This furniture was manufactured for use at an exhibition to be held in Seattle on specified dates. Complainant was advised by

defendant's agent that if the cargo was delivered to defendant's pier before 11 o'clock a. m., July 12, 1940, it would go forward on the S. S. *Kansan* sailing that day and would be delivered in Seattle on time. Defendant received the goods before 8 o'clock a. m., July 12, but the shipment was not loaded on the *Kansan* but on another vessel scheduled to arrive in Seattle too late for the exhibition. Complainant was advised of this fact after the shipment had been made whereupon it requested discharge at Los Angeles, Calif., intending to forward the furniture to destination at its own expense. Defendant denied the request on the ground that the cargo was not accessible for discharge at Los Angeles. Defendant's bill of lading, which is part of its legally filed tariff, specifically provides that "the shipowner shall not be required to deliver the goods at port of discharge at any particular time, or to meet any particular market or in time for any particular use." The furniture was finally delivered at Seattle in a damaged condition, but too late for the exhibition.

An examination of the various acts from which we derive our jurisdiction fails to disclose that we have any authority to adjudicate loss and damage claims or to award damages because of a carrier's failure to follow instructions to ship on a particular voyage. No showing was made that there was cargo space available on the *Kansan* and consequently no action may be maintained under the allegation of section 14.

Defendant's motion is granted and the complaint dismissed. An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 13th day of February A. D. 1941.

No. 594

PILGRIM FURNITURE CO., INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof; and defendant having entered a motion to dismiss the complaint for failure to state a cause of action;

It is ordered, That the motion be, and it is hereby, granted, and that the complaint be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) R. L. McDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 581

ROWE SERVICE COMPANY, INC

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

Submitted February 8, 1941. Decided February 20, 1941

Rates on coin-operated vending machines from New York, N. Y., and Newark, N. J., to Los Angeles Harbor, Calif., not shown unreasonable. Complaint dismissed.

Earl W. Cox for complainant.
H. S. Brown, M. G. de Quevedo, and *W. M. Carney* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainant filed exceptions to the report proposed by the examiner, and defendant replied. The latter moves that the exceptions be stricken from the record on the ground, among other things, that they contain evidential matter not introduced at the hearing. The motion is denied, but such matter will not be considered in the disposition of the issues. Our conclusions agree with those of the examiner.

By complaint filed July 9, 1940, it is alleged that defendant's rates on coin-operated vending machines from New York, N. Y., and Newark, N. J., to Los Angeles Harbor, Calif., were and are unjust and unreasonable. Just and reasonable rates for the future and reparation are sought. Rates will be stated in amounts per 100 pounds.

Coin-operated vending machines are used in selling various kinds of articles. As in the case of other coin-operated machines, defendant's rates thereon from New York and Newark to Los Angeles Har-

bor were $2.20, carload, minimum weight 24,000 pounds, and $3.00, less than carload, for more than a year prior to December 12, 1939, when they were reduced to $1.50, any quantity. This rate was increased to $2.50 on March 4, 1940, but effective October 17, 1940, was reduced to $2.25. The shipments, made during the period May 11, 1939 to April 30, 1940, consisted of cigarette-vending machines, mainly in less carload lots.

Complainant compares these rates with a less-than-carload rate of $1.27 on steel cabinets in effect from November 13, 1939, to May 1, 1940, when it was increased to $1.35. The cabinets are used as stands for coin-operated cigarette-vending machines and for the storage of cigarettes to be vended. They, like the machines, are of three sizes. Their average weight per cubic foot is about 15 pounds, and that of the cigarette-vending machines is about 13 pounds. This is not enough to establish unreasonableness of the rates attacked.

Complainant also calls attention to the existence of a lower rate of defendant on coin-operated vending machines east-bound than west-bound, and to the fact that the rate of rail carriers from New York to Los Angeles on less-than-carload shipments of coin-operated vending machines is lower than their less-than-carload rate on other coin-operated machines. Defendant's east-bound rate referred to was an any-quantity rate of $2.00, which became effective September 5, 1939, and was increased to $2.08 effective May 1, 1940. The rail rates, which cover pick-up-and-delivery servies, are $3.60 and $4.76, respectively.

The minimum reasonable rate prescribed on this commodity in *Intercoastal Rate Structure*, 2 U. S. M. C. 285, was $2.20, carload, minimum 24,000 pounds and $3.00, less carload. As stated, the present rate is $2.25, any quantity, which was authorized by the third supplemental order in the above-mentioned proceeding. We are not convinced upon this record that the rates assailed have been shown to be unreasonable.

We find that the rates assailed are not shown to be, or to have been, unjust or unreasonable. An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 20th day of February A. D. 1941.

No. 581

ROWE SERVICE COMPANY, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) R. L. McDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 590

ATLANTIC SYRUP REFINING CO.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

Submitted February 13, 1941. Decided February 21, 1941

Defendant's failure to fulfill obligation fixed by its routing sheet in connection with shipment of syrup from Philadelphia, Pa., to San Diego, Calif., found unreasonable practice. Complainant found damaged and reparation awarded.

H. S. Brown for complainant.

R. H. Specker, M. G. de Quevedo for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report, the recommendations of which, as modified, are adopted herein.

The complaint alleges than on March 12, 1940, a shipment of 582 cases of syrup, weighing 33,174 pounds, was made via defendant from Philadelphia, Pa., to San Diego, Calif.; that defendant quoted a through carload commodity rate of 60 cents per 100 pounds; that the shipment was routed via McCormick Steamship Co. beyond Los Angeles; that charges were assessed on the basis of 73 cents per 100 pounds consisting of the defendant's ocean rate of 60 cents to Los Angeles and rail charges beyond of 13 cents per 100 pounds; and that complainant has been damaged to the extent of the difference between charges at the rate quoted and the charges assessed. Reparation is requested. Rates will be stated in cents per 100 pounds.

At the hearing defendant admitted the facts as alleged. McCormick proposed to, and subsequently did, discontinue its service to San Diego on April 1, 1940, and on February 27, 1940, Luckenbach through its

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tariff publishing agent filed a cancelation of the route effective April 1. The shipment arrived in Los Angeles on April 1 but not in time for McCormick's last sailing. After arrival of the goods defendant notified the consignee and thereafter forwarded the shipment via rail to San Diego at the 13-cent rate and complainant was billed therefor.

Defendant's applicable tariff, Alternate Agent Wells' Westbound Freight *Tariff No. 1C*, SB–I *No. 6*, provides in paragraph D–1 of rule 2 that the through joint rates named in the tariff are applicable except when service of the participating on-carrier has been interrupted due to strike, vessel accident, break-down, or other similar emergency situation. Defendant contends that this rule is controlling in the premises. The rule was published by defendant as a result of our decision in *Intercoastal Joint Rates via On-Carriers*, 1 U. S. M. C. 760. Therein, it was stated that carriers ordinarily cannot free themselves from the obligation to deliver, but may be permitted to do so under certain specified conditions as set forth in the rule. None of the conditions outlined in the rule is present here. Moreover defendant had notice of the discontinuance of the on-carrier service on February 27 when the cancellation of the joint through route was filed. It is clear that the rule is inapplicable.

Rule 24 of the Wells' tariff provides that rate changes are effective as of the date of the dock receipt. On that date defendant's tariff provided that shipments to San Diego would be transported either direct by Luckenbach or by McCormick beyond Los Angeles. Regardless of the effect of the discontinuance of McCormick's service, the obligation remained upon Luckenbach to make delivery direct as provided in its tariff.

We find that defendant's failure to fulfill the obligation fixed by its routing sheet was an unreasonable practice which resulted in damage to complainant in the amount of the difference between the charges collected and those which would have accrued at 60 cents, or $43.13 and that reparation in that amount should be made to complainant.

An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 21st day of February A. D. 1941.

No. 590

ATLANTIC SYRUP REFINING CO.

v.

LUCKENBACH STEAMSHIP COMPANY, INC.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That defendant be, and it is hereby, authorized and directed to pay to complainant Atlantic Syrup Refining Co., of Philadelphia, Pa., on or before 30 days after the date hereof, the sum of $43.13 as reparation on account of the unreasonable practice found herein.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 586

PLOMB TOOL CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP CO.

Submitted February 13, 1941. Decided February 25, 1941

Shipments of composition tool handles from Brooklyn, N. Y., to Los Angeles Harbor, Calif., found to have been overcharged. Overcharges should be refunded immediately.

Earl W. Cox for complainant.

H. S. Brown, M. G. de Quevedo, and *W. M. Carney* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. Our conclusions agree substantially with those which he recommended.

By complaint filed September 18, 1940, it is alleged that the rate charged by defendant for the transportation of two shipments of composition tool handles from Brooklyn, N. Y., to Los Angeles Harbor, Calif., was inapplicable and unreasonable. Reparation is sought. Rates will be stated in amounts per 100 pounds.

The shipments weighed 593 pounds and 410 pounds, respectively. At the times of movement, December 17 and 20, 1938, the governing classification contained a rating of second class on composition handles, less than carload. Defendant's second-class rate of $3.80 was charged. Defendant also published a less-than-carload commodity rate of $1.70 applicable on mechanics' hand tools and parts thereof. Defendant admits that the shipments consisted of composition tool handles, thus leaving no doubt that they were parts of machanics' hand tools and entitled to the lower rate. Freight charges at the higher rate were paid on January 7 and 10, 1939. In April 1940, complainant sought to recover the overcharges, but defendant,

under date of May 2, 1940, returned the claim without favorable action, citing the following tariff rule, which became effective January 18, 1940:

> Any claim for alleged overcharge must be filed in writing with carrier party hereto within one (1) year from the date on which freight is paid to the carrier.

Section 2 of the Intercoastal Shipping Act, 1933, forbids any common carrier by water in intercoastal commerce to "charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property or for any service in connection therewith than the rates, fares, and/or charges which are specified in its schedules filed with the Commission and duly posted and in effect at the time." That act amended the Shipping Act, 1916, but made no change in section 22. This section provides for the payment of reparation if complaint is filed with the Commission within two years after the cause of action accrued. It follows that recovery in the instant case is not barred.

We find that the shipments were overcharged $21.06, which should be refunded immediately.

An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of February A. D. 1941

No. 586

PLOMB TOOL CO.

v.

AMERICAN-HAWAIIAN STEAMSHIP CO.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission:

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 10th day of September A. D. 1940.

No. 522

GRAYS HARBOR PULP & PAPER COMPANY

v.

A. F. KLAVENESS & CO., A/S, ET AL.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the defendants herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before November 1, 1940, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of printing paper from Grays Harbor, Wash., to the ports within the scope of the Pacific Westbound Conference agreement rates which exceed those on like traffic to the same ports from Seattle or Tacoma, Wash., or Portland, Oreg.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary

UNITED STATES MARITIME COMMISSION

No. 522

GRAYS HARBOR PULP & PAPER COMPANY

v.

A. F. KLAVENESS & CO., A/S, ET AL.

Submitted January 14, 1941. Decided February 27, 1941

Prior report and order modified so as to permit the establishment of proposed schedule of rates on printing paper from Grays Harbor, Wash., to ports in the Orient.

De Forest Perkins for complainant.
Joseph J. Geary and *W. H. Hayden* for defendants.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

In the original report herein (2 U. S. M. C. 366), we found that defendants' rates on printing paper from Grays Harbor, Wash., to the ports within the scope of the Pacific Westbound Conference agreement were, and for the future would be, unduly prejudicial and unjustly discriminatory to the extent that they exceeded or might exceed their rates contemporaneously maintained on printing paper from Seattle or Tacoma, Wash., or Portland, Oreg., to such ports, calls to load at docks in Grays Harbor to be made at defendants' discretion. The undue prejudice and unjust discrimination was ordered removed.

Upon receipt of a stipulation of facts and agreement to modification of the order by the parties, filed January 11, 1941, reciting changed conditions since the prior report and order were issued, the proceeding was reopened for receipt of said stipulation and agreement and for reconsideration of the order.

The rates from Grays Harbor were higher than those from the other ports named by the amount of an arbitrary of $4.90 per net ton, which was equivalent to the charges incidental to the movement of printing

paper by rail from Grays Harbor to Tacoma or Seattle. Calls at complainant's dock were subject to a minimum tonnage requirement of 500 tons.

According to the stipulation, there has been a decrease in the rail charges amounting to $1.50 per net ton, which reduces the cost of transportation to Seattle or Tacoma to $3.40.[1] In lieu of a parity of rates between Grays Harbor and Seattle and Tacoma, defendants propose, on shipments from Grays Harbor direct, to charge the entire arbitrary of $3.40 on quantities of less than 200 tons, and to impose an arbitrary of $1.40 for quantities of 200 tons or more. They also propose, on shipments via Seattle or Tacoma of 200 tons or more, to absorb $2 of the charges to those ports. If the rail charges should vary further, defendants agree to increase or decrease their absorption by 60 percent of the amount of the variation on shipments of the required minimum. As a result of the proposal, the total freight charges from Grays Harbor would be the same whether the shipments were lifted by defendants there or at Seattle or Tacoma.

It will be observed that under the proposed adjustment, the arbitrary as well as the minimum tonnage requirement will be reduced to a basis satisfactory to all parties, particularly in view of the additional and more frequent service which will be available to complainant via Seattle and Tacoma.

We find that the original report and order herein should be modified so as to permit the establishment by defendants of the schedule of rates proposed in the stipulation and agreement as described above.

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[1] Includes rail charges of $2.40, and wharfage and handling charges of $1.00.

UNITED STATES MARITIME COMMISSION

No. 584

E. I. Du Pont de Nemours & Company, Inc.

v.

Southern Steamship Company

Submitted January 30, 1941. Decided February 28, 1941

Rate charged on shipment of synthetic indigo paste and sodium hydrosulphite from Philadelphia, Pa., to Houston, Tex., found unreasonable and reparation awarded.

Robert W. Marshall for complainant.
Julian M. King for defendant.

Report of the Commission

By the Commission:

This case was presented under the shortened procedure. Exceptions were filed by defendant to the report proposed by the examiner, whose findings are adopted herein.

By complaint filed August 14, 1940, it is alleged that the rate charged by defendant on a mixed carload of sodium hydrosulphite and synthetic indigo paste shipped August 30, 1938, from Philadelphia, Pa., to Houston, Tex., was unreasonable. Reparation is sought. Rates will be stated in amounts per 100 pounds.

The shipment consisted of 50 drums of sodium hydrosulphite weighing 13,450 pounds and 90 drums of synthetic indigo paste weighing 39,963 pounds. Charges were collected on the aggregate weight of 53,413 pounds at a fourth-class rate of $1.03. At the time of shipment, sodium hydrosulphite, carload, minimum 40,000 pounds, was rated fifth class in western classification, which governed, and synthetic indigo paste, carload, minimum 30,000 pounds, was rated fourth class. The fifth-class and fourth-class rates were 37½ and 55 percent, respectively, of the first-class rate of $1.87. Under rule 10 of the classification, the fourth-class rate was applicable on the entire shipment. Complainant contends that a reasonable carload rate on synthetic indigo paste should not have exceeded 45 percent of the first-class rate, or 84 cents, and that the rate charged was unreasonable to the extent it exceeded that figure.

Synthetic indigo is a nonhazardous dye which requires no special packing or stowage, and commercially it has largely displaced nat-

ural indigo, which also is nonhazardous and which rarely moves. The shipment of synthetic indigo under consideration had a value of from 16 to 19 cents per pound, whereas natural indigo had a value ranging from $1.63 to $1.67 per pound. During the period involved, defendant published a carload rate of 45 percent of first class on natural indigo, dry, liquid, or paste, from Philadelphia to Houston, and shortly thereafter, effective October 31, 1938, the same rate was established on synthetic indigo paste.

Defendant contends that the comparison of the assailed rate with the rate on natural indigo has little or no weight since the movement of this commodity is rare. Complainant, to show the appositeness of the comparison, cites *Chemicals, Acids, and Dyestuffs*, 177 I. C. C. 529, wherein the Interstate Commerce Commission, after referring to the displacement of natural indigo by the synthetic product and the characteristics of the two commodities, held that a carload rating of fourth class on natural indigo, liquid or paste, was justified, but that for synthetic indigo, in liquid or paste form, the carload rating should not exceed fifth class. Although that case involved ratings in southern classification while we are here concerned with western classification, the basis of the ruling was the "very wide difference in value."

Complainant further shows that, except during the period from July 22, 1937, to October 31, 1938, rates as low as, or lower than, the rate sought have been in effect on synthetic indigo paste from Philadelphia to Houston since June 21, 1932. To justify the increase on July 22, 1937, and to show that rates 45 percent of first class on natural and synthetic indigo are depressed, defendant points out that the Interstate Commerce Commission in *Consolidated Southwestern Cases*, 205 I. C. C. 601, 211 I. C. C. 601, and 222 I. C. C. 229, found that a maximum reasonable first-class rate for application from Philadelphia to dock at Houston would be $1.70 (or $1.87, including the increase permitted in *Fifteen Percent Case, 1937–1938*, 226 I. C. C. 41) and that a maximum reasonable fourth-class rate would be 55 percent of first class. But the issue here is not the reasonableness of the fourth-class rate; it is whether it was reasonable to apply the fourth-class rate on synthetic indigo paste. The facts of record clearly warrant the conclusion that the rate charged was unreasonable. We find that the assailed rate was unreasonable to the extent it exceeded 84 cents; that complainant made the shipment as described and bore the charges thereon; that it was damaged thereby to the extent of the difference between the charges paid and those which would have accrued at a rate of 84 cents; and that complainant is entitled to reparation in the sum of $101.48.

An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of February A. D. 1941

No. 584

E. I. DU PONT DE NEMOURS & COMPANY, INC.

v.

SOUTHERN STEAMSHIP COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions, decision, and findings thereon, which report is hereby referred to and made a part hereof;

It is ordered, That defendant, Southern Steamship Company, be, and it is hereby, authorized and directed to pay to complainant, E. I. du Pont de Nemours & Company, Inc., Wilmington, Delaware, on or before 30 days after the date hereof, the sum of $101.48 as reparation on account of unreasonable charges collected on the shipment involved herein.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 595

SIGFRIED OLSEN

v.

BLUE STAR LINE, LIMITED, ET AL.

Submitted March 4, 1941. Decided March 25, 1941

Defendants' refusal to admit complainant to conference membership and to participation in exclusive patronage contracts entered into pursuant to conference agreement found to be unfair and unjustly discriminatory as between complainant and defendants, and to subject complainant to undue prejudice and disadvantage.

If complainant be not admitted to full and equal membership in the conference, consideration will be given to disapproval of the conference agreement.

Joseph B. McKeon, *Clarence A. Shuey*, and *Farnham P. Griffiths* for complainant.

Chalmers G. Graham for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Defendants filed exceptions to the report proposed by the examiner, and complainant replied. Our conclusions agree with those of the examiner.

Complainant, an individual doing business under the name of Sigfried Olsen Shipping Company, alleges, in substance, that the Camexco Freight Conference Agreement, under which defendants,[1] which are all of the members of the conference, refuse to admit him to membership therein, and defendants' exclusive patronage contracts

[1] Blue Star Line, Limited, Compagnie Generale Transatlantique (French Line), The East Asiatic Company, Limited, Fred. Olsen & Company (Fred. Olsen Line), Grace Line, Inc. (Grace Line), Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft (Hamburg-American Line), "Italia" Societa' Anonima di Navigazione (Italian Line), N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij (Holland-America Line), Norddeutscher Lloyd (North German Lloyd), Rederiaktiebolaget Nordstjernan (Johnson Line), Royal Mail Lines, Ltd., and Westfal-Larsen & Company, A/S (Westfal-Larsen Company Line).

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entered into pursuant to the conference agreement, are unfair and unjustly discriminatory as between complainant and defendants, subject complainant to undue prejudice and disadvantage, result in undue preference of certain shippers and unjust discrimination against others, and operate to the detriment of the commerce of the United States. We are asked to disapprove the conference agreement unless defendants admit complainant to full and equal membership in the conference.

The conference agreement was approved by us on April 13, 1939. It provides for the establishment, regulation, and maintenance of agreed rates, charges, and practices for and in connection with the transportation of green coffee in vessels owned, chartered, and otherwise controlled by the parties thereto from ports on the west coast of Central America and Mexico to Pacific-coast ports of the United States and Canada. It also provides that any person, firm, or corporation regularly engaged as a common carrier by water in the trade may become a party to the agreement and a member of the conference upon unanimous assent of the conference members and that no eligible applicant shall be denied admission to membership except for just and reasonable cause.

Complainant applied for admission to membership in the conference on September 21, 1940. He informed the conference that he was ready to abide by the terms of the conference agreement, tariffs, and regulations, and on October 1, 1940, furnished additional information pursuant to the latter's request. Under date of October 9, 1940, he was advised that his application had been declined. The conference did not disclose any reason for its action, and an effort on the part of complainant to ascertain why he was excluded from membership met with no success.

Complainant operates the Solship Line, employing vessels which he time-charters. He has agencies throughout Central America, as well as his own offices there, in the Canal Zone, and in San Francisco, Calif.; Portland, Oreg.; and Seattle, Wash. At the time of hearing, in December 1940, he had four vessels under charter. For years prior to the time that he applied for conference membership, he had chartered ships for the carriage of cargo south-bound to Central America and the Canal Zone, to which he ships large quantities of lumber and cement. He began to hold himself out as a common carrier in the north-bound trade to which the conference agreement relates on or about September 23, 1940, and, in weekly shipping publications on and since that date, he has advertised services, north-bound and south-bound, with calls at Corinto, Puntarenas, La Union, La Libertad, Amapala, and San Jose de Guatemala, all coffee ports in Central

America, Balboa and Cristobal, in the Canal Zone, and Los Angeles, San Francisco, Portland, Tacoma, and Seattle, in the United States.

Complainant's sailings average about two a month from the Canal Zone. In his two to three months' activity as a common carrier up to the time of hearing, he had made two Central American calls for ore north-bound and had scheduled another. Because of defendants' exclusive patronage contracts, he has found it impossible to secure shipments of green coffee. Under the contracts, shippers of green coffee from Pacific-coast ports of Central America to ports in California, Oregon, and Washington are required to offer their shipments to members of the conference. For failure to do so, there is charged, on past and future shipments, a noncontract rate which is $3.00 per net ton higher than the contract rate. The result is that defendants, admittedly, have a practical monopoly of the carriage of coffee, and complainant's efforts to secure such shipments are futile.

Complainant has been assured of support for his service by coffee shippers, associations, and government departments throughout Central America, provided that the conference admit him to membership and permit of patronage of his line without penalty. Consular officers of nearly all of the Central American republics testified in his behalf. They generally stress the fact that the vessels of many lines have been withdrawn from operation as a result of the European war, thus creating a need for other tonnage. The record shows that seven members of the conference are inactive. They carried approximately 60 percent of the coffee transported by the conference lines.

Defendants state that the conference has received no complaint with respect to vessel space available for Central American coffee, and, to support their contention that the trade is adequately served by them, they show that there have been times when coffee could not be obtained by present active members. These members, under the conference's coffee pooling agreement in effect prior to the commencement of the war, received less than 40 percent of the freight pooled, and none of them, individually, except one, received more than 3¼ percent. They are engaged in trades between European, Caribbean, and South American ports and Pacific-coast ports of the United States. The coffee ports in Central America are intermediate ports of call served as inducements are offered to ships en route. Some of defendants' ships arrive at or off these ports about the time that another conference vessel is loading, and failure to obtain cargo at times is doubtless due to the arrangement of ships' schedules. Furthermore, many of the calls when no cargo was available were made during periods other than the coffee season. The season extends from about January 1 to June 30, after which shipments are irregular.

But, even if the trade were adequately tonnaged "this factor cannot be controlling for the reason that if adequacy of existing service is to prevent new lines from engaging in the trade, carriers already in the service could perpetuate their monopoly by the simple and expedient method of continuing to maintain adequate service." *Waterman S. S. Corp.* v. *Arnold Bernstein Line*, 2 U. S. M. C. 238, 243; *Cosmopolitan Line* v. *Black Diamond Lines, Inc.*, 2 U. S. M. C. 321, 330. Defendants admit that it is necessary to supplement their tonnage with chartered vessels in order to handle the volume of coffee moving. Moreover, their evidence with respect to available cargo, which includes the coffee seasons of 1939 and 1940, would apply to defendant Blue Star Line, Limited, as well as to complainant. Blue Star Line, Limited, was admitted to membership in the conference July 24, 1940. And, since then, another carrier, Pacific Argentine Brazil Line, Inc., has resigned.

Defendants also contend that, since complainant has transported no coffee, he is not regularly engaged in the coffee-carrying trade covered by the conference agreement and, therefore, not entitled to conference membership. Thus, they endeavor to impose a requirement which they themselves by monopolizing the trade make impossible to fulfill. Complainant has announced his service, published sailing schedules, solicited coffee shipments, and carried cargo obtainable. This is sufficient. *Cosmopolitan Line* v. *Black Diamond Lines, Inc., supra.* It is shown in addition that Blue Star Line, Limited, prior to the time of its admission to the conference, was not actually carrying cargo in the trade.

Defendants suggest the possibility that complainant may, at some future time, for lack of cargo or inability to secure vessels, find it necessary to cease operating. They apparently overlook the fact that most of them at the present time are inactive and that the future of others is uncertain. Membership in the conference continues to be held by the inactive lines while it is denied complainant. Like situations were condemned in *Phelps Bros. & Co. Inc.*, v. *Cosulich-Societa Triestina di Navigazione*, 1 U. S. M. C. 634, 641, and *Sprague S. S. Agency, Inc.* v. *A/S Ivarans Rederi*, 2 U. S. M. C. 72, 76. Also, it should be noted that the conference agreement does not disallow the operation of chartered tonnage; rather, its provisions were evidently drawn with such operation by the members in view. Further, any member is permitted by the agreement to withdraw from the conference on ninety days' notice.

It is pointed out by defendants that complainant has not disclosed his financial condition. But he was not asked to do so; defendants have not revealed theirs, and there is no provision in the conference

agreement requiring parties thereto or applicants for membership to divulge such information.

There is testimony by complainant that, southbound, he has charged rates above, below, and the same as those of a different conference in the southbound trade. The charging of the lower rates southbound is advanced by defendants as ground for debarring complainant from the northbound conference despite the fact that complainant has been denied membership in the southbound conference, as well as in the northbound conference. Defendants even contend that complainant should be excluded from the northbound conference unless he again make application for southbound-conference membership. Such a position is unreasonable. No provision of the northbound-conference agreement requires any party thereto or applicant for membership to make even one application to the southbound conference.

Defendants seek support from our decision in *Hind, Rolph & Co., Inc.*, v. *French Line*, 2 U. S. M. C. 138, where refusal to admit the Brodin Line to membership in the predecessor of Camexco Freight Conference, among others, was upheld. But that case was reopened for rehearing "as it appeared that conditions had changed materially as a result of the European war." 2 U. S. M. C. 280. It is true that the complaints were finally dismissed, but that was because the issues had been rendered moot. In the report on rehearing, we pointed out that the vessels employed by complainants were proceeding to Sweden under recall orders, and we stated that the dismissal was "without prejudice to complainants' right to petition for reopening of this proceeding, or to file a new complaint, if and when they reenter the trade involved." Material facts not present in the case cited are presented here. Likewise, in other cases which defendants cite,[2] the facts were essentially different.

We find on the record in this proceeding that complainant is entitled to membership in the Camexco Freight Conference on equal terms with each of the defendants, and that failure to admit complainant to membership in said conference, including participation in shippers' contracts entered into pursuant to the conference agreement, resulted in the said agreement and contracts being unfair, and unjustly discriminatory as between complainant and defendants, thus subjecting complainant to undue prejudice and disadvantage, and subjecting the agreement to disapproval or modification under section 15 of the Shipping Act, 1916, as amended.

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[2] *Wessel, Duval & Co., Inc., v. Colombian S. S. Co., Inc.*, 1 U. S. S. B. B. 390; *American Caribbean Line, Inc., v. Compagnie Generale Transatlantique*, 1 U. S. S. B. B. 549; *Application of Red Star Linie G. m. b. H. for Conference Membership*, 1 U. S. S. B. B. 504.

Defendants will be allowed 10 days within which to admit complainant to full and equal membership in the conference, failing which consideration will be given to the issuance of an order disapproving the conference agreement.

Concerning the allegations of undue preference of, and unjust discrimination against, shippers, no shipper testified, and no substantial evidence was presented. We find that these allegations are not sustained.

By the United States Maritime Commission.

[SEAL] (Sgd) W. C. PEET, JR.,
Secretary.

WASHINGTON, D. C., *March 25, 1941.*

UNITED STATES MARITIME COMMISSION

No. 585

RATES, CHARGES, AND PRACTICES OF CARRIERS, AND PRACTICES OF SHIPPERS, IN CONNECTION WITH FREIGHT TRAFFIC FROM UNITED STATES TO PHILIPPINE ISLANDS

Submitted March 13, 1941. Decided March 25, 1941

Respondent carriers named allow persons to obtain transportation at less than their regular rates currently established and enforced by means of false billing, and unduly prefer and unduly prejudice particular persons, in violation of section 16 "Second" and "First," respectively, of the Shipping Act, 1916, as amended.

Respondent shippers named obtain transportation of property by means of false billing at less than the rates which would otherwise be applicable, in violation of paragraph 1 of Section 16 of the Shipping Act, 1916, as amended.

Cease and desist order entered, and record herein to be certified to Department of Justice for prosecution.

William G. Symmers and *Samuel D. Slade* for the Commission.

Herman Goldman, *Elkan Turk* and *Leo E. Wolf* for American President Lines, Ltd., Barber Steamship Lines, Inc., De La Rama Steamship Company, Inc., Ellerman & Bucknall Steamship Company, Ltd. (American & Manchurian Line), Isthmian Steamship Company, Kerr Steamship Company, Inc., and United States Lines Company (American Pioneer Line); *Harry Smith* for Abe Cohen; *Jack Adair* and *Marian DeDonna* for L. R. Aguinaldo & Company, Inc.; *Arthur Caplan* for Arthur Caplan, Inc.; *Harry G. Herman* for E. Awad & Sons, Inc., and Cohen & Schwartz Mill Products Corporation; *Herbert M. Statt* for De La Rama Steamship Company, Inc.; *Frank Gindoff* for A. Gindoff & Company; *Charles S. Belsterling* and *Thomas F. Lynch* for Isthmian Steamship Company; *Arthur Leonard Ross* for Kummer, Comins & Company, Inc., and Stronghold Fastener Company, Inc.; *Clement C. Rinehart* and *T. F. McGovern* for Smith, Kirkpatrick & Company, Inc.; *Stanley Bogart* for United

States Bag and Burlap Company and United States Export Products Company.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by certain of the carrier and shipper respondents, and the issues were orally argued. The findings recommended in the proposed report are adopted herein.

This is an investigation instituted by the Commission into the lawfulness of rates, charges and practices of carriers under sections 16, 17, and 15 of the Shipping Act, 1916, as amended, and of practices of shippers under section 16 of that act, in connection with transportation of freight from the United States to the Philippine Islands.

The carriers named respondents [1] are, together with other carriers, members of the Far East Conference. This conference functions under authority of an agreement [2] filed and approved pursuant to section 15 of the Shipping Act, 1916. The other respondents [3] are individuals and corporations engaged in shipping textiles and other commodities from the United States to Manila, P. I., via the respondent carriers. Stronghold Fastener Company, Inc., is a forwarder for Kummer, Comins & Company, Inc., and United States Bag & Burlap Company and United States Export Products Company are trade names for Harry Schetzen, of New York, N. Y., who is purchasing agent for the Manila Remnant Company, of Manila, P. I. Respondent A. Gindoff & Company is purchasing agent for Litton & Company, of Manila, P. I. No evidence was presented against Kerr Steamship Company, Arthur Caplan, Inc., Cohen & Schwartz Mill Products Corporation, or United States Bag & Burlap Company, and the term "respondents" hereinafter used in this report will not apply to them.

By the terms of their conference agreement the respondent carriers are required to exact all rates strictly in accordance with a tariff of

[1] American President Lines, Ltd., Barber Steamship Lines, Inc., De La Rama Steamship Company, Inc., Ellerman & Bucknall Steamship Company, Ltd. (American & Manchurian Line), Isthmian Steamship Company, Kerr Steamship Company, Inc., and United States Lines Company (American Pioneer Line).

[2] Far East Conference Agreement No. 17, approved November 14, 1922, and amended to January 14, 1935.

[3] L. R. Aguinaldo & Company, Inc., E. Awad & Sons, Arthur Caplan, Inc., Abe Cohen, Cohen & Schwartz Mill Products Corporation, Federated Trading Corporation, A. Gindoff & Company, Kummer, Comins & Company, Smith, Kirkpatrick & Company, Inc., Stronghold Fastener Company, Inc., United States Bag & Burlap Company, United States Export Products Company.

rates agreed upon by them. Their joint tariff [4] specifying the rates and regulations in relation thereto was filed with us on January 10, 1938. This tariff, with its supplements subsequently filed, set forth the established and enforced rates of respondent carriers applicable to shipments involved in the instant proceeding.

In cooperation with United States Bureau of Customs, Commission investigators during July, August, and September, 1940, examined customs files in New York, N. Y., covering shipments of textiles via respondent carriers to Manila made during the period June 1938 to July 1940, inclusive. The papers examined included bills of lading, ships' manifests, and export declarations.[5] In some instances bales of textiles were opened and the contents checked with their bill of lading and manifest descriptions. Examination was also made of manufacturers' and shippers' (commercial) [6] invoices and of other papers relating to textile shipments to Manila in the New York offices of respondent carriers and shippers, and inspections were made at places of business of respondent shippers as to the nature of textiles shipped and the manner of their packing for transportation to Manila. Differences between descriptions of textiles in export declarations and their descriptions in bills of lading comprise the principal evidence to establish that respondent carriers allow respondent and other shippers to obtain transportation at less than their tariff rates by means of false billing, in violation of section 16 "Second" of the Shipping Act, 1916, as amended,[7] and, in relation to textiles accurately billed by other shippers, of violation by these carriers of section 16 "First" thereof.[8] Differences in descriptions of textiles as stated in bills of lading and manifests and as stated in export declarations, invoices and other papers, comprise the principal evidence to establish that shippers have obtained transportation at less than rates otherwise applicable by means of false billing, in violation of the first paragraph

[4] Far East Conference Tariff No. 14, issued January 1, 1938.

[5] Export declarations (United States Department of Commerce Form 7525) are prepared sworn to, and filed with customs by the shipper or his broker. They describe the goods to be shipped in detail. Since issuance of Far East Conference circular dated September 8, 1939, the carriers require filing of copy of the export declaration and issuance of a permit by them before they will receive the goods or sign the bill of lading. Previous to that date copy of the declaration was filed with the carriers after their receipt of the goods for transportation and after signing by them of the bill of lading.

[6] The commercial invoice is the basis upon which the textiles are bought and sold. It is one of the documents required by Philippines customs in permitting entry.

[7] Providing that it shall be unlawful for any subject carrier "to allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means."

[8] Providing that it shall be unlawful for any subject carrier "to make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

of section 16 of that act.[9] The textiles primarily involved were billed as cotton piece goods and as rags, but shown by the export declarations and other papers and evidence to be rayon, fabrics of mixed rayon and cotton, or remnants rather than rags.

As to a few of the exhibits introduced to show false billing and carriage of rayon fabrics as cotton goods, the accuracy of the investigators' conclusions regarding the material of which the goods was made is questioned by both carrier and shipper respondents upon the ground that textiles as sometimes loosely described by various names[10] could be woven of either cotton or rayon. In the case of all shipments of this class, only those are considered herein which are shown by export declarations, invoices, and/or other papers and evidence to have been rayon.

Concerning the evidence which shows that fabrics woven of cotton and other material are billed and carried as cotton goods, respondent shippers point to the fact that under United States Bureau of Customs' regulations a description of a mixed fabric as "cotton" or "cotton chief value" is acceptable for customs purposes if the fabric contains 50 percent or more of cotton by value. Furthermore, under regulations administered by the Surplus Marketing Administration, United States Department of Agriculture, subsidy payments applicable to shipments of cotton goods are made on mixed fabrics, to the extent of their cotton content, if their weave includes 50 percent or more of cotton by weight. However, as conceded by witnesses for respondent carriers, their tariff admits of no such latitudes of interpretation. Item 655 thereof is applicable by unqualified description to "cotton" goods of the varied kinds specified by name in the tariff, and does not permit of application to any goods which do not consist wholly of cotton. For textiles consisting of mixtures of cotton and rayon or other material in any proportion, the only applicable provision of the governing tariff is Item 450, "Cargo, N. O. S." This item expressly provides that it "Applies on Commodities Not Specifically Covered by Individual Rate Items."

Additional evidence to show false billings is the fact that before an increase on May 1, 1940, in the tariff rate on rags in bales to the level of the rate on cotton piece goods and on cotton remnants, cotton remnants were billed and carried as rags; that rayon remnants and remnants composed of mixed rayon and cotton fabrics are billed and

[9] Providing that it shall be unlawful "for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means, to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable."

[10] For examples, "Drill," "Sharkskin," "Sheer," "Suede."

carried as rags, and that cotton remnants and rayon remnants packed in the same bale and chargeable under Tariff Rule 18[11] at the rate for rayon remnants are billed and carried as rags.

In the Philippine trade respondent shippers deal extensively in substandard textiles. From textile mills in the United States they purchase, by weight, "seconds," "fents," "shorts," "pounds," "mill ends," "rags," and other "off goods" which because of imperfections as to pattern, print, length, width, or other condition, are discarded by the mills as inferior to the standard textiles manufactured by them. Some of these "off goods" as received from the mills are torn or are marred by weaving machine holes. Many of them are perfect except for tears along one of the selvages. Except for rarely occurring grease or dirt spots, the goods are new and clean. In most instances these textiles are sorted or graded by respondent shippers or others as to size and quality so that pieces may be selected for the making of clothing. Pieces thus selected and shipped to Manila on bills of lading describing them as rags, range from ¼ yard to 15 or more yards in length; and each piece is either of original width from selvage to selvage or of a width sufficient to provide a substantial piece for sewing to other pieces in the making of garments. Many of such pieces are pressed, folded and tied together by respondent shippers or their suppliers in uniform parcels before being compressed in bales for shipment, and others are more loosely arranged in bales and compressed. All witnesses are in agreement that these fabrics billed as rags are retailed in Manila stores and are used by housewives and others in the making of dresses, underwear, and other garments. Exhibits brought from Manila and introduced in evidence showed that even the smallest pieces of cloth involved were used for the making of children's dresses.

Testimony by dealers in textiles, including shippers of textiles to Manila, by witnesses for respondent carriers, and by others, is that rags are fragments or pieces of cloth which because of torn, worn, dirty, or other disqualifying condition, are not usable for the making of garments or other cloth articles as originally intended in their manufacture. The testimony is that "rags" are fit only for utilization for secondary purposes, such as, for example, grinding or shredding in the manufacture of paper, or of wiping or other absorbent "waste." Assertions by witnesses that there are no paper mills in the Philippines are undisputed. No facts are presented which indicate any commercial or other demand or use in the Philippines for "rags" as thus understood which would explain the volume of

[11] Tariff Rule 18 provides, in part, that "Any package containing more than one commodity must be charged at the rate for the highest commodity contained therein."

respondent shippers' consignments billed as rags. An expert in rayons stated that there is no such thing as a rayon rag. No testimony tends to show the existence of any commonly known and established trade definition of rags which would support repondent shippers' billings. The testimony of respondent shippers is indefinite, each giving a definition to correspond with the textiles he bills as rags. That the commodities concerned are remnants of various fabrics falsely billed as rags is further evidenced by letters from respondent and other shippers to the Department of Agriculture, supplementing applications for cotton subsidy payments, in which are statements, for example, that "our shipments of cotton remnants are listed as 'cotton rags' only in order to take advantage of the lower shipping rates" * * * "this is to certify that the goods described as cotton rags in the bill of lading are in fact remnants," and by testimony of customs inspectors that upon opening of bales the contents were disclosed to be rayon goods. Additional evidence shows that Manila customs authorities, in the course of their inspection of textiles, or examination of invoices thereof, or upon other customs supervision over Manila entry, have required amendments of ships' manifests of respondent carriers by changing descriptions of textiles of respondent shippers, mostly from rags to remnants.

The traffic manager of respondent Aguinaldo testified that for the past six years the packers under her supervision have at her direction "stuffed" cotton goods, rayon underwear, and mixed cotton and rayon goods around that respondent's Manila shipments of radios, folding beds, children's high chairs, and nursery furniture "to make the shipments secure" and "in the interest of economy." In some instances, for example, the "stuffing space" has approximated six inches on each side of table models and console types of radios. The bills of lading have described the goods shipped solely as radios, etc., and the textiles and wearing apparel have "traveled free." In some instances textiles thus inserted were duly entered in the export declarations.

At no time have respondent carriers opened any shipments destined to Manila to check the contents with the bill of lading descriptions thereof,[12] nor are copies of invoices required by respondent carriers except when a shipper may claim an overcharge after the signed bill of lading is delivered to him. Apart from recent communications between them and their Manila agents in reference to manifests amended

[12] Bill of Lading provisions of two of these respondents expressly provide that the carrier may at any time open packages and examine the contents.

at the direction of Manila customs, the only indication of a check made by respondent carriers to insure that they shall not allow shippers to obtain transportation at less than lawful rates by false billing is a comparison in their New York offices of the descriptions of the goods as written by the shipper into the export declaration, dock receipt, and bill of lading at the time the bill of lading is signed by them. The employee of one of them whose duties over a long period of years have included the comparison referred to could recall no instance in which shipments by any of respondent shippers over his line had ever been questioned. Testimony by an employee for another is that occasion has never arisen during his experience with his line for determining whether merchandise in a bale or case corresponded with the bill of lading description. The employee of another testified that it had never occurred to him that a shipper in the trade would endeavor to obtain a lower rate over his line by describing textiles differently in the bill of lading than as described in the export declaration. In the numerous instances of misbilling clearly shown by the evidence, respondent carriers seek to excuse their failure to detect it by testimony detailing pressure of work encountered by their office staffs during an approximate 36-hour period before vessel sailing, the element of human frailty in the making of mistakes due to divided responsibilities and to haste incident to ship clearances, and the complexity of bills of lading because of entry therein of numerous and varied commodities.

The evidence presented by the Commission's investigators was obtained by means of a "spot check" sufficient to prove the facts of false billing and carriers' allowance of transportation at less than the applicable tariff rates. There is no douht that the exhibits prepared pursuant to this "spot check" and presented in evidence are merely illustrative, and that false billing of textiles and transportation thereof at less than lawful rates obtains to a much greater extent than is involved in the actual instances set forth by the Commission exhibits. Respondent carriers affirm that false billing of textiles in the trade is by no means limited to the shippers who are respondents herein.

Respondent carriers disavow any blame for these false billing practices, and insist that they have been diligent in guarding against allowing transportation of falsely billed textile commodities. Pertinent in this regard, however, are numerous exhibits and extensive testimony showing communications and interviews at various times beginning in August or September, 1939 between shippers of textiles on the one hand and respondent carriers' conference organization on the other, and discussions between the respondent carriers themselves in conference, relating to classifications and rates on textiles to the Philip-

pines, and particularly to misbilling and transportation of textiles at less than the applicable tariff rates. As stated, the rate on rags was increased on May 1, 1940, to the level of the rate on cotton piece goods and cotton remnants, so that from then on it was a matter of no concern to the carriers whether shipments transported by them were cotton remnants or rags. As to the other problems, however, they apparently followed the course generally indicated by witnesses for one of them that "Your shipper is the man who will decide what he is shipping * * * it is not up to me to say what he is shipping," and that in the event the export declaration and bill of lading descriptions do not agree the carrier "usually" notifies the shipper. Testimony of witness for another respondent carrier is that except for checking export declarations his line "relies entirely upon the word of the shipper," and of another that when the export declaration reads rayon cloth and the bill of lading reads cotton piece goods "the system" is "to have some person in the bill of lading department notify the shipper and point out the discrepancy."

In short, respondents' own evidence of their course of action, their position and their defense, plainly show passive interest and complaisance. At no point do they recognize an obligation on their part to determine the nature of the textiles received by them for transportation, or whether shipments are "stuffed" with textiles, further than to compare the export declaration and dock receipt with the bill of lading. As indicated, this comparison is more or less routine and is certainly ineffective. Confronted with the proof of their many failures even to perform this comparison, they demonstrate their lack of any substantial diligence respecting their statutory responsibility by showing the inadequacy of their office staffs to cope with the false billing practices.

The facts and circumstances herein reviewed are convincing that respondent carriers are culpably indifferent with regard to the false billing of textiles to Manila over their lines. A principle sanctioned by reason and adopted by law is that one charged by statute with a duty is thereby charged with the responsibility of reasonably diligent inquiry and exercise of care to insure his compliance with the statute, and that indifference on his part is tantamount to outright and active violation. *Prince Line* v. *American Paper Exports, Inc.*, 55 Fed. (2nd) 1053; *Spurr* v. *United States*, 174 U. S. 728; *United States* v. *I. C. R. Co.*, 303 U. S. 239; *E. J. & E.* v. *United States*, 253 Fed. 907, 249 U. S. 601. The record amply displays lack of any such inquiry or exercise of care by respondent carriers, and a cor-

responding indifference on their part as to compliance with their statutory duty. As detailed in Appendix A hereto for illustration, respondent carriers are shown to allow persons to obtain transportation at less than lawfully applicable rates by false billing, in violation of section 16 "Second" of the Shipping Act, 1916, as amended.

Concerning the issue of undue and unreasonable prejudice and preference, testimony by a respondent shipper is that before he began to falsely bill his textile shipments to Manila his business was adversely affected because of the lower transportation charges obtained by his competitors who billed rayons as cottons and otherwise falsely billed their consignments. Another textile dealer testified that one of the reasons for his recent withdrawal from the trade was refusal by his employee in charge of billing to describe falsely rayon and other textile shipments via respondent carriers as is done by others who compete with him. Testimony of a third textile dealer is that a visit to Manila made by him to ascertain the reason for the inability of his company to meet competition disclosed false billing of rayons as cottons and other false billing of textiles by respondent shippers and others over respondent carrier lines. These facts disclosing disadvantage to shippers, together with the showing hereinbefore reviewed of respondent carriers' responsibility therefor due to their allowance of false billing, establish that for the same transportation service performed under similar circumstances and conditions the respondent carriers subject certain shippers to undue prejudice and unduly prefer others in violation of section 16 "First" of the Shipping Act, 1916, as amended.

At the hearing and in their briefs certain of respondent shippers set forth at length various contentions calculated to show lack of knowledge or willfulness on their part in relation to their false billings. These contentions are predicated, among other things, upon the long continued practice of false billing in the trade without interference by the carriers, assertions of absence of tariff information and of ignorance by their billing employees of the kinds of textiles they ship, and upon instances in which respondent shippers have accurately billed their textile shipments. Opposed to these contentions are the conflicts between the descriptions by respondent shippers in their bills of lading and in their export declarations, the evidence afforded by their invoices, and by their statements to the Department of Agriculture, together with the fact that, with rare exceptions, they consistently avail themselves of lower transportation charges in the trade by billing rayon remnants as rags if contained in bales,

and as cotton piece goods if contained in cases. Thus there is no sufficient ground for belief that in falsely billing their shipments respondent shippers were under any misapprehension, as claimed; or that there was other than a reckoned and generally well followed purpose on their part to profit from the substantial differences in transportation charges involved. As detailed in Appendix B hereto for illustration, respondent shippers are shown upon the record to knowingly and willfully, by means of false billing, obtain transportation of textiles at less than the rates lawfully applicable thereto, in violation of the first paragraph of section 16 of the Shipping Act, 1916, as amended.

No evidence was presented respecting violation by respondent carriers of sections 17 or 15 of the Shipping Act, 1916, as amended.

We conclude and decide that each of respondent carriers, namely, American President Lines, Ltd., Barber Steamship Lines, Inc., De La Rama Steamship Company, Inc., Ellerman & Bucknall Steamship Company, Ltd. (American & Manchurian Line), Isthmian Steamship Company, and United States Lines Company (American Pioneer Line), is shown upon the record to allow persons to obtain transportation for property at less than its regular rates currently established and enforced by means of false billing, in violation of section 16 "Second" of the Shipping Act, 1916, as amended, and to give undue and unreasonable preference to particular persons and to subject particular persons to undue and unreasonable prejudice, in violation of section 16 "First" of that act. We also conclude and decide that each of respondent shippers, namely, L. R. Aguinaldo & Company, Inc., E. Awad & Sons, Abe Cohen, Federated Trading Corporation, A. Gindoff & Company, Kummer, Comins & Company, Smith, Kirkpatrick & Company, Inc., Stronghold Fastener Company, Inc., and United States Export Products Company, is shown upon the record to knowingly and willfully, by means of false billing, obtain transportation for property at less than the rates which would otherwise be applicable, in violation of the first paragraph of section 16 of the Shipping Act, 1916, as amended.

An order will be entered requiring said respondents to cease and desist from the aforesaid violations. The record herein will be certified to the Department of Justice for prosecution of the above-named respondents for the violations found herein to exist.

APPENDIX A

AMERICAN PRESIDENT LINES, LTD.

Exhibit	Shipper	Bill of lading description and rate applied	Export declaration, description, and rate applicable
148	Stronghold Fastener	Cotton piece goods, $18	Cotton and rayon mixtures (chief value cotton), $30.
79	Neuss, Hesslein & Co	do	Cotton and rayon suiting, 36-inch, $30.
80	Getz Bros. & Co	do	Rayon-decorated shirtings, $30.
81	do	do	Do.
82	Smith, Kirkpatrick	do	Cotton piece goods (spun rayon and hopsacking, solid colors, piece dyed, under 7½ yards per pound), $30
83	do	do	Cotton piece goods (viscose and acetate suitings, 35/36 inches wide, under 7½ yards per pound), $30.
85	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
86	do	do	Do.
107	Aguinaldo	Radios, $18.50; cotton thread, $15.25; nursery furniture, $28.50.	Polo shirts and rayon hair nets, $33.
108	do	Radios, $18.50; nursery furniture, $28.50.	Rayon underwear, $33.
84	Smith, Kirkpatrick	Cotton hosiery, $19.75	Cotton and rayon hosiery, $33.
87	Stronghold Fastener	Cotton piece goods, $19.75.	Cotton and rayon mixtures (chief value cotton), $33.

BARBER STEAMSHIP LINES, INC.

102	Aguinaldo	Cotton piece goods, $15	Rayon and cotton remnants, $25.
64	do	Cotton piece goods, $18	Cotton and rayon remnants, $30.
56	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
60	do	do	Do.
59	do	do	Do.
58	do	do	Do.
62	Smith, Kirkpatrick	do	Cotton piece goods (acetate and rayon printed crepes remnants pieces sold by the pound), $30.
178	Federated Trading Corporation.	Cotton piece goods, $19.75.	Finished piece goods, 40-inch rayon, dyed in the piece, $33.

DE LA RAMA STEAMSHIP CO., INC.

67	Brune Nadler & Cuffe	Cotton piece goods, $18	Cotton and rayon suiting, $30.
71	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
73	do	do	Do.
74	do	do	Do.
193	Smith, Kirkpatrick	do	Cotton piece goods (spun rayons, 36 inches), $30.
72	do	do	Cotton piece goods (rayon prints, 39 inches), $30.
75	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
179	Federated Trading Corporation.	Cotton piece goods, $19.75.	Finished rayon piece goods (39 inches, dyed plaids). $33.
184	do	do	Finished piece goods (French crepe, 39 inches, rayon printed), $33.
66	A. Steinam Co., Inc	do	Cotton and rayon cloth (chief value cotton), $33.
68	Federated Trading Corporation.	do	Finished rayon piece goods, $33.
69	do	do	Do.
70	do	do	Do.

ELLERMAN & BUCKNALL STEAMSHIP CO., LTD.

101	Aguinaldo	Folding beds, $19 Radios, $14; cotton piece goods, $15. Nursery furniture, $21.50.	Including mens cotton polo shirts. Boys' knitted sweaters, part wool, $25. Including worsted yarn, $25.

ISTHMIAN STEAMSHIP COMPANY

Exhibit	Shipper	Bill of lading description and rate applied	Export declaration, description, and rate applicable
95	Stronghold Fastener	Cotton piece goods, $18	Cotton and rayon mixtures (chief value cotton), $30.
96	do	do	Cotton and rayon mixtures, $30.
94	do	do	5 cases cotton and rayon mixtures (chief value cotton), $30.
92	Smith, Kirkpatrick	do	Cotton piece goods (printed rayon ends 36/40 inch remnants), $30.
91	do	do	Cotton piece goods (rayon printed crepes remnant pieces), $30.
93	do	do	Cotton piece goods (assorted spun rayon piece dyed, 36 inches, under 7½ yards per pound), $30.
90	do	do	Cotton piece goods (acetate and rayon prints with spun rayon-remnant pieces sold by pound), $30.
98	Stronghold Fastener	do	Cotton and rayon mixtures (chief value cotton), $30.
97	do	do	Do.
99	do	do	Do.
105	Aguinaldo	do	Cotton and rayon, $30.
100	Stronghold Fastener	Cotton piece goods, $19.75.	Cotton and rayon mixtures (chief value cotton), $33.
88	Federated Trading Corporation.	do	Finished piece goods (39-inch acetate Jacquard dyed in the piece), $33.
110	Aguinaldo	do	Cotton rayon and cotton crochet thread, $33.

UNITED STATES LINES COMPANY

76	Bernard Semel, Inc	Cotton piece goods, $19.75.	Rayon and cotton cloth (cotton chief value), $33.
78	Stronghold Fastener	do	Rayon cloth, $33.
77	Wiener and Bauer, Inc	do	Cotton and rayon mixtures (chief value cotton), $33.
109	Aguinaldo	do	Woven printed rayon pound goods (spun rayon pounds), $33.

Rates shown are measurement per 40 cubic feet.

APPENDIX B

L. R. AGUINALDO AND COMPANY, INC.

Exhibit No.	Bill of lading description and rate applied	Invoice description and rate applicable
101	Nursery furniture, $21.50	Waxed birch hi chair, and worsted yarn, $25.
	Folding beds, $19	Folding beds, worsted yarn, curtains, elastic braid, cotton braid, $25.
	Cotton piece goods, $15	Printed rayon and cotton, acetete 3 yards, and prints 1-3 yards, $25.
102	do	Rayon and cotton. $25.
103	Cotton piece goods, $18	Plain acetate remnants, printed spun remnants, $30.
	do	Printed rayon and cotton ¼-1 yard, $30.
104	Cotton piece goods, $16.80	Printed rayon and cotton crepe, $30.
	Case 3711 cotton piece goods, $18	Marquisettes, acetate rayon, rayon remnants, ladies handkerchiefs, $30.
105	Cotton piece goods, $18	Printed rayon and cotton ¼-1 yard, $30.
106	Cotton piece goods, $18	Printed rayon and cotton crepe, $30.
107	Radios, $18.50	Including Gimp, DW Rec., battery kits, cocktail sets, Silex percolator, bowls, red coaster racks, $33.
	Nursery furniture, $28.50	Waxed birch hi chair and assorted Gimp, $33.
	do	Rayon and cotton shirts, high chair, rayon and cotton polo shirts, cotton polo shirts, $33.
	Cotton thread, $15.25	Assorted Gimp, ladies' belts (samples), and Gimp, $33.
108	Case 1228, cotton piece goods, $19.75	Printed marquisette and rayon pounds, $33.
	Radios, $18.50	Including rayon underwear, $33.
	Nursery furniture, $28.50	Rayon underwear and waxed birch hi chair, $33.
109	Cotton piece goods, $19.75	Printed crepe ½ inch, rayon remnants, printed spuns, $33.

E. AWAD & SONS

Exhibit No.	Bill of lading description and rate applied	Invoice description, unit price, and rate applicable
[1] 221	Rayon rags, $19.75	Rayons 1/10 yard $0.70 pound. Brushed goods 1/10 .25 pound. Prints 3/8 .06 pound. Prints rayon 1 up .70 pound. Spuns 1 up .38 pound. Bemberg 1 up .90 pound. Assorted prints 1/8 R. O. M .70 pound. Assorted prints 1/8 R. O. M .70 pound. Rayon pounds 2 yds. up .48½ pound. Jerze spun rayons F. P .16 yard. Plain spuns 1 up .34 pound. Sharkskin 1 up .48½ pound. Plain rayons 10 yards to F. P .13½ yard. ($33)
[2] 26	Cotton rags and cotton remnants, $18.	Rayons, ribbons, etc. Do. Do. Printed French crepe. Sheers. Pig-skin, rihbons, etc. Sheer. Rayons. Bemberg and silk sheer, white. Cotton and rayon cloth. Cotton and rayon cloth. ($30)

[1] Other substantially similar exhibits against E. Awad & Sons dealing with remnants and full-piece goods, either cotton or rayon, described in the bills of lading as rags are Exhibits Nos. 222, 10A, 13A, 15A, 17A, 19A, 21A, 23A, and 39A.

[2] Other substantially similar exhibits against E. Awad & Sons dealing with rayon and mixtures of cotton and rayon, silk, and/or wool, described in bills of lading as cotton goods are Exhibits Nos. 9, 12, 14, 16, 18, 20, 22, 24, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, and 52.

ABE COHEN

Exhibit No.	Bill of lading description and rate applied	Invoice description and rate applicable	Respondent's declaration to Department of Agriculture
[1] 215	Bales rags, $17 W	(2) Cotton shorts, $25	(2) Certifies that remnants are listed as rags in order to take advantage of the lower shipping rate.

[1] Other substantially similar exhibits against this respondent are Exhibits Nos. 216, 217, and 218.

FEDERATED TRADING CORPORATION

Exhibit No.	Bill of lading description and rate applied	Invoice description and rate applicable
174	Cotton hosiery, $18	Cotton and rayon hosiery, $30.
173	Cases cotton piece goods, $18	Ptd. Nub. spun rayon, $30.
179	Cases cotton piece goods, $19.75	Plaid wool and spun, $33.
[1] 187	Cases cotton piece goods and cotton hosiery, $19.75.	Poplin; ladies' hose; rail bill lading shows cotton and silk hosiery, $33.

[1] Other substantially similar exhibits against Federated Trading Corporation are Exhibits Nos. 166, 167, 168, 169, 170, 171, 172, 175, 176, 177, 178, 180, 181, 182, 183, 184, 185, 186, 188, 189.

A. GINDOFF & COMPANY

Exhibit No.	Bill of lading description and rate applied	Export declaration description	Invoice description and rate applicable
121	Cases cotton piece goods, $19.75.	Cotton broadcloth	Rayon, rayon Frenob crepe, spun rayon, silk and rayon, gabardine, $33.
113	Cases cotton piece goods, $15.	Printed cotton cloth	Rayon, $25.
[1] 117	Cases cotton piece goods, $18.	Printed cotton cloth and cotton rags.	Spun rayon, printed silk and rayon samples, rayon French crepe, suitings, $30.

[1] Other substantially similar exhibits against A. Gindoff & Company are Exhibits Nos. 114, 115, 116, 118, 119, 120.

SMITH, KIRKPATRICK & COMPANY, INC.

Exhibit No.	Bill of lading description and rate applied	Export declaration description and rate applicable	Invoice description and rate applicable
62	Cotton piece goods (cases), $18.	Cotton piece goods (acetate and rayon printed crepes—remnant pieces sold by the pound, $30.	
72	----do----	Cotton piece goods (rayon prints 39 inches, under 7¼ yards per pound), $30.	
[1] 191	Cotton rags (bales), $20.40 W.	----------	Khaki drills, twills, herring-bone weaves 1 to 10 yards. (Respondent's certificate to Department of Agriculture states in fact remnants or short lengths cotton piece goods billed as rags for freight-rate purposes), $30.

[1] Other substantially similar exhibits against Smith, Kirkpatrick & Co., Inc., are Exhibits Nos. 82, 83, 84, 61, 193, 89, 90, 91, 92, 93, 194, 195, and 196.

STRONGHOLD FASTENER COMPANY—KUMMER, COMINS & COMPANY

Exhibit No.	Bill of lading description and rate applied	Export declaration description	Invoice description and rate applicable
157	Cotton piece goods (cases), $18.	Cotton and rayon mixtures, (chief value cotton).	Plain rayons, $30.
160	Cotton piece goods, $19.75	----do----	Rayon and cotton, $33.
[1] 147	Cotton piece goods, $18.	----do----	Spun rayon remnants, $30.

[1] Other exhibits against these respondents showing similar false bill of lading descriptions are Exhibits Nos. 144, 145, 146, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 159, and 161.

U. S. EXPORT PRODUCTS COMPANY

Exhibit No.	Case or bale No.	Bill of lading description and rate applied	Amended freight bill description and rate applicable
[1] 197	Case 9013	Cotton piece goods, $15	Wool piece goods, $25.
	Bale 9032	Cotton rags, $17-$23.50 W	Rayon remnants, $25.
	Bale 9015	----do----	Do.
	Bales 9039/40	----do----	Do.
	Case 9041	Cotton piece goods, $15	Rayon piece goods, $25.
	Bale 9053	Cotton rags $17-$23.50 W	Rayon remnants, $25.
	Cases 9054/56	Cotton piece goods, $15	Rayon piece goods, $25.

[1] Other substantially similiar exhibits against U. S. Export Products Company are Nos. 201, 201A, 202, 202A, 202B, 203, 204, 205, 206, 207, 208, 209, 210, 211, 198 and 223.

Rates shown are measurement per 40 cubic feet, except where "W" (weight rates per 2,000 pounds) are indicated.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of March A. D. 1941

No. 585

RATES, CHARGES, AND PRACTICES OF CARRIERS, AND PRACTICES OF SHIPPERS, IN CONNECTION WITH FREIGHT TRAFFIC FROM UNITED STATES TO PHILIPPINE ISLANDS

By its orders of August 30, 1940, and September 26, 1940, the Commission having instituted a proceeding into and concerning the lawfulness under sections 16, 17, and 15 of the Shipping Act, 1916, as amended, of rates, charges, and practices of carriers made respondents by said orders, and into and concerning the lawfulness under section 16 of that act, as amended, of practices of shippers made respondents therein, and full investigation of the matters and things involved in said proceeding having been conducted, and the Commission on the date hereof having made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That respondents American President Lines, Ltd., Barber Steamship Lines, Inc., De La Rama Steamship Company, Inc., Ellerman & Bucknall Steamship Company, Ltd. (American & Manchurian Line), Isthmian Steamship Company, United States Lines Company (American Pioneer Line), L. R. Aguinaldo & Company, Inc., E. Awad & Sons, Abe Cohen, Federated Trading Corporation, A. Gindoff & Company, Kummer, Comins & Company, Smith, Kirkpatrick & Company, Inc., Stronghold Fastener Company, Inc., and United States Export Products Company, be, and each of said respondents is hereby, notified and required to cease and desist, and hereafter abstain, from the violations of the Shipping Act, 1916, as amended, herein found; and

It is further ordered, That the record herein be certified to the Department of Justice for prosecution of the above-named respondents for the violations found herein to exist.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 587

LARROWE MILLING COMPANY (TRADE NAME) DIVISION OF GENERAL MILLS, INC.

v.

BALTIMORE INSULAR LINE, INC., AND BULL INSULAR LINE, INC.

Submitted March 20, 1941. Decided April 1, 1941

Rates on commercial mixed feed and dried beet pulp from New York, N. Y., and Baltimore, Md., to ports in Puerto Rico not shown unjust or unreasonable. Complaint dismissed.

E. B. Smith and *A. M. Thomas* for complainant.

H. J. Dellert for *Allied Mills, Inc.*, intervener.

Roscoe H. Hupper, *E. Myron Bull*, and *Burton H. White* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainant to the report proposed by the examiner. Our conclusions agree with those which the examiner recommended.

Complainant alleges that defendants' rates on commercial mixed feed and dried beet pulp from New York, N. Y., and Baltimore, Md., to ports in Puerto Rico were, and that their rate on commercial mixed feed still is, unjust and unreasonable. Reparation and a just and reasonable rate on commercial mixed feed for the future are sought. Rates and charges will be stated in cents per 100 pounds.

Complainant's shipments of commercial mixed feed total, roughly, between 7,000 and 9,000 tons a year, and its shipments of dried beet pulp, between 400 and 500 tons. The freight charges thereon are paid by it and, in turn, collected from its customer in Puerto Rico, to which, it is stated, would be turned over any reparation awarded in this case.

In *Puerto Rican Rates*, 2 U. S. M. C. 117, 119, it was pointed out that defendants herein and other carriers comprised the membership of the United States Atlantic and Gulf-Puerto Rico Conference, operating at uniform rates, charges, rules and regulations established pursuant to agreement approved February 14, 1938. The rates of the conference to Puerto Rico are blanketed over ports of the North Atlantic, South Atlantic, and Gulf of Mexico. On commercial mixed feed and dried beet pulp, the rates are 36 cents and 40 cents, respectively. Prior to February 1, 1937, there was a rate in effect on these commodities from Atlantic and Gulf ports to Puerto Rico of 28 cents. On that date, it was increased to 33 cents, and on March 8, 1937, the rate on dried beet pulp was increased to 40 cents. Rates of 36 cents on commercial mixed feed and 50 cents on dried beet pulp were established by the conference effective September 21, 1938. These rates, which represent increases of 29 percent and 79 percent, respectively, in the rate in effect prior to February 1, 1937, are the rates assailed. They were included, with others, in the investigation in *Puerto Rican Rates, supra.* Originally, it was found that they had not been justified, but, upon reconsideration, that finding was eliminated. The rate on dried beet pulp has since been reduced to 40 cents, effective September 23, 1940.

The rates assailed do not include landing and other charges amounting to 5 cents or insurance, except insurance differentials resulting from diversion or other specified cause. Port-equalization provisions to which they were subject were condemned in *Puerto Rican Rates*, *supra*, and *City of Mobile et al* v. *Baltimore Insular Line, Inc., et al.*, decided by us February 4, 1941.

Complainant compares the assailed rates with rail and water rates in continental United States. In making the comparisons, it assumes that a movement of 3 or 3.6 statute miles by water is equivalent to a haul of 1 mile by rail. It says: "In this proceeding complainant has equated to land-rail miles the water miles from U. S. ports to the port of San Juan, Puerto Rico, and between U. S. ports. The purpose is to make it feasible: (1) to compare with land-rail rates the ocean rates from U. S. ports to Puerto Rico; (2) to compare with land-rail rates the ocean rates between U. S. ports; and (3) to measure mile for mile, against a common yardstick of graduated rail distance rates, both the ocean rates from U. S. ports to Puerto Rico and the ocean rates between U. S. ports." Representative comparisons are set forth in the following table:

From—	To—	Equated miles (3 to 1)	Water rate on commercial mixed feed	Water rate on dried beet pulp	Rail grain rates for equated miles (3 to 1) [1]			
					Revised southwestern distance scale [2]		Western trunk-line distance scale [3]	
					100 percent	90 percent	100 percent	90 percent
New York	San Juan	537	36	50	37	33	29	26
New Orleans	do	589	36	50	39	35	31	28
Houston	do	668	36	50	43	39	34	31
San Francisco	New York	2,025	69	63	80	72	76	69
New York	Miami	378	22	22	32	29	24	22
San Francisco	Seattle	309		24	28	25	22	20

[1] Complainant shows that under Agent L. E. Kipp's tariff I. C. C. No. A-3158, mixed feed and beet pulp take the grain-rate basis. Complainant also equates mileage 3.6 to 1, producing somewhat lower rates. For instance, from New York to San Juan the rates would average about 3 cents lower than on the 3-to-1 basis.

[2] The reason for showing 90 percent of the scale, as well as the full scale, is explained by complainant, after discussing decisions of the Interstate Commerce Commission, as follows: "The point is that the Revised Southwestern distance scale, as such, represents only the rates for rail transportation of grain and grain products between miscellaneous interior points—and the general level of rates in the Southwest for this transportation is 90 percent of that scale."

[3] Referring to the 100-percent scale and rates 90 percent thereof shown under this heading, complainant says: "The latter represents the general level of the grain and grain products rates within Western Trunk Line Territory. This will again explain why, in all of complainant's rate comparisons, there is used not only the full distance scale rates, as such, but also the rates made 90 percent of those rates."

According to the table, if one of the ratios and the full or 90-percent western-trunk-line or southwestern scale constitute a proper measure for maximum reasonable rates in this case, then, depending upon the ratio and scale used, the rates assailed should not exceed a rate or rates somewhere between 23 and 37 cents, both inclusive. On commercial mixed feed, complainant seeks a rate of 33 cents as a basis for reparation and for the future. It is content with the present rate of 40 cents on dried beet pulp and asks reparation to this basis on past shipments.

The only ground offered for the use of the ratios employed is the fact that they have been used or referred to in certain decisions of the Interstate Commerce Commission. Neither of them nor any other ratio has been approved for general application. One of the cases cited by complainant is *Iron and Steel Rates*, 209 I. C. C. 657, in which the Interstate Commerce Commission authorized the establishment and maintenance of certain rates without observance of the long-and-short-haul provisions of section 4 of the Interstate Commerce Act, subject to certain conditions. In that case the Commission said at page 676:

> In applying the above conditions in the case of routes operating partly by rail and partly by water, constructive distances determined by adding to the actual rail distances the water distances equated to rail distances on the basis of three to one may be used in lieu of the actual distances.

Then it added:

> This is not to be understood as approval of this formula for general rate-making purposes.

Likewise, in a previous case, *Alexander Grocery Co.* v. *B., S. L. & W. Ry. Co.*, 104 I. C. C. 155, 161, that Commission said:

> Although we have heretofore used a ratio of water miles to rail miles for the purpose of comparing rail-and-water and all-rail rates, we are not here prepared to accept this basis as a controlling principle in prescribing rates for rail-and-water hauls. Before this is done careful analysis should be made of the conditions surrounding the transportation of the different lines.

No such analysis is reflected in the record here.

Complainant points out that, whether equated miles or statute or nautical miles be used, the rates assailed are higher mile for mile than the compared water rates. However, there is nothing in the record to warrant the acceptance of any of the compared rates as a measure for rates to Puerto Rico. Costs, competition, and other factors may account for the rate differences. What the circumstances are is not shown.

Complainant contends that, since the port-equalization provisions referred to above allowed maximum deductions of 30 percent from the rates, the rates must have been made unreasonably high to permit of such deductions. The facts of record are insufficient to sustain this contention.

We find that the assailed rates on commercial mixed feed and dried beet pulp are not shown to have been, and that the assailed rate on commercial mixed feed is not shown to be, unjust or unreasonable.

An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of April A. D. 1941

No. 587

LARROWE MILLING COMPANY (TRADE NAME) DIVISION OF GENERAL MILLS, INC.

v.

BALTIMORE INSULAR LINE, INC., AND BULL INSULAR LINE, INC.

This case being at issue upon complaint on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) R. L. MCDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 593

AMERICAN UNION TRANSPORT, INC.

v.

"ITALIA" SOCIETA ANONIMA DI NAVIGAZIONE

Submitted June 13, 1941. Decided August 12, 1941

Complainant is a broker seeking reparation for brokerage and for alleged injury to its reputation as a broker, because of defendant carrier's refusals to book shipments upon its requests. Duties of defendant carrier under regulatory provisions of Shipping Act, 1916, not owed to complainant broker, as such. Complaint dismissed.

Harold Manheim and *David Sklaire* for complainant.
Homer L. Loomis for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by complainant, to which reply was made by defendant. Our conclusions agree with those recommended by the examiner.

Complainant[1] is a New York State corporation engaged in business in New York City as a steamship broker and freight forwarder. In the capacity of steamship broker it seeks out cargoes which are to move. In return for compensation from carriers of a percentage of the freight earned by the carriers, it obtains such cargoes for movement via the carriers who will book the same and who will pay it

[1] Successor to a Delaware corporation of the same name. The Delaware corporation made the applications for space herein involved, and the alleged unlawful refusals of space were made to that corporation. Upon dissolution of the Delaware corporation in October 1940, its assets, including any award of reparation by the Commission in the instant proceeding, were assigned to complainant. The term "complainant" as hereinafter used in this report will apply to either the Delaware or the New York corporation as indicated by context.

the percentage "brokerage" compensation. By complaint filed December 5, 1940, it alleges violations by defendant during a 5-month period from December 1939 through April 1940, of sections 14, 16, and 17 of the Shipping Act, 1916,[2] in connection with defendant's refusals to make bookings at its request for certain shipments from ports in the United States to Fiume and Trieste, Italy, and payment by defendant of brokerage on such shipments to a broker in Europe. Reparation for injury in the sum of $13,493.99 is requested. Of this sum $3,493.99 represents complainant's alleged loss of brokerage at 1¼ percent of freight charges, and $10,000 is for alleged injury to complainant's reputation for ability as a broker to secure steamship bookings. The shipper-consignees of the cargoes involved are not parties to the proceeding, and there is no evidence that they authorized complainant to represent their interests herein. Complainant shows that one of the shipper-consignees, Manfred Weiss Steel and Metal Works A. G., of Budapest, Hungary, has paid complainant $500 "as a quasi consideration" for the fact that complainant did not receive a brokerage commission on shipments hereinafter indicated (2) and (3), and that another shipper-consignee, Rimamuranyi Salgotarjan Iron Works, Ltd., of Budapest, Hungary, has promised by letter to make complainant a corresponding payment in relation to shipment hereinafter indicated (1). Complainant states that it will return these amounts to the shipper-consignees if and when reparation in the instant proceeding is awarded by the Commission.

Prior to December 1939 defendant dealt with complainant as a broker and paid complainant a brokerage of 1¼ percent of freight charges earned on numerous shipments secured by complainant and transported in defendant's vessels.

During the period covered by the complaint, the complainant requested defendant to book five shipments, as follows: (1) in December 1939, 5,000 tons of steel scrap from New York to Fiume or Trieste; (2) in February 1940, 5,000 tons of steel scrap from New York to Fiume or Trieste; (3) in April 1940, 3,000 tons of pig iron from Philadelphia and Baltimore to Trieste; (4) in April 1940, 400 tons of ferromanganese from Mobile to Fiume or Trieste; and (5) in April 1940, 300 tons of ferromanganese from Mobile to Fiume or Trieste. These requests were made pursuant to information ob-

[2] Section 14, paragraph "Fourth," providing that no subject carrier shall, directly or indirectly, unfairly treat or unjustly discriminate against any shipper in the matter of cargo space accommodations, due regard being had for the proper loading of the vessel and the available tonnage; Section 16, paragraph "First" providing that it shall be unlawful for any subject carrier to make or give any undue or unreasonable preference or advantage to any particular person, or to subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; Section 17, paragraph 2, requiring every subject carrier to observe and enforce just and reasonable practices relating to or connected with the receiving of property.

tained by complainant from New York City representatives of the shipper-consignees located in Budapest, Hungary. The record is that these representatives had authority from their several principals in Hungary to locate and purchase the scrap steel and other commodities concerned, and that their authority encompassed the arranging of the transportation of such commodities from the United States.

Under a barter agreement or trade treaty hereinafter referred to between Italy and Hungary, the freight on the shipments concerned was required to be paid in Italian lira. As lira were blocked by the Italian government for use only in Italy, restriction of the transportation of the shipments to defendant was thereby effected.

Booking was requested by complainant on each of the five shipments referred to several times during the months indicated above. These requests were made to defendant's representatives in New York City by telephone, personal interview, or letter, and were for space in first available vessel. It is not shown that at the times of such requests the respective shipments were aggregated or being held in readiness to move. No written record, as such, of the requests is indicated to have been kept. Respecting shipments indicated (2), (3), (4), and (5) above, cablegrams requesting bookings were also sent by complainant to defendant's Trieste office. For example, in connection with shipment indicated (2), complainant "checked daily" with defendant's New York City representatives, and became "finally convinced" on February 28 "that no progress could be made with them here," whereupon it addressed cablegram request for booking to defendant's Trieste office. The reply thereto, dated March 5, was "Yours 28th. Working direct with Budapest." Complainant's requests for bookings were held in abeyance by defendant for interoffice consideration, refused with the statement that no space was available, or, as in the case of the shipments of ferromanganese, declined (April 29) with the assertion that booking had already been arranged. Complainant shows that each of the five shipments specified was booked by defendant's office abroad in acceptance of offer made by the consignee-shipper or its subsidiary or representatives in Hungary, and that three of the shipments were carried by defendant pursuant to such bookings.[3] Complainant learned of the

[3] Shipments carried were: Shipment indicated (1) above, 2,500 tons in defendant's vessel *Lucia C*, sailing March 8, 1940, and 2,500 tons in defendant's vessel *Carlos Martinolich*, sailing April 5, 1940; shipment indicated (2) above in defendant's vessel *Livenza*, sailing May 15, 1940. Of shipment indicated (3) above, only 1,000 tons were carried by defendant, i. e., 500 tons from Philadelphia and 500 tons from Baltimore in defendant's vessel *Clara*, sailing from the United States in early May 1940. Shipments indicated by (4) and (5) above, although booked by defendant's office abroad in acceptance of offers by Hungarian consignees, were not carried by defendant due to its cessation of service upon entry of Italy into war.

bookings of the shipments by defendant abroad during performance by it of services[4] for and on behalf of the New York City representatives of the Budapest shipper-consignees.

Concerning its allegation of injury to reputation, complainant shows that the New York City representative of one of the Hungarian shipper-consignees concerned declined to allow complainant to arrange booking of a shipment of 2,000 tons of cast iron scrap from Houston to Fiume, and a shipment of 1,000 tons of steel scrap from New York to Fiume, because of complainant's inability to effect bookings in defendant's vessels for previous shipments.

Defendant's service to Trieste and Fiume during the 5-month period covered by the complaint was in a state of uncertainty and disorder. This condition, due to the European war, progressively increased throughout the period, until all service by defendant was discontinued upon entry of Italy into war. Negotiations during the period for transportation to Trieste and Fiume of "deadweight" cargoes, including scrap metals and kindred commodities, were required under compulsion of the Italian government to be conducted by defendant in accordance with allotments and specifications prescribed from time to time by trade authorities in keeping with a barter agreement or trade treaty between the governments of Italy and Hungary. The weight of the evidence is that the authority of defendant's representatives in the United States was restricted to the booking of deadweight cargo when other cargo bookings consummated by defendant's headquarters abroad had been cancelled.

Whether, at the particular times of complainant's requests for bookings of the five shipments upon which the complaint is predicated, there was available space in defendant's vessels to accommodate such shipments, and whether the bookings by defendant abroad were subsequent to complainant's requests, as alleged by complainant, are not shown by any facts of record; nor is it shown that brokerage as to any of these shipments was paid by defendant.

At the hearing defendant moved for dismissal of the complaint on the ground that the regulatory provisions of the Shipping Act, 1916, alleged to have been violated are not for the benefit of brokers as such.

From the foregoing discussion of the evidence it is seen that the basis of complainant's allegations is that it was deprived of earnings as a broker in connection with services to be performed by it for defendant; also that its status as a broker was adversely affected by defendant's refusal of space. We are not convinced that the duties

[4] Obtaining of navicerts, preparation of customs documents, bills of lading, and performance of other details incident to exportation of the shipments.

imposed upon defendant by sections 14, 16, and 17 of the Shipping Act, 1916, were owed by defendant to complainant broker whose only interest in the transportation involved was the compensation it expected to receive from defendant in return for supplying cargo for defendant's vessels. Complainant's cause of action against defendant, if any, is not cognizable under the provisions of the Shipping Act, 1916, alleged to have been violated. Similar determinations by the Interstate Commerce Commission in proceedings under provisions of the Interstate Commerce Act, involving the principle concerned, are *Jones* v. *St. L. & S. F. R. R. Co.*, 12 I. C. C., 144; *South-western Produce Distributors* v. *Wabash R. R. Co.*, 20 I. C. C., 458; *Cosby* v. *Richmond Transfer Co.*, 23 I. C. C., 72, and *Emery* v. *B. & M. R. R.*, 38 I. C. C., 636.

It is clear that even if complainant were within the class of persons for whose protection the sections of the Shipping Act, 1916, concerned were designed, no violations of those sections have been shown. For example, so far as any evidence to the contrary is adduced, defendant may have booked the shipments abroad before complainant requested bookings from defendant's office in the United States. Moreover, it is entirely possible that no space was available at the times and during the periods of complainant's requests, in view of the circumstances and conditions of defendant's service during the period covered by the complaint. No other broker is shown to have been paid brokerage by defendant, nor is it shown that complainant was treated differently by defendant than any other broker or brokers.

The complaint will be dismissed.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 12th day of August A. D. 1941.

No. 593

AMERICAN UNION TRANSPORT, INC.

v.

"ITALIA" SOCIETA ANONIMA DI NAVIGAZIONE

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon,

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 571

ALASKAN RATES

No. 572

ALASKA RATE INVESTIGATION NO. 2

Submitted May 26, 1941. Decided August 28, 1941

Rate base and fair rate of return for respondents Alaska Steamship Company, Northland Transportation Company, Alaska Transportation Company and Santa Ana Steamship Company, and net income under proposed rates determined.

Proposed rates found not to yield fair return as to certain respondents and not an excessive return as to others.

Respondents' rate structures as a whole not shown to be unreasonable.

Increases in rates on commodities transported prior to June 1940, at freight, n. o. s. rates, to the extent they exceed increases published in suspended schedules under item freight, n. o. s., found not justified and unlawful.

Special rates to large shippers based on volume found unduly prejudicial and preferential.

Complaint alleging prejudice to Tacoma and preference to Seattle not sustained.

Services of certain respondents to so-called "irregular" ports for which no tariffs are filed found subject to Commissioner's jurisdiction and respondents required to file tariffs.

Provisions of bills of lading, etc., affecting rates and services not effective unless incorporated in tariff.

Respondent Alaska Steamship Company should cancel joint rail and water rates maintained with Alaska Railroad and in lieu thereof publish and file with the Commission water proportional rates.

Common carrier status of certain respondents and carriers determined.

Appropriate order entered.

Albert E. Stephan, Lawrence Bogle, Stanley B. Long, George F. Kachlein, Jr., A. S. Zeigler, H. L. Faulkner, F. M. Donohoe, Lester Gore, R. E. Robertson, F. B. Fite, Jr., John Ambler, J A. Talbot, Matthew Stafford, W. N. Cuddy, Alfred J. Schweppe, Einar Haugen and *R. W. Weymouth* for respondents.

James S. Truitt, F. S. Gordon, Jay W. McCune, Wilbur LaRoe, Jr., Frederick E. Brown, Arthur L. Winn, Jr., L. S. McIntyre, and *Matthew W. Hill* for interveners.

David E. Scoll and *Samuel D. Slade* for the Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by certain respondents and intervener Tacoma Chamber of Commerce to which replies were made.

The issues were orally argued. Our conclusions differ somewhat from those recommended by the examiner.

In No. 571 respondents,[1] common carriers by water, proposed to increase and decrease rates for the transportation of various commodities between Seattle, Tacoma, and Port Wells, Wash., and certain ports in the Territory of Alaska. By order of May 14, 1940, the operation of the schedules was suspended, on our own motion, until September 20, 1940. On motion of respondents the suspension order was vacated on May 28, 1940, subject to conditions guaranteeing refunds to shippers if the rates in issue are found unlawful.

No. 572 is an investigation instituted by us on our own motion concerning the lawfulness of rates, fares, charges, regulations and practices of common carriers by water for or in connection with transportation between the United States and ports in Alaska, and between ports in that Territory. In addition to the carriers heretofore named, Santa Ana Steamship Company, Alaska Rivers Navigation Company, Heinie Berger, and International Ocean Express System, Inc., were made respondents.

Territory served.—Alaska is about one-fifth the size of the United States with a population density of one person for every ten square miles compared to 41.3 persons to a square mile in the United States. Normally, 80 percent of employment is in the fishing industry; 15 percent in mining; and less than 5 percent in railroading, road building and forest activities. During the summer months the Territory enjoys a large tourist trade. There is very little passenger or freight business in the winter. With the exception of a limited airplane service, Alaska depends on water transportation in its commerce with the United States.

Southeastern Alaska is about 380 miles long and 120 miles wide, extending along the coast from Dixon Entrance on the south to Icy

[1] Alaska Steamship Company, Alaska Transportation Company, Northland Transportation Company, Davis Transportation Company, Haugen Transportation Company, Puget Sound Freight Lines and West Coast Transportation Company.

Straits on the north, the principal ports being Ketchikan, Wrangell, Petersburg, Juneau, Sitka, Skagway, and Haines. This area is the most populous and accessible section of the Territory, having a population, in 1930, of 19,304. Juneau, the largest town, had a population of 5,748 in 1940. In addition to the principal ports, there are many cannery, saltery and fish reduction plants, mining camps, and sawmills located on the many islands and inlets which require steamship service. Ketchikan, the southernmost town and first port, is 750 miles from Seattle. Normally, about 50 percent of the labor in Southeastern Alaska is supplied locally.

Southwestern Alaska extends from Yakutat, in the Gulf of Alaska, through to Seward, including Cordova and Valdez, and the fishing area of Prince William Sound which lies between Cordova and Seward. Many canneries and salteries are located there. Only 20 percent of the labor in Southwestern Alaska is supplied locally.

Cook Inlet and Kodiak Island district embraces Portlock, Seldovia, Homer, Kenai, and Snug Harbor and is open to navigation between March 1 and November 1. Kodiak Island supports canneries and salteries as well as a whaling station. There is a cattle-raising industry on the southern end. The Aleutian Peninsula region extends from a point opposite the southern end of Kodiak Island through to Unalaska Pass and beyond to Umnak Island, along which are located numerous villages, settlements, and cannery ports. At the southern end of the peninsula some sheep and cattle are raised. Bristol Bay comprises the great red fishing districts of Nakeen, Naknek, Nushagak, and Dillingham. In addition to cannery traffic, there is commercial freight for stores, trappers, and traders around Bristol Bay. Goodnews Bay is between Bristol Bay and Bering Sea and has become a prominent mining center in recent years. St. Michael, Golovin, Solomon Bluff, Nome, and Teller are located on Bering Sea. There is transshipment of freight at St. Michael with Northern Commercial Company which operates steamers up the Yukon River.

Operating and traffic conditions.—Steamer operations in the Alaskan trade are extremely hazardous because of navigation dangers such as ice, wind, fog, shoals, strong tides at narrow passes, and poor berthing accommodations. Aids to navigation at the many small settlements, lumber mills, mines, and canneries are poor. Some cannot be reached at night. Where docks are available they are small wooden structures, easily damaged and generally unable to receive cargo from more than one or two hatches at a time. It is not uncommon to tie vessels to trees to prevent tearing the dock away. Side ports cannot be used at any Alaskan port, and the vessels are equipped with unusually long booms.

There are other serious handicaps to maintenance of efficient and economical operation of steamship services in Alaska. The fishing industry is the backbone of the trade. Volume of business northbound and southbound depends upon the unpredictable size of the catch. In 1937 and 1938 the number employed in commercial fisheries was 30,331 and 28,084 persons, respectively. The trade is severely unbalanced. In the spring the cargo, consisting mostly of fishery, cannery, and mining supplies, moves north, the southbound movement being negligible. In the summer cargo is not heavy, but there is a large round-trip tourist passenger trade. In the fall there is practically no volume of cargo northbound while southbound vessels carry the bulk of cannery products. During the winter most of respondents' vessels are laid up for general overhauling and repair. It is testified that the Alaskan fishing industry is on the decline due to governmental restrictions and to the use of high-powered fishing vessels which deliver fish to Seattle direct rather than to Alaskan canneries and salteries. Some of the large canneries maintain their own fleets. The general merchandise steamship business is described of record as a "milk wagon" or "express" service because of inability of Alaskan industries and stores to warehouse their supplies or to keep fuel oil in large quantities. This requires frequent calls with small quantities of cargo per call. With the exception of Ketchikan, Juneau, and Sitka, all the stevedoring and longshoring in Alaska is performed by ships' crews at the regular rates of pay and overtime wages for that labor, in addition to their compensation as members of the crew. Another characteristic of the trade is the total lack of regularity of calls at the outports and varying routes navigated from one voyage to another. On a so-called "regular" trip there are generally 10 or 15 "irregular" or outside calls. There is an instance of record where one of the larger passenger vessels made 40 ports of call on one round trip, the necessity for the extra calls not being definitely known at the beginning of the voyage.

Steamship services.—Alaska Steamship Co. maintains freight and passenger service between Seattle, and practically all coastal and island areas of the Territory. It publishes a number of freight tariffs but only five are filed. In addition it concurs in tariffs of the Alaska Railroad naming joint freight rates and joint settlers fares via Seward to points in the interior of Alaska; and joint tariffs of Pacific and Arctic Railway and Navigation Co., naming joint rates via Skagway to interior points in Alaska and in Yukon Territory, Canada.

Northland Transportation Co. maintains freight and passenger services throughout the year between Seattle, Tacoma, and Port Wells, Wash., and Southeastern and Southwestern ports, except Haines and Skagway. During six months of the summer season it operates a passenger and freight service between Seattle and points on the Alaska Peninsula, and to Kodiak and to Woman's Bay; during 60 days of the salmon canning season two additional freight ships are placed in service.

Alaska Transportation Co. maintains a weekly passenger and freight service between Seattle and Tacoma and Southeastern ports. Its sailing schedule for the months, May to August 1940, inclusive, also shows scheduled calls northbound at Hoonah, Tenakee, Craig, and Klawack, at least once each month. Southbound monthly calls also were scheduled at Craig and Klawack and at Taku Inlet by all vessels. Its common carrier operation included service to five canneries in Southeastern Alaska. Under a special contract, it also transports sacked concentrates southbound for a mine at Tulsequah, B. C., on the Taku River approximately 50 miles east of Juneau. Such cargo is transferred from mine-owned and operated barges placed alongside respondent's vessel at Taku Inlet. Rates charged for this transportation are not of record. Rates on this commodity from other so-called "irregular" ports are subject to special arrangements. However, in its filed tariff U. S. M. C. No. F 2, respondent publishes southbound rates on this commodity from so-called "regular" southeastern ports.

Santa Ana Steamship Company owns and operates one vessel with which it makes three voyages each year between Seattle and Tacoma and Goodnews Bay anchorages, and to Bethel, Alaska, on the Kuskokwim River.

Rate situation.—Rates published by Alaska Steamship and Northland have been and are now generally the same. Prior to the recent increases, rates of Alaska Transportation on most commodities were $1 per ton lower than those of other carriers; but now all rates to Sitka and those on most commodities to other ports are on a parity. Differentials, when now published, with few exceptions, do not exceed 50 cents per ton.

There are no class rates in this trade. All commodity rates apply from ship's tackle to ship's tackle and are generally on a weight or measurement basis. The rate structure appears to have been stable over a number of years, free of rate wars and appreciable tramp competition. There is no evidence of general public dissatisfaction insofar as respondents' rates, fares, practices, or services are con-

cerned. Specific complaints from shippers and receivers of freight are few.

The increased rates in question apply only from and to ports in Southeastern, Southwestern Alaska, and Kodiak and were published to meet increased operating expenses experienced particularly since 1937. Effective January 2, 1940, Alaska Steamship and Northland increased passenger fares between Seattle and Alaskan ports. The passenger fares were not suspended. Respondents estimated the amount of additional revenue necessary to meet increased operating costs and sought to apportion it as nearly as possible between passenger and freight business. The basic increase in freight rates was 50 cents per ton. On some commodities there were no increases, on others higher increases, and still others took reductions. The bulk of general merchandise moves under a n.o.s. rate item. Where increases exceeded 50 cents per ton, respondents assert that they apply on commodities of comparatively higher value and risk of transportation. Some of the increases are on individual items and others result from removal of commodities from the n.o.s. classification to individual items taking a higher rate.

Reasonableness of increased rates.—Respondents' increased operating costs are reflected in rising labor costs, higher insurance rates, increased taxes and greater costs of materials and supplies. Rising labor costs are due to a succession of increased basic wage and overtime scales for seagoing personnel and longshoremen; constant strikes both in the industry and ashore; slowdown tactics of labor in loading and discharging cargo; the carrying of extra pilots and crew; and recent expense of changing interior crew quarters, mess halls and toilet facilities of vessels. Much of these costs cannot be calculated.

Testimony and exhibits of record of Alaska Steamship reflect estimated increased costs, effective at various times during 1940, which, on the basis of 1939 operations, would result in annual increases of $164,730 in wages of ships' crews, $78,574 in cargo handling costs and $30,101 in insurance. Tax accruals of that respondent for 1940 are $237,000 in excess of those for 1939. During the period from January 1, 1937, to June 30, 1940, wages of ships' crews increased 32.5 percent per voyage day. From January 1, 1937 to December 31, 1940, freight revenue increased an average of $1.57 or 18.23 percent per ton and passenger revenue increased an average of $5.46 or 12.66 percent per passenger. Wage increases effective in February 1941 are estimated to result in additional annual costs of $64,387 and other wage adjustments under negotiation in further increases of $25,000.

Both Northland and Alaska Transportation bear the same proportionate increases in wages, stevedoring and insurance costs.

The suspended rates and certain unfiled rates to and from minor ports covering 41 percent of Alaska Steamship's freight traffic, 73 percent of Northland's traffic, and 71 percent of Alaska Transportation's traffic for 1940, increased the revenue of those respondents by 4.57 percent, 3.83 percent, and 3.80 percent, respectively; and their revenue per ton 37.3 cents, 34 cents, and 25 cents, respectively, during the period from June to December 1940. Alaska Steamship's revenue per ton for the year 1940, including revenue from the increased rates for seven months, exceeded 1939 revenue by 90 cents, whereas Northland's revenue decreased 30 cents per ton. The effect of increased costs and revenue is hereinafter shown.

Representatives of various Alaskan industries testified at hearings held in Ketchikan, Juneau, and Anchorage, some opposing and others favoring the rates in issue. However, little evidence of value was received from them.

In view of the extensive adjustments made in respondents' rates, the reasonableness of the changes depends largely upon whether respondents' rate structures as a whole are reasonable. Such determination must be predicated upon the relation of net operating income from Alaskan service to the fair value of the property devoted to that service.

FAIR VALUE

Our counsel urge, as in *Rates of Inter-Island Steam Navigation Co., Ltd.*, 2 U. S. M. C. 253 (1940), the adoption of the "prudent investment theory" as a proper test of fair value. In our decision therein in January 1940 we adhered to principles laid down by the Supreme Court in *Smyth* v. *Ames*, 169 U. S. 466 (1898); the *Minnesota Rate* cases, 230 U. S. 352, 434; *McCardle* v. *Indianapolis Water Co.*, 272 U. S. 400; *Los Angeles Gas and Electric Corp.* v. *Railroad Commission*, 289 U. S. 287, 306, 308; *Railroad Commission of California* v. *Pacific G. and E. Co.*, 302 U. S. 388; and *Driscoll et al.* v. *Edison Light and Power Co.*, 307 U. S. 104 (1939). It is unnecessary to restate principles underlying those cases except to emphasize that reproduction cost and other elements of value are to be given such weight as may be just and right in each case. *Smyth* v. *Ames*, *supra*. We shall proceed to a consideration of the elements of fair value.

ORIGINAL COST

The original cost and original cost less accrued depreciation as of December 31, 1939, of vessels and other property owned and used in the Alaskan trade during 1939 is shown by the following tabulation:

	Original cost	Original cost less depreciation
Alaska Steamship:		
Vessels	$7,500,273	$3,741,748
Terminal property	186,884	51,214
Total	7,687,157	3,792,962
Northland:		
Vessels	1,430,477	1,022,547
Other shipping property	10,612	7,346
Total	1,441,089	1,029,893
Alaska Transportation:		
Vessels	460,954	[1]
Other shipping property	[1]	[1]
Santa Ana:		
Vessel	117,506	107,714
Other shipping property	29,498	29,196
Total	147,004	136,910

[1] The original cost less depreciation of vessels and original cost and original cost less depreciation of other shipping property as of December 31, 1939, are not of record. As of June 30, 1940, the original cost of vessels was $470,648 and original cost less depreciation was $426,076; original cost of other shipping property was $957 and original cost less depreciation was $566.

In addition to the property owned and used, Alaska Steamship owned six vessels as of December 31, 1939, which were not in use. During 1940 three of these vessels were sold and one was dismantled. Santa Ana owned but did not use as of December 31, 1939, one vessel which was later sold. The value of these vessels is not included in the rate bases herein determined.

Included in the above tabulation are the costs of two vessels of the Alaska Steamship, the *Derblay* and *Sutherland*, operated under charter in other trades 87 and 95 days, respectively, in 1939 and two vessels of Northland, the *North Haven* and *North Wind*, operated 67 and 159 days, respectively, in the intercoastal trade and under charter in other trades. The portion of such costs assignable to non-Alaskan service, based on the ratio of days in such other service to 365 days, is as follows:

	Original cost	Original cost less depreciation
Alaska Steamship	$57,859	$36,742
Northland	51,296	29,547

COST OF REPRODUCTION

Stipulations of reproduction cost new of vessels, and such reproduction cost new less depreciation as of December 31, 1939, were entered into between counsel for respondents and for the Commission after conferences between engineers representing respondents and our Technical Division. In computing reproduction cost new less depre-

ciation for each vessel an amount representing a deduction for physical depreciation and losses suffered through current lessening in value of tangible property from wear and tear not covered by current repairs, was deducted from reproduction cost new. An additional deduction of 30 percent also was made to represent functional depreciation, obsolescence, or inadequacy resulting from age or physical change by reason of new inventions or discoveries, changes in popular demand or public requirements. Other than data set forth in such stipulations there is no evidence of record on reproduction cost new or reproduction cost new less depreciation.

The stipulated reproduction cost new and reproduction cost new less depreciation, as of December 31, 1939, of vessels owned and used in the Alaskan trade during 1939, is shown in the following tabulation:

	Reproduction cost new	Reproduction cost new less depreciation	Depreciated condition (percent)
Alaska Steamship	$23,200,609	$11,164,578	48.12
Northland	5,923,327	2,927,770	49.43
Alaska Transportation	1,495,100	1,015,369	67.91
Santa Ana	761,000	372,890	49.00

The portion of the above amounts assignable to vessels engaged in non-Alaskan service in 1939, herein discussed under original cost, is as follows:

	Reproduction cost new	Reproduction cost new less depreciation
Alaska Steamship	$538,340	$263,849
Northland	629,722	298,558

Since reproduction cost of property other than vessels was not determined, consideration will be given to the original and depreciated cost of such property in a finding of fair value. For Santa Ana, counsel stipulated that for such other property reproduction cost should be taken as equivalent to book value.

WORKING CAPITAL

Working capital for a rate base usually includes first, the investment, if any, in a stock of materials and supplies for operations; second, the cash necessary to pay operating expenses incurred for common-carrier service prior to the time when the revenues from that service are collected and available; and third, a buffer fund of cash on hand to cover the fluctuating deficiencies in the receipt of cash from operating revenues necessary to meet maturing operating payments.

Alaska Steamship claims that $1,250,000 should be allowed. During 1939 the average investment in a stock of materials and supplies, as disclosed by monthly balances, was $72,603. A consideration of the monthly balances in accounts covering current operating assets and liabilities and prepaid and deferred items during 1939 indicates that the average amount by which collections from operations lagged behind operating disbursements and prepaid items was $568,495. A fair measure for a buffer fund would be equal to one month's operating expenses and taxes, not including depreciation, which in 1939 averaged approximately $500,000. The sum of the above amounts, $1,141,098, is based on average conditions. Maximum requirements would exceed that amount. We find the respondent's claim of $1,250,000 to be reasonable.

Northland claims $475,000 for working capital. Based upon an analysis of its operating experience that amount appears excessive. The record does not disclose that this respondent maintained a stock of materials and supplies. A consideration of the monthly balances in accounts covering current operating assets and liabilities and prepaid and deferred items during 1939 indicates that the average amount by which collections from operations lagged behind operating disbursements and prepaid items was $142,402. Operating expenses in 1939 in connection with Alaskan service averaged $82,274 per month, which is a fair amount for a buffer fund. The sum of the above amounts which are based upon average conditions is $224,676. Maximum requirements would exceed that amount slightly. We find the amount of working capital to be included in the rate base should not reasonably exceed $250,000.

Alaska Transportation claims $160,000 should be included in fair value for working capital. This estimate includes amounts advanced to meet operating deficits which are not properly includible as working capital in a rate base. The amount claimed for working capital is equal to about four months' average operating expenses for the calendar year 1940. At June 30, 1940 the respondent's investment in a stock of materials and supplies was $1,286. The investment in net current assets, including prepaid items was approximately $10,000. Average monthly operating expenses for 1940 were $40,875. The sum of these items is $52,161. Since maximum requirements would exceed that amount, we find the amount of working capital to be included in the rate base should not reasonably exceed $75,000.

Santa Ana made no claims for working capital. An analysis of its experience and a consideration of the highly seasonal nature of its traffic indicates that an amount to be included in the rate base should not reasonably exceed $80,000.

Conclusions as to Fair Value.—Respondent Alaska Steamship contends the fair value of its property as of December 31, 1939, is $14,000,000, including $1,250,000 for working capital and $1,500,000 for good will and going concern value. Northland urges that its property has a fair value as of that date of $3,900,000, including $475,000 for working capital and $500,000 for good will. Alaska Transportation contends that the fair value of its property as of December 31, 1939, is $900,000 including an unstated sum for going concern value and $160,000 for working capital. While Santa Ana claims no specific amount for fair value it contends that the loss of its one vessel would require the immediate expenditure of $761,000 to replace it. Working capital has heretofore been considered. The amounts claimed for going concern value and good will are merely speculative estimates. The property is valued as an organized going enterprise. Otherwise it would have only a salvage value. The costs of developing the enterprise have been included in the operating expenses paid out of rates collected from the public. Good will is but another name for the value of attached business. In *Los Angeles G. & E. Elec. Corp.* v. *Railroad Commission of California, supra*, the court said: "It (the concept of going value) does not give license to mere speculation; it calls for consideration of the history and circumstances of the particular enterprise * * *." No definite amounts will be assigned for going concern or good will.

Respondents also urge that controlling weight be given to reproduction cost in a finding of fair value. This apparently is based on the hypothesis that under present conditions current replacements will be possible only through new construction. The probability that it will be necessary to replace the fleets through new construction appears remote. Statements of record indicate that the trade will not support the capital investment in a fleet of newly constructed modern vessels. Reproduction cost new was computed by our engineers and those for respondents independently, using the same basic data. No consideration was given to the effect upon construction costs of current war conditions. The results, upon comparison, were said to be surprisingly close. Figures representing depreciated reproduction cost new were based upon actual inspection of vessels by the respective engineers of the parties. As stated, the ratio of depreciated reproduction costs of respondents' vessels to reproduction cost new ranges from 48 percent to 68 percent. The weight to be given reproduction cost less depreciation should be determined in the light of respondents' past history and policy in respect to the acquisition and replacement of their vessel property.

The only vessels in the fleet of 16 owned and used in 1939 by Alaska Steamship that were acquired in new condition, were the

Cordova and the *Alaska*, built in 1912 and 1923, respectively. Of the others the *Yukon*, acquired in 1923 but built in 1899, is the oldest. The *Denali*, built in 1927 and acquired in 1938, is the most recently constructed. The average age is 24 years. The average age of Northland's fleet is 19 years. Three of its vessels were built in 1918. The *M. S. Northland*, built in 1929, has been operating in the trade since 1930. The *North Coast*, built in 1923, was acquired in 1938. The average age of Alaska Transportation's fleet is 21 years. The *Tongass*, a wooden vessel, was built in 1915 and acquired in 1937. The *Taku* and *Tyee* were built in 1921 and acquired in 1939 at which time substantial alterations were made for the Alaskan trade. The S. S. *North Pacific*, owned and operated by Santa Ana was built in 1918 and acquired by it in 1938.

Respondents Alaska Steamship and Northland insist that, notwithstanding the age of some of them, their vessels are as serviceable today as when built. The record warrants the conclusion that they consider it a sounder investment policy to purchase old vessels and to recondition them rather than to build new vessels. Apparently neither freight nor passenger traffic requires modern vessels.

Based upon a consideration of the elements of value as of Decmeber 31, 1939, hereinbefore discussed, and giving consideration to the fact that the business of each carrier was a going concern, the examiner, in his proposed report, concluded for the purposes of this particular proceeding that the value of the property of respondents Alaska Steamship, Northland and Santa Ana used in the Alaskan service did not exceed $6,875,000, $1,675,000, and $285,000, respectively, as of that date. No finding of value of the property of Alaska Transportation was made in the proposed report on the ground that its operations have consistently shown a deficit. This respondent introduced testimony as to the elements of value of its property and contends, we think rightly, that a finding of the fair value thereof should be made by us.

Passenger and freight rate increases by Alaska Steamship, Northland and Alaska Transportation became effective in January and June of 1940, respectively. A determination of the reasonableness of the rate structure as a whole, measured by annual net operating income in relation to the fair value of the property must necessarily give consideration to the effect on net income of those increases and the value of the property during the period the income was earned. However the evidence respecting certain elements of value does not go beyond December 31, 1939. Except as hereinafter noted, respondents owned and used the same vessels in the Alaskan service during 1940 as in 1939. Also, annual depreciation accruals on respondents' properties normally have exceeded the annual expenditures for addi-

tions and betterments to such properties. Hence, it is fair to assume that values for 1940 did not exceed those of 1939. Therefore, values as of 1939, adjusted to reflect changes in the use of the property in 1940, will be used herein.

During the year 1940 Alaska Steamship's vessels *Baranof*, *Oduna*, *Depere*, and *Sutherland* were chartered in other trades for 17 days, 247 days, 148 days, and 110 days, respectively; Northland's vessels *North Haven* and *North Wind* were chartered and engaged in intercoastal service 366 days and 246 days, respectively. The portion of original cost and reproduction cost shown herein that is assignable to non-Alaskan services during 1940, is as follows:

	Alaska Steamship	Northland
Original cost	$214,839	$140,595
Original cost, less depreciation	98,177	82,913
Reproduction cost new	1,483,913	1,902,609
Reproduction cost new, less depreciation	708,244	893,705

The following statement summarizes the available data respecting the elements of value of property owned and used in Alaskan service during 1940:

	Undepreciated	Depreciated
Alaska Steamship:		
Original cost:		
Vessels	$7,285,434	$3,643,571
Terminal property	186,884	51,214
Cost of reproduction—vessels	21,718,696	10,456,332
Working capital	1,250,000	
Northland:		
Original cost:		
Vessels	1,289,882	939,634
Other shipping property	10,612	7,346
Cost of reproduction—vessels	4,020,718	2,034,065
Working capital	250,000	
Alaska Transportation:		
Original cost:		
Vessels	470,648	428,076
Other shipping property	957	566
Cost of reproduction—vessels	1,495,100	1,015,369
Working capital	75,000	
Santa Ana:		
Original cost:		
Vessels	117,506	107,714
Other shipping property	29,498	29,198
Cost of reproduction—vessels	761,000	372,890
Working capital	80,000	

The problem of finding fair value herein is similar to that presented in the *Inter-Island* case, *supra*, wherein we said at page 260:

> Essentially, this is a rate rather than a valuation proceeding. Therefore it is unnecessary to make a precise determination of the value of the property in question. The estimates submitted are considered insofar as they have a bearing upon the economic cost of performing the service; also as they indicate the level of rates which may avoid the taking of the carrier's property for public use without just compensation.

In addition to the elements of value summarized above, the record shows the volume of past and present earnings, the actual and estimated amounts necessary to meet operating expenses, hereinafter discussed, and the amount of the stocks and bonds. Considering all relevant factors and recognizing that the property of each respondent is an integrated operating enterprise and a going concern, it is concluded for the purpose of this particular proceeding that the fair value of the property owned and used in Alaskan service during the year 1940, based upon the adjusted fair value as of December 31, 1939, does not reasonably exceed the following amounts:

Alaska Steamship	$6,650,000
Northland Transportation	1,475,000
Alaska Transportation	650,000
Santa Ana	285,000

RATE OF RETURN

In the *Inter-Island* case, *supra*, we found that the fair rate of return on the value of respondent's property did not exceed 7 percent. That finding, however, does not operate as a precedent. Each case as it arises must be considered on its merits. We recognized that a rate of return should be such as to attract the intelligent investor, with due regard to certainty and security, and that as a comparative measure the return expected and usually obtained from investments with corresponding risks should be considered. We also recognize that in the regulation of public utilities the constitutionally guaranteed fair return excludes the right "to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." *Bluefield Water Works & Improvement Co.* v. *Public Service Commission of West Virginia*, 262 U. S. 679; *Wilcox* v. *Consolidated Gas Co.*, 212 U. S. 19.

Respondents show 8 percent as the prevailing rate of interest on loans negotiated in Alaska. It was not shown that any respondent actually made loans within the Territory. In fact, the only loans of record were made in 1938 by Northland in Seattle at 4.5 and 5 percent. In addition, that company issued 6 percent cumulative preferred stock in 1937 and 1938. An attempt was made through one witness to show that from 12 to 18 percent would not be unreasonably high. Such testimony was based on experience dealing with more speculative enterprises than public utilities subject to regulation. Counsel for respondents urged 10 percent as a fair rate of return.

The possibility that income will fail or that principal will be lost is an outstanding hazard against which investors in any public enterprise should be guarded. In any water carrier operation there are,

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of course, risks incident to perils of the sea and question arises whether such risks warrant a higher rate of return than would be allowed a land utility. Such utilities operate under public franchise or other protection and are, in effect, monopolies within the areas they serve. Railroads also are afforded protection against undue competition through the issuance of certificates of public convenience and necessity. There is no such protection in the Alaskan trade. In the *Inter-Island* case the respondent had little competition. For the element of competition here involved due weight should be given. Property investments, common carrier risks incident to cargo, also liabilities for personal injuries to passengers, vessel crews and other employees are covered by insurance. Premiums paid for such protection are allocable as an operating expense and ordinarily are borne by shippers in the rates they pay. But even recognizing the element of competition, the effect thereof in the future will probably be no greater than in the past. The original capital investment of Alaska Steamship has shown a return of over 400 percent from all sources and over 300 percent from Alaskan operations. The company was incorporated in December 1907. On January 1, 1908, capital stock of $3,000,000 par value was issued in acquisition of property having a reputed cash value of equal amount. Up to December 31, 1939, net profit from all sources has aggregated $16,589,550 of which $9,547,887 [2] is stated to represent net income from "common carrier" operations in Alaska. A stock dividend of $1,500,000 and cash dividends aggregating $13,690,000 have been declared. During thirty-two years of continuous operations only three years, 1932 to 1934, inclusive, have failed to show a profit from Alaskan operations. In those depression years losses aggregated only $212,193. As of December 31, 1939, the capital surplus was $1,399,550. There are no outstanding bonds or other long-term indebtedness.

Northland was incorporated in 1923. Net profit from 1930 to December 31, 1939, from all operations aggregates $1,036,816, of which $760,236 was profit from Alaskan operations. Dividends during the period aggregated $594,386, of which $131,100 was paid in preferred stock and the remainder in cash. The proprietary investment, as reflected by the average outstanding capital stock, excluding stock issued as dividends, during this period averaged $83,270. On the basis of earnings of $760,236 from Alaskan operations the original capital investment has shown a return of approximately 900 percent.

Alaska Transportation since the inception of its common carrier service in June 1935, has operated continuously at a loss. The exist-

[2] The difference of $7,041,673 represents net profit from charter hire, interest and dividends from investments, sale of investment securities, vessels and other property, etc.

ing service did not commence until 1939 when two additional vessels were acquired.

Santa Ana was incorporated in 1923. The record contains no data regarding its financial history prior to January 1, 1938. Its net profit from operations was $49,443 in 1938, and $80,211 in 1939. Dividends at the rate of 40 percent on $100,000 par value of capital stock were paid in cash in each such year.

It is concluded that the fair rate of return on the value of respondents' property should not exceed 7.5 percent.

NET OPERATING INCOME

The results of the Alaskan operations of respondents, as reflected by their net water-line operating income for the calendar years 1939 and 1940, are shown below:

	1939	1940	Increase+ or decrease−
Alaska Steamship (see Appendix 1)	$382,896	$548,153	+$165,257
Northland (see Appendix 2)	82,888	54,222	−28,666
Santa Ana (see Appendix 3)	86,704	84,059	−2,645

Alaska Transportation's operations resulted in operating deficits of $107,707 for the year ended June 30, 1940 and $96,213 for the calendar year 1940. (See Appendix 4.) Northbound cargo of Alaska Steamship increased 64,553 tons while southbound decreased 12,376 tons. Passengers carried increased by 5,678 of which 4,631 were northbound. Average revenue per cargo ton increased 90 cents while average revenue per passenger increased two dollars. Revenue freight carried by Northland increased 4,508 tons while the number of passengers carried decreased by 88. Average revenue per ton of freight decreased 30 cents while average revenue per passenger increased $5.21.

During the year 1940 Alaska Steamship transported 38,874 tons of freight cargo with revenue of $565,608 for the U. S. Army, Navy, Marine Corps and Civil Aeronautics Authority in connection with the national defense program. Of the total, 37,993 tons with revenue of $556,428 moved northbound from Seattle, the balance being largely Alaskan interport traffic. In addition it transported 648 passengers with revenue of $53,175 for a contractor acting on behalf of the U. S. Navy. Northland in 1940 transported freight and passenger traffic to a contractor for the U. S. Army and Navy with total revenues of $147,769. Respondents contend all this traffic is non-recurring and that the revenues therefrom should be deducted

from the normal revenue in determining the reasonableness of their rate structure under normal conditions. Alaska Steamship estimates the approximate net revenue from its gross freight revenue of $565,608 from this traffic to be $79,185 which latter amount it contends should be deducted from the total net operating income. It estimated the net revenues by applying the operating ratio based on gross operating revenues and expenses. No estimate of the portion of the revenue from passenger traffic that represented net revenue was submitted. But on the basis used for freight traffic, net income would be $7,745, making a total of $86,930. Northland made no estimate of net revenue.

There is no indication of record as to how long the movement of this traffic, designated by respondents as "non-recurring," will continue. A determination of the net operating income assignable to such traffic would necessarily have to be on some arbitrary basis of allocation of expenses, including overheads. The results would be highly conjectural. Furthermore, it would be necessary to determine the portion of fair value found herein that would be properly assignable to the movement of this traffic, an exceedingly difficult problem which could only be solved on some arbitrary basis. For the purpose of this proceeding we will make no attempt to segregate net income or fair value assignable to this so-called "non-recurring" traffic.

Alaska Steamship has submitted evidence of wage increases effective in February 1941 estimated to result in annual increased costs of $64,387 based on operations for the year 1940. It estimated additional increases then under negotiation with unions that will result in an estimated annual increase of $25,000. Such increases will affect the results of operations for 1941. We see no justification for considering them in connection with 1940 net income which reflects the wage increases effective during that year.

Fuel oil, gasoline and oil products accounted for 41.9 percent of the total tonnage carried by Santa Ana in 1938, 32.17 percent in 1939 and 32.54 percent in 1940. Beginning with the season of navigation in 1941 that respondent expects to lose this traffic because the Standard Oil Co. of California is building storage tanks at Bethel and Dutch Harbor to be supplied by that company's tankers. It was testified that as a result of this development the gross earnings of Santa Ana will decrease by 25 percent to 33 percent without any offsetting reduction in operating expenses. All of the respondent's traffic has been handled by one vessel making three voyages a year. On the basis of 1940 operations, a reduction in freight revenue ranging from 25 percent to 33 percent would reduce net operating income to amounts ranging from approximately $17,500 to $34,000.

Conclusions as to reasonableness of rate structure.—The fair value of property devoted to Alaskan service in 1940, based upon the adjusted fair value as of December 31, 1939, and the net operating income therefrom for that year, as found herein, together with the resulting rate of return are summarized in the following tabulation:

Respondent	Fair value	Net operating income	Rate of return (percent)
Alaska Steamship	$6,650,000	$548,153	8.24
Northland	1,475,000	54,222	3.68
Alaska Transportation	650,000	[1] 96,213	None
Santa Ana	285,000	84,059	29.49

[1] Deficit.

Northland's rate of return of 3.68 percent is 3.82 percent less than the fair rate of return of 7.5 percent found herein. Alaska Transportation, with an operating deficit, earned no return. Alaska Steamship earned $49,403 or 0.74 of one percent in excess of the fair return of 7.5 percent. Santa Ana earned $62,684 or 21.99 percent in excess of the fair return.

The estimated net income of $86,930 on traffic that respondent Alaska Steamship contends is nonrecurring is $37,527 more than the excess over the fair return found herein. Considering all factors we conclude that respondent Alaska Steamship's rate structure as a whole is not shown to be unreasonable from the standpoint of the fair value test.

The rate of return of 29.49 percent earned by Santa Ana in 1940 is clearly excessive. Assuming that on basis of 1940 traffic all revenue from the oil and oil products is lost with no offsetting traffic or any corresponding reduction in operating expenses, the resulting estimated net operating income, ranging from $17,500 to $34,000, would produce rates of return on the fair value found herein ranging from 6 percent to 12 percent. That respondent's rate on general merchandise to Bethel is $22.50 per ton weight or measurement, as compared with a similar rate of $18.00 maintained by Alaska Steamship to Goodnews Bay, 150 miles less distant from Seattle than Bethel. Both respondent's president and the master of its vessel testified that this stretch of 150 miles is more hazardous to navigate than any other waters within their knowledge. In view of the unpredictable loss of revenue in 1941 and its effect on net income, and in the absence of complaint from any of the affected shippers, we conclude that respondent Santa Ana's rate structure has not been shown to be unreasonable.

Justification of particular rates.—The foregoing conclusions as to the general rate level do not foreclose an examination of particular rates which may be unreasonable or discriminatory.

The proposed report recommends that increases on articles[3] formerly included in the item freight, n. o. s., be found not justified to the extent they exceed the proposed increases on the latter item. Rates on these articles, which comprise approximately one percent of the traffic, are increased by amounts ranging from $1 to $7, because of alleged susceptibility to damage or necessity for special stowage.

The record shows that while payments of Alaska Steamship resulting from claims on clothing, dry goods, notions, and furniture increased since 1937, payments were less in 1939 than in 1938. On miscellaneous articles, understood to include most commodities formerly transported at the n. o. s. rate, claim payments in 1939 increased slightly over 1938 but since 1937 there has been a decrease. There is no comparison of claim payments with revenue received on any commodity, nor of claim payments on the articles under consideration as contrasted with traffic generally. Hence, statements showing claims paid are of little value. The record shows further that on a per ton basis, total claim payments by Alaska Steamship, except on products of mines and forests, for four years beginning with 1936, were 11.8, 9.93, 13.1 and 10.5 cents, respectively. Regarding the alleged necessity for special stowage, respondents stated that shipments are frequently delivered improperly packed for safe transportation, as for instance, furniture packed in cardboard cartons. Respondents' tariffs, however, contain the following provision:

> All freight for shipment by boat must be packed in shape for safe and expeditious handling. When tariff does not specify kind of package, it is understood that bags, barrels, boxes, crates, or other suitable packages will be used; and when freight is offered in bulk or in such packages as would endanger contents or other cargo or steamer, when handled with ordinary care, it shall be optional with the company to refuse to transport it or to accept it with notation on shipping receipt or bill of lading fully releasing the company from liability for any damage that may occur.

But the rule is not enforced. Obviously, carriers should not exempt themselves from liability for damage under a tariff rule and at the same time increase rates to cover such risks. Increases in rates on commodities formerly transported at the rate on freight, n. o. s., to the extent they exceed increases applicable on traffic remaining within that classification, have not been justified.

Special rates to large shippers.—Counsel for the Commission assails a lower basis of rates applying on property moving from

[3] Clothing, dry goods; dishes and glassware; glass; compounds, liquid; accounting machines; athletic goods; drugs, cosmetics; electrical appliances; furniture, uncrated; acids and chemicals; batteries, storage; films, moving picture; burial cases; and live poultry.

Seattle to Japonski Island near Sitka and to Woman's Bay near Kodiak under a contract between Siems-Drake Puget Sound Company, contractors, and the Navy Department for the construction of Navy air bases. Since the hearing, a copy of the contract has been incorporated by reference into the record by agreement between the parties. It is clear from the terms of the contract that Navy bears the freight charges. The contractors do not profit from either the lower rates or consequences thereof. There is no claim by any party that those rates are below a compensatory level or that they influence other rates or traffic in any particular. We conclude therefore that they are not unlawful.

Alaska Steamship publishes unfiled Tariff No. 583 naming rates applicable to and from points on the Alaska Peninsula, including King Cove and Akutan. However, unfiled Tariff No. 551 names lower rates on cannery supplies and products, oil, lumber and freight n. o. s. to and from False Pass, on the Alaska Peninsula between King Cove and Akutan, which respondents state are based on volume. These rates are restricted to apply only on shipments to and from the cannery wharf of P. E. Harris and Company. Under unfiled Tariff No. 584 rates are blanketed to ports within the Bristol Bay and Goodnews Bay areas, yet unfiled Tariff No. 592 names lower rates to and from a subsidiary of The Great Atlantic and Pacific Tea Company and Nakat Packing Corporation located at Nakeen on Bristol Bay. Tariffs which accord to particular shippers within blanketed areas rates or privileges not available to others similarly situated are unlawful under section 16. *Armstrong Cork Co.* v. *American-Hawaiian S. S. Co.*, 1 U. S. M. C. 719. *Intercoastal Rates of Nelson Steamship Co.*, 1 U. S. S. B. B. 326, 342, 343; *Intercoastal Rates on Silica Sand*, 1 U. S. S. B. B. 373. Tariffs 551 and 592 will be ordered cancelled.

Propriety of blanket rates.—The examiner recommended that we find respondents' failure to reflect in rates the distances between Southwestern ports in the Yakutat-Seward area, while observing the distance factor with respect to rates to and from Southeastern ports south of Yakutat, is an unreasonable practice which results in undue preference and prejudice. Respondents' justification of the practice is that vessels call at intermediate ports sometimes en route to and sometimes en route from Seward, and the rates have always been blanketed in order to avoid having higher rates for a shorter than for a longer distance over the same route in the same direction, the shorter being included within the longer distance. Respondents also stated that they desire to maintain rate parity on fishery supplies and products.

The proposed report refers particularly to ton-mile revenue on northbound traffic to Seward of 5 mills as compared with 9 mills to Juneau, Skagway, and Valdez. This comparison is not conclusive because it is based on all cargo carried in 1939 which may have varied widely as to commodities and volume to the various ports concerned. The rates offer a better comparison. For example, the rate on freight, n. o. s. yields an average ton-mile earning of 9.3 mills to the three ports named as compared with 7.8 mills to Seward. We are of the opinion that the practice has been justified.

Rates of Alaska Steamship and Northland on fishery supplies and products and certain other specified commodities apply to and from a series of southeastern and southwestern port groups; the minor ports are grouped with and accorded the same rate as the contiguous principal port. No justification is offered by respondents for this practice except as to fishery traffic which, as stated, is the backbone of the Alaskan trade. On northbound traffic respondents state it is necessary to maintain parity of production costs between producers, and on southbound traffic, competitive parity between Alaskan producers in common markets and also between such producers and producers in Puget Sound and other areas.

The bulk of traffic to and from minor ports consists of fishery traffic which takes the lowest rates in the filed tariffs. On northbound traffic, gross per ton revenue for the minor ports is from $1 to $4 per ton lower than for principal ports. The proposed report concludes that traffic to and from principal ports is being unduly burdened with more than its share of operating costs. This does not necessarily follow because traffic to and from minor ports is of a lower grade than to and from principal ports, and the revenue thereon consequently would be less.

Inasmuch as no justification was given for blanketing rates on commodities such as products of mining, fuel, fuel oil, and live stock, respondents will be expected to adjust such rates on a mileage basis. Respondents should also give consideration to the inclusion of ports on Baranof Island south of Sitka, on Chatham Strait, and on Scow Bay, in the Petersburg area, to which they appear to be more contiguous than to Juneau.

Complaint of Tacoma Chamber of Commerce.—Tacoma Chamber of Commerce, an intervener, alleges generally that respondents Alaska Steamship and Northland, in discontinuing rate parity between Seattle and Tacoma on shipments to and from Alaska, are subjecting the Port of Tacoma and shippers there located to undue prejudice and that the Port of Seattle and shippers there located are unduly preferred in violation of section 16 of the Shipping Act, 1916, as amended. Alaska Steamship now restricts the application

of its rates to Seattle on 29 commodities. Northland's restrictions are less numerous. Parity still exists on nearly all northbound traffic. Neither Alaska Steamship nor Northland has given Tacoma direct service for several years, but joint rates are published in connection with Puget Sound Freight Lines. Alaska Transportation serves both Seattle and Tacoma with its own vessels at the same rate.

Other than testimony on behalf of Wypenn Oil Co., Inc., and Centennial Flour Mills Co., hereinafter discussed, evidence by intervener consists of general statements of the character of the industries located at Tacoma, the advantages of that port, its possibilities for expansion, and a conclusion that the discontinuance of rate parity has retarded Tacoma's progress as a port. It was not shown that competitive merchants or manufacturers there located receive unlike treatment or that competition actually exists between shippers at Tacoma and shippers at Seattle. Evidence of such general character has little, if any, value. In *Intercoastal Cancellations and Restrictions*, 2 U. S. M. C. 397, we said that findings of undue preference and prejudice resulting from the cancellation of through routes and joint rates should be made only when unlawfulness has been shown by the most clear and convincing proof.

Wypenn Oil Co., Inc., refines and hydrogenates fish and animal oils, and provides bulk storage for such oils at Tacoma. The plant was built in 1936 after the rate to Tacoma on herring oil had been cancelled. There are no processing plants at Seattle with which Wypenn competes. Herring oil is transported in bulk to Seattle in ships' tanks. It was *not affirmatively* shown that Puget Sound Freight Lines has facilities for transporting oil in bulk. It is apparent that the foregoing is insufficient to support a finding of unlawfulness under section 16.

Centennial Flour Mills Co. manufactures and sells flour, cereal, and animal and poultry feed. The latter product is processed in part from fish meal produced in Alaska. Rates northbound from Tacoma and Seattle on merchandise it sells are the same, but on fish meal southbound the rate applies only to Seattle. Rates from Seattle to Tacoma by rail and boat are 5.5 and 7.5 cents respectively, per 100 pounds. Such rates, it was said, increase Centennial's manufacturing cost from $550 to $865 annually. Centennial also has plants located at Spokane, Wenatchee and Portland, and shipments of fish meal move to such plants from Seattle by rail and truck. Rail and truck rates to these plants are the same from both ports. Centennial does not specifically show that there are competitive feed manufacturers at Seattle; hence, as in the case of Wypenn, there is no basis for a finding of undue preference and prejudice.

After hearing, intervener Tacoma Chamber of Commerce filed a petition for further hearing to introduce evidence concerning alleged changed conditions since the hearing, and the service accorded Tacoma by respondents. The petition was denied without prejudice to the filing of a formal complaint. We conclude that intervener's allegations have not been sustained.

Sufficiency of tariff filings.—Respondents Alaska Steamship, Alaska Transportation, and Northland have not filed their tariffs covering service to and from the canneries, salteries, lumber camps, and small settlements on the ground that they are "irregular" ports. They contend that there is no requirement for filing tariffs naming rates to and from such ports because they are not on regular routes and because no regularity exists with respect to sailings or calls. Section 2 of the Intercoastal Shipping Act, 1933, requires that "every common carrier by water in interstate commerce, engaged in transportation on regular routes from port to port shall file schedules showing all the rates, fares, and charges for or in connection with transportation on its own route * * *." The statute does not classify ports nor does it contemplate regularity of sailings in a trade or regularity of calls at a port. The question presented is whether respondents are engaged in transportation on regular routes.

The primary purpose for the insertion in the statute of the phrase "on regular routes from port to port" was to exclude from regulation traffic transported by tramp vessels. Certainly, respondents cannot contend that any vessel which they operate is a tramp; they operate the only services to Alaska. In fact, that trade comprises their principal business. Respondents admit they hold themselves out to transport cargo to and from all industry locations within the respective areas which each serves, and it has become generally known that if service is required and requested it will be given. Irregularity in respect to sailings and calls at minor ports is due to the seasonal character of the industries respondents hold themselves out to serve. Service to principal ports also is irregular, because of the necessity for more frequent service in the summer season to accommodate the tourist traffic.

It is apparent that there is no clear distinction between vessels which serve minor ports from those which serve principal ports. Schedules of all vessels, although tentatively planned in advance, are subject to frequent and constant disruptions throughout the season due to peculiar industrial and other conditions inherent in the trade. Under such circumstances, to accept respondents' contention would render futile any regulation with respect to principal ports.

We conclude that the service of Alaska Steamship, Alaska Transportation, and Northland is confined principally to one trade, and within their respective areas each of them is engaged in transportation on regular routes from port to port. An order will be entered requiring these respondents to file schedules showing all the rates, fares, and charges for the entire service of each respondent.

Alaska Transporation will be expected to remove the apperent discrimination in connection with transportation of ore and concentrates as between principal ports and minor ports from which rates are subject to special arrangements.

Rule 1 of the filed freight tariffs of Alaska Steamship, Alaska Transportation, and Northland contain the following provision:

> The steamer rates named herein are applicable subject * * * to the conditions of the company's shipping receipts, bills of lading, and livestock contracts * * *.

When rates are published, dependent upon conditions in the carrier's bill of lading, said conditions should be published in the tariff. *Transportation of Lumber Through Panama Canal*, 2 U. S. M. C. 143, *Puerto Rico Rates*, 2 U. S. M. C. 117, 131.

Alaska Steamship maintains joint rates and fares with Alaska Railroad, which is owned and operated by the United States Government under the provisions of the Alaska Railroad Act of March 12, 1914, chapter 37, 38 Stat. 305. Apparently these rates do not come within the jurisdiction of the Interstate Commerce Commission, 34 *Attorney General Opinions*, 232. We are of the opinion that respondent Alaska Steamship should cancel existing joint through rates and fares with Alaska Railroad and establish in lieu thereof proportional rates for the water transportation involved. No order to that effect will be entered at this time, but consideration will be given to the issuance of such an order if the action indicated is not taken within a reasonable time.

Common carrier status of certain respondents.—Respondent Heinie Berger is an individual operating the *M. V. Discoverer*, a motor vessel of about 100 tons capacity, between Anchorage, Cook Inlet, and Seattle during nine months of the year. He carries passengers and freight but maintains that his operation is not that of a common carrier because of irregularity of schedules and routes. The record is that he carries all kinds of freight offered, sails quite regularly although not on stated schedules. In this respect we see no difference between his service and that of other common carriers serving so-called irregular ports. We conclude that respondent Heinie Berger operates a common carrier. He will be required to publish and file his schedules.

Questions involving International Ocean Express System, Inc., are (1) whether it is a common carrier, and (2) whether it is being unduly prejudiced because shipments of Railway Express Agency, Inc., its competitor, are being transported by Alaska Steamship under a special contract.

International is engaged in the business of consolidating and forwarding freight. It receives a bill of lading from the transporting carrier and pays the regularly published and filed rates. International charges a rate which is sufficiently higher than the rate it pays the transporting carrier to cover the expense of solicitation, assembling, segregation, delivery, accounting, marine insurance, and other incidental costs. It issues bills of lading, and assumes full liability for loss and damage, but does not own or control vessel space. International's status therefore is that of a consolidator and forwarder or "other persons" as defined in Shipping Act, 1916, and thus is not required to file its tariffs.

Railway Express Agency, Inc., is owned by various railroads and is a common carrier under the Interstate Commerce Act. It publishes an unfiled tariff naming rates and charges applicable, but restricted, to shipments transported by boat between ports in the United States and ports in Alaska. Railway Express forwards its shipments via vessels of Alaska Steamship pursuant to a contract under which the steamship company receives one-half of the gross revenue which Railway Express receives under its tariff. The steamship company does not issue bills of lading or freight bills covering such shipments. Compensation received by Alaska Steamship, it was said, exceeds in the aggregate the revenue obtainable at its tariff rates on Railway Express shipments. Although Railway Express' activities are conducted in a manner substantially similar to those of International, however, through its contract with Alaska Steamship it has the status of a common carrier by water operating on regular routes from port to port. So long as it remains a common carrier under the Act, no preference or prejudice as between it and International can result from the contract. Railway Express will be required to file its tariff.

Upon this record we find:

1. That the value for rate making purposes of the properties used and useful in the Alaskan public service during the calendar year 1940, based upon the adjusted fair value as of December 31, 1939, does not exceed the following amounts: Alaska Steamship Company, $6,650,000; Northland Transportation Company, $1,475,000; Santa Ana Steamship Company, $285,000; and Alaska Transportation Company, $650,000.

2. That the fair rate of return on the respective values above mentioned does not exceed 7.5 percent.

3. That respondents' net operating income from Alaskan service during the calendar year 1940 was as follows: Alaska Steamship Company, $548,153; Northland Transportation Company, $54,222; and Santa Ana Steamship Company, $84,059; and that respondent Alaska Transportation Company's operations for the calendar year 1940 resulted in a net operating deficit of $96,213.

4. That respondents' net operating income for the calendar year 1940 represented rates of return on the fair values found herein as follows: Alaska Steamship Company, 8.24 percent; Northland Transportation Company, 3.68 percent; and Santa Ana Steamship Company, 29.49 percent.

5. That the evidence does not disclose that the rate structures as a whole of respondents Alaska Steamship Company, Northland Transportation Company and Alaska Transportation Company are unreasonable, or that the rate structure of Santa Ana Steamship Company will, for the future, be unreasonable. This finding is not an approval of individual rates and is without prejudice to the right of shippers to file formal complaint against such rates in accordance with section 22 of the Shipping Act, 1916.

6. That to the extent increases in rates on commodities transported prior to such increases at freight, n. o. s. rates exceed increases published in the suspended schedules under the commodity rate item entitled "Freight, n. o. s.," they have not been justified, and are not shown to be lawful.

7. That rates in tariffs No. 551 and No. 592 of Alaska Steamship Company, applicable to particular shippers at False Pass, on the Alaska Peninsula, and Nakeen, on Bristol Bay, lower than rates published in tariffs No. 583 and No. 584 applicable to other ports in the same general areas, are unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916.

8. That complaint of Tacoma Chamber of Commerce alleging that discontinuance by certain respondents of rate parity between Seattle and Tacoma, Wash., on traffic to and from Alaska is in violation of section 16 of the Shipping Act, 1916, as amended, has not been sustained.

9. That service by Alaska Steamship Company, Alaska Transportation Company and Northland Transportation Company to and from so-called irregular (minor) ports is transportation on regular routes from port to port within the intent of Congress and subject to the Shipping Act. Tariffs of rates, fares, charges, rules, regulations, and practices applicable to such service should be filed as required by section 2 of the Intercoastal Shipping Act, 1933, as amended.

10. That provisions of bills of lading or other documents affecting rates or the value of transportation service are not governing unless incorporated in carriers' published and filed tariffs.

11. That Alaska Steamship Company should cancel existing joint rail and water rates maintained with Alaska Railroad and in lieu thereof, publish and file with the Commission proportional water rates covering its part of the transportation service.

12. That the *M. V. Discoverer*, operating between Seattle, Wash., and Anchorage, Alaska, and other ports on Cook Inlet is engaged in a common carrier service on regular routes from port to port, and tariffs of rates, fares, charges, rules, regulations, and practices should be filed as required by section 2 of the Intercoastal Shipping Act, 1933, as amended.

13. That International Ocean Express System, Inc., is a consolidator and forwarder included within the term "other persons" as defined in the Shipping Act, 1916. Such persons are not required to file their rates and charges.

14. Railway Express Agency, Inc. is a common carrier engaged in transportation on regular routes from port to port and should file tariffs of its rates, fares, charges, rules, regulations, and practices as required by section 2 of the Intercoastal Shipping Act, 1933, as amended.

Respondents should promptly refund to interested shippers all freight charges to the extent they have been herein found to be unlawful in accordance with the Commission's order entered in No. 571, dated May 28, 1940.

An appropriate order will be entered.

APPENDIX 1

ALASKA STEAMSHIP COMPANY

Comparison of revenues, expenses, and net water-line operating income—Alaskan service

	1940	1939	Increases over 1939
Water-line operations—revenues:			
Freight	$4,500,027	$3,617,826	$882,201
Passenger	2,771,432	2,392,520	378,912
Mail	273,830	241,897	31,933
Express	41,556	34,725	6,831
Excess baggage	4,839	3,925	914
Bar and radio	61,093	57,420	3,673
Rents of buildings and other property	1,300	2,520	[1] 1,220
Wharfage and miscellaneous	191,888	158,639	33,249
Total	7,845,965	6,509,472	1,336,493
Water-line operations—expenses:			
Maintenance of equipment	1,120,531	1,154,658	[1] 34,127
Maintenance of terminals	17,384	10,434	6,950
Traffic expenses	222,608	235,182	[1] 12,574
Transportation expenses:			
Operation of vessels	3,152,585	2,718,969	433,616
Operation of terminals	1,311,128	979,272	331,856
Incidental transportation expenses	295,163	107,187	187,976
General expenses	715,168	630,729	84,439
Charter hire	129,768	161,715	[1] 31,947
	6,964,335	5,998,146	966,189
Less charter expenses	152,224	108,504	43,720
Total	6,812,111	5,889,642	922,469
Net water-line operating revenue	1,033,854	619,830	414,024
Water-line tax accruals	429,500	192,500	237,000
Water-line operating income	604,354	427,330	177,024
Miscellaneous rents	56,201	44,434	11,767
* Net water-line operating income—Alaskan service	[2] 548,153	382,896	165,257

[1] Decrease.

[2] The net income from all operations for 1940, as shown by Exhibit A of Ford's affidavit dated March 29, 1941, is $716,615. A reconciliation of the reported net income and the amount assigned to Alaska service is as follows:

Deductions:		
Dividend income	$15,225	
Income from securities	400	
Miscellaneous, including $36,422 profit from ship sales	86,836	
Net revenue charter hire	96,668	
		199,129
Additions:		
Interest on unfunded debt	3,260	
Miscellaneous fixed charges	27,407	
		30,667
Net deduction		168,462
Net income Alaska operations		548,153
Total as reported		716,615

APPENDIX 2

NORTHLAND TRANSPORTATION COMPANY

Comparison of revenues, expenses, and net water-line operating income—Alaskan service

	1940	1939	Change from 1939
Number of voyage terminations	63	66	[1] 3
Nautical miles traveled	147,593	147,621	[1] 28
Number of voyage days	953	1,073	[1] 120
Number of passengers carried	12,428	12,516	[1] 88
Revenue tons cargo carried	89,423	84,915	4,508
Operating revenue:			
Freight	$756,989.75	$745,014.63	$11,975.12
Passenger	454,836.07	392,876.97	61,959.10
Mail	6,236.25	4,607.61	1,628.64
Other voyage revenue	29,188.77	20,882.95	8,305.82
Total operating revenue	1,247,250.84	1,163,382.16	83,868.68
Operating expense:			
Vessel expense	705,189.86	643,949.32	61,240.54
Voyage expense	221,002.03	182,525.97	38,476.06
Total vessel operating expense	926,191.89	826,475.29	99,716.60
Direct profit—vessel operations	321,058.95	336,906.87	[1] 15,847.92
Inactive vessel expense	36,199.57	49,111.46	[1] 12,911.89
Depreciation	77,504.08	81,253.24	[1] 3,749.16
Administrative and general expense and taxes except Federal income tax	138,289.42	109,357.82	28,931.60
Other deductions or other income—net	73.15	(364.15)	437.30
Total other expenses	252,066.22	239,358.37	12,707.85
Gross profit—Alaskan operations	68,992.73	97,548.50	[1] 28,555.77
Federal income tax—estimated	14,770.55	14,660.57	109.98
Net water-line operating income—Alaskan operations	[2] 54,222.18	82,887.93	[1] 28,665.75

[1] Decrease.

[2] The reported net profit from all operations in 1940 as shown by Exhibit A of affidavit was $204,814.31 made up as follows:

Net profit from intercoastal operations	$62,767.94
Net profit from charters	95,272.96
Net profit from Alaskan operations	46,773.41
Total	204,814.31

The reported net income from Alaskan operations, $46,773.41 has been increased to $54,222.18 by the elimination of net interest expense of $7,448.77 which is a capital expense and not properly includible in the determination of net water-line operating income.

APPENDIX 3

SANTA ANA STEAMSHIP COMPANY

Adjusted net operating income

	Calendar year	
	1939	1940
Operating Revenue—terminated voyages:		
Freight	$211,231.45	$257,596.17
Passenger	4,855.00	4,780.00
Mail	1,547.76	1,450.86
Other	490.02	2,340.18
Total	218,174.23	266,167.21
Operating Expense—terminated voyages	78,289.52	108,732.08
Net	139,884.71	157,435.13
Inactive vessel expense	3,892.94	11,635.31
Gross profit—vessel operations	135,991.77	145,799.82
Terminal operations:		
Income	3,213.54	4,647.57
Expense	3,184.63	4,939.37
Other shipping operations:		
Income (cargo handling)	12,089.20	20,106.72
Expense (cargo handling)	17,483.07	26,815.34
Gross profit from shipping operations before overhead and depreciation	130,626.81	138,799.40
Overhead, including administrative and general expense, advertising and taxes other than Federal income taxes	20,167.91	23,959.97
Gross profit before depreciation	110,458.90	114,839.43
Depreciation:		
S. S. *North Pacific*	5,875.32	5,875.32
Other	302.19	302.19
Total	6,177.51	6,177.51
Gross profit from shipping operations before Federal income tax	104,281.39	108,661.92
Provision for Federal income tax	17,577.72	24,602.94
Adjusted net operating income [1]	86,703.67	84,058.98

[1] Depreciation on S. S. *W. M. Tupper* and interest and dividends have been excluded in this determination.

APPENDIX 4

ALASKA TRANSPORTATION COMPANY

Comparison of revenues, expenses, and net water-line operating deficit—Alaska service

	Calendar year 1940	Year ended June 30, 1940
Vessel Operations:		
Revenue	$394,295	$356,437
Expenses	456,424	423,861
Loss—vessel operation	62,129	67,424
Administrative and *other expenses*	34,084	40,283
Net water-line operating deficit	96,213	107,707

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of August A. D. 1941

No. 571

ALASKAN RATES

No. 572

ALASKA RATE INVESTIGATION NO. 2

These cases having been instituted by the Commission on its own motion and without formal pleading, or on orders of suspension of tariff schedules, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the order dated May 14, 1940, entered in No. 571 suspending the operation of schedules enumerated and described in said order, be, and it is hereby, vacated and set aside;

It is further ordered, That respondents herein, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before September 17, 1941, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of clothing and dry goods; dishes and glassware; furniture, uncrated; glass, rolled or plate; poultry, live; acids and chemicals; batteries, storage; compounds, liquid; films, moving picture; accounting machines; athletic goods; burial cases; drugs, cosmetics; and electrical appliances, from Seattle, Tacoma, and Port Wells, Wash., to ports in the Territory of Alaska, rates which exceed the rate contemporaneously maintained by said respondents for the transportation from and to the same points of articles under the item freight, n. o. s.;

It is further ordered, That the orders dated May 28, 1940, and June 27, 1940, entered in No. 571, be, and they are hereby, vacated and

set aside except as they apply to shipments of the articles named in the next preceding paragraph, the rates on which have been found to be unlawful herein;

It is further ordered, That respondent Alaska Steamship Company be, and it is hereby, notified and required, on or before September 17, 1941, to cancel its Tariffs Nos. 551 and 592, upon notice to this Commission and to the general public, by not less than one day's filing and posting, in the manner prescribed by section 2 of the Intercoastal Shipping Act, 1933, as amended;

It is further ordered, That respondents Alaska Steamship Company, Alaska Transportation Company, Northland Transportation Company, Davis Transportation Company, Haugen Transportation Company, Puget Sound Freight Lines, West Coast Transportation Company and Heinie Berger, be, and they are hereby, notified and required to file with the Commission and keep open to public inspection schedules showing all the rates, fares, and charges for or in connection with transportation of passengers or property from port to port between Alaska and the United States and between ports or places in Alaska on or before September 17, 1941;

It is further ordered, That Tariff S. B. No. 1 of respondent International Ocean Express System, Inc., be, and it is hereby, stricken from the files of the Commission, effective on the date hereof;

It is further ordered, That these proceedings be, and they are hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr., *Secretary*.

UNITED STATES MARITIME COMMISSION

No. 555

PRACTICES, ETC. OF SAN FRANCISCO BAY AREA TERMINALS

Submitted July 9, 1941. Decided September 11, 1941

Respondents, including State and municipal terminals, are "other persons" as defined in Shipping Act, 1916, as amended.

Certain respondents are operating under agreements or working arrangements within the purview of section 15 of said act, without approval of the Commission.

Practice of Encinal Terminals of collecting service charges from steamship lines on freight discharged at other terminals unauthorized by its tariff and unreasonable in violation of section 17 of said act.

Encinal Terminals knowingly received information in violation of section 20 of said act.

Practice of State and municipal terminals of making tariff changes without adequate notice unreasonable. Changes should not be made except upon 30 days' notice, unless good cause exists for shorter period.

Respondents' rules, regulations and practices regarding free time unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17 respectively, of said act. Reasonable regulation prescribed.

Respondents' rates, rules, regulations, and practices relating to wharf demurrage and wharf storage unduly prejudicial and preferential and unreasonable in violation of sections 16 and 17 respectively, of said act. Reasonable regulation prescribed.

Respondents should file their tariffs with the Commission in order that regulations prescribed may be enforced.

Appropriate order entered.

David E. Scoll, Samuel D. Slade, T. G. Differding and *Carl F. Arnold* for the Commission.

Lucas E. Kilkenny, Earl Warren and *E. A. McMillan* for State of California and Board of State Harbor Commissioners for San Francisco Harbor.

W. Reginald Jones, Charles A. Beardsley and *M. D. McCarl* for Board of Port Commissioners of the City of Oakland.

J. R. Townsend, B. C. Allin and *C. O. Burgin* for Stockton Port District.

W. G. Stone for Port of Sacramento and Sacramento Chamber of Commerce.

Leslie M. Rudy for Port of Redwood City.

W. R. Gerini for State Terminal Company, Ltd.

W. F. Williamson and *R. P. Norton* for Eldorado Terminal Company and Eldorado Oil Works.

Eugene D. Bennett, *Hugh T. Fullerton*, *Joseph J. Geary*, and *E. M. Nuckols, Jr.*, for Encinal Terminals.

Chalmers G. Graham for Howard Terminal.

F. A. Somers for Grangers Terminal Company.

P. J. Shaw for South San Francisco Terminal Company.

Eugene A. Read and *Fred D. Parr* for Parr-Richmond Terminal Corporation.

C. S. Connolly for Albers Brothers Milling Company and Interstate Terminals, Ltd.

W. S. Bell for Islais Creek Grain Terminal Corporation.

J. H. Anderson and *F. W. Mielke* for The River Lines.

H. V. Nootbaar for West Coast Wharf and Storage Company.

Joseph J. Burns for Standard Coal Company.

C. A. Hodgman for Port of San Diego.

Edwin G. Wilcox for Oakland Chamber of Commerce.

Elmer Westlake for Western Sugar Company, Spreckels Sugar Refinery and California and Hawaiian Sugar Refining Corporation.

Reginald F. Walker for Western Sugar Refinery and Spreckels Sugar Company.

H. A. Lincoln for Fibreboard Products, Inc.

Walter A. Rohde for San Francisco Chamber of Commerce.

Warren D. Lamport, *John L. Kelly*, *Elor J. Amar*, and *Charles A. Bland* for Board of Harbor Commisioners of Long Beach.

Clyde M. Leach for Board of Harbor Commissioners of the City of Los Angeles.

L. M. Fites for the Glidden Company.

J. K. Hiltner for United States Pipe and Foundry Company and Cast Iron Pressure Pipe Institute.

N. S. Laidlaw for Swayne and Hoyt, Ltd.

J. R. West for Northwest Marine Terminal Association.

L. A. Bailey and *Reginald L. Vaughan* for Warehousemen's Association of the Port of San Francisco.

E. M. Cole for American Cast Iron Pipe Company and Cast Iron Pressure Pipe Institute.

Report of the Commission

By the Commission:

Exceptions were filed to the report proposed by the examiner and oral argument was had. Substantially all of the examiner's recommendations are adopted herein.

This investigation was instituted upon our own motion to determine whether certain acts and practices of respondents,[1] which operate terminals in the San Francisco Bay area, are in violation of the Shipping Act, 1916, as amended. Various shippers intervened, but offered no evidence. After hearing, briefs and replies thereto were filed.

The order of investigation alleges that some or all of respondents: (1) are carrying out agreements in violation of section 15; (2) are diverting cargo from its natural course and creating undue preference or subjecting persons or traffic to undue prejudice by means of controlled tonnage and purchasing power in violation of section 16; (3) are receiving or soliciting confidential information from carriers which might be used to the detriment of shippers in violation of section 20; and (4) have failed to establish reasonable regulations and practices in connection with the receiving, storing, or delivery of property in violation of section 17.

The Board of State Harbor Commissioners for San Francisco Harbor, hereinafter called San Francisco, controls piers and wharves on the San Francisco waterfront which represent an investment of over $40,000,000. Approximately 40 piers are assigned to, and are operated by steamship lines. San Francisco retains all revenue from dockage, tolls, rentals, storage and wharf demurrage. It is not permitted by State law to engage in warehousing or to operate under tariffs which create either a profit or loss. No taxes are paid. San Francisco's pier No. 45 and part of No. 56 are assigned to Golden Gate Terminals and State Terminal Company, respectively. They retain only revenues from handling, loading and accessorial services which they perform. The Board of Port Commissioners of the City of Oakland, hereinafter called Oakland, operates terminal facilities at Oakland. Its investment in property, derived largely from local and partly from Federal funds, is approximately $20,000,000. No taxes are paid and the City is authorized to meet operating deficits by taxation. The Stockton Port District operates terminal properties at Stockton, together with warehouse, belt railroad and other facilities, which represent a total investment of local, State, and Federal funds in excess of $9,000,000. No taxes are paid and interest charges and bond redemptions are met by tax levies upon the Port District.

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[1] Albers Brothers Milling Company; Board of Port Commissioners of the City of Oakland; Board of State Harbor Commissioners for San Francisco Harbor; Eldorado Oil Works; Eldorado Terminal; Encinal Terminals; Golden Gate Terminals; Grangers Terminal Company; Howard Terminal; Interstate Terminal, Ltd.; Islais Creek Grain Terminal Corporation; Parr Richmond Terminal Corporation; Port of Redwood City; Port of Sacramento; Stockton Port District; Standard Coal Company of California; South San Francisco Terminal Company; State of California; State Terminal Company, Ltd.; The River Lines; West Coast Wharf and Storage Company.

Parr-Richmond Terminal Corporation operates terminal facilities at Richmond. A major portion of the property is owned by the City and leased to the corporation. All of the facilities are exempt from city taxation. Howard Terminal and Encinal Terminals operate terminal facilities on the Oakland inner harbor. Encinal's facilities are leased from its parent company, Alaska Packers Association, which is controlled by California Packing Corporation, hereinafter called "Calpak." Operations of the other respondents are only incidentally involved in this proceeding.

The privately owned terminals, namely, Parr-Richmond, Howard and Encinal and Golden Gate and State Terminals, file their tariffs with, and are regulated by the Railroad Commission of the State of California. The publicly owned terminals, which operate the major portion of the terminal facilities in the San Francisco Bay area, file no tariffs and are unregulated, except by their own governing bodies.

In 1935, the California Commission undertook a comprehensive study of the operations and revenues of private terminals in the Bay area. These studies are embodied in the Preliminary and Final Reports of Dr. Ford K. Edwards and Mr. T. G. Differding, which are of record in this proceeding. An analysis was made of all of the rates, rules, and practices of the terminals from three aspects, (1) the inadequacy of existing revenues, (2) uneconomical diversion of tonnage from one port to another, and (3) discrimination between various users of the terminal services. Certain of their recommendations, approved by the California Commission in *Decision No. 29171; Case No. 4090, Railroad Commission of the State of California*, (1936), and supported by testimony of Mr. Differding in this proceeding have been recommended for adoption by counsel for the Maritime Commission. The order of the California Commission, prescribing an adjustment of the rates, rules, and practices of the private terminals, was conditioned upon similar adjustments being made by the State and municipal terminals. All of the respondents herein have adopted substantially the recommendations of the California Commission covering toll, dockage, and service charges,[2] but not those relating to free time, demurrage and storage. The primary issues in this proceeding concern the latter services.

San Francisco and Oakland, though extending their assistance and cooperation in this investigation, oppose the jurisdiction of the Commission on the ground that they are not "other persons" within the

[2] Toll charges are assessed against cargo for the privilege of transportation over or through terminal, or being loaded or discharged at terminal. Dockage charge is assessed against vessel for docking at wharf. Service charge is assessed against vessel for arranging for berth, space for cargo, checking cargo to or from vessel, receiving or delivering cargo, preparing manifests and "over," "short," "damage" reports, etc.

definition [8] contained in the Shipping Act, 1916, as amended. The law on the question has been ably briefed by those for and against our assumption of jurisdiction in the premises. However, no sufficient reason is shown for a departure from *Wharfage Charges and Practices at Boston, Mass.*, 2 U. S. M. C. 245, wherein, after considering contentions similar to those advanced by San Francisco and Oakland, we ruled that the Commonwealth of Massachusetts, insofar as it engages in the activities of "other persons," as defined in the Shipping Act, 1916, as amended, is subject to that act.

Issues.—Aside from the jurisdictional question, the issues concern the lawfulness of (1) certain agreements under section 15, (2) Encinal's practice of collecting charges from steamship lines on freight discharged at another terminal, (3) Encinal's practice of soliciting freight through reciprocal purchases, (4) Encinal's practice of receiving notices containing names of consignees desiring delivery of cargo elsewhere without their consent, (5) the practice of San Francisco, Oakland, and Stockton, of failing to provide adequate notice of tariff changes, (6) the free time rules of respondents, except San Francisco, (7) the wharf demurrage and wharf storage charges assessed by Oakland, Howard, Stockton, Encinal, Parr-Richmond, Golden Gate and State terminals, and (8) the leasing and rental arrangements of Stockton and Oakland.

Agreements.—Oakland and McCormick Steamship Company operate under an agreement dated March 1, 1932, covering a preferential assignment to the latter of one-half of the shed area at the former's Ninth Avenue terminal. The agreement provides that McCormick shall not compete with Oakland for terminal traffic and shall observe the same rates. Oakland also has an agreement with Howard, dated November 5, 1914, leasing certain facilities to the latter with the understanding that Oakland shall receive all revenue from tolls, wharfage, and dockage. Rates to be observed are those fixed by Oakland. Stockton, under agreement dated July 23, 1936, extends preferential use of certain floor space to its lessee, Port of Stockton Grain Terminal, for the handling of grain and similar products. The latter company, though not a respondent herein, is a public wharfinger and files its rates with the California Commission. Stockton retains control of the space as well as the rates, rules, and regulations to be observed. None of these agreements has been filed with the Commission.

[8] The term "other person subject to this act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water. (Section 1.)

Clearly, these are agreements as defined in section 15, providing for "special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; * * * or in any manner providing for an exclusive, preferential, or cooperative working arrangement." As such, they are subject to our approval and it is unlawful to carry them out before such approval.

Encinal's practices.—Encinal is charged with unlawfully exacting service charges from McCormick and Williams, Dimond & Company, agents for Quaker Line for unperformed service. On freight billed to, but not delivered at, Encinal the carriers pay toll and service charges to Encinal as if the cargo had been delivered there. Carriers are said to be forced into this unusual practice by Encinal's use of the purchasing power and controlled tonnage of its parent companies.

McCormick tries to confine its East Bay operations to its terminal at Oakland, but admits that its terminal policies are influenced by a desire to obtain cargo controlled by Calpak. In 1935, McCormick discontinued coastwise calls at Encinal and thereby lost both coastwise and southbound Calpak traffic. Later, an agreement was made between Encinal, Calpak, and McCormick whereby McCormick was to resume the calls. In return it was to get southbound cargo controlled by Calpak and agreed, as to freight obtained through its own solicitation, not to oppose discharge thereof at Encinal. The cargo was delivered direct to McCormick's terminal whenever possible, with the permission of the consignees. For this "privilege" McCormick compensated Encinal through the above-described practice.

None of the other lines except Quaker indulged in this practice. Calpak is one of the Quaker's best customers. McCormick has no similar arrangement with any other terminal. Encinal states that under McCormick's tariff the latter was obligated to discharge at Encinal, and that by delivering to consignee at Oakland by Encinal's consent, McCormick saved the cost of draying or shifting to Encinal, and obtained carloading revenues on some of the shipments.

The collection of the charge, for which no service is performed, is not only in violation of Encinal's tariff, but is an unreasonable practice.

Encinal is charged, through improper solicitation, with diverting to its piers cargo originally consigned to competing piers. This is accomplished through a system of reciprocity between the consignee, Encinal, and a third party who is a buyer from the consignee and and a seller to Encinal. For instance, a cargo of sulphur consigned

to General Chemical Company for Howard delivery was diverted while in transit to Encinal (Standard Coal Company) through the intercession, at Encinal's request, of Tidewater Associated Oil Company. Associated sells large quantities of oil to Encinal and Calpak and is an important customer of General Chemical's. The consignee advised its New York principal that the change was made at Associated's request "for reciprocal reasons."

As stated in *Reciprocity in Purchasing and Routing*, 188 I. C. C. 417, 433–4, "the practice * * * succeeds only in making the handling of existing traffic more expensive." However, the evidence does not show that Encinal used its purchasing power or that of its affiliates in a coercive manner. We conclude therefore that the allegation has not been sustained.

Encinal is alleged to have violated section 20 * of the Shipping Act, 1916, by receiving information, without the consignee's consent, as to the billing of shipments consigned to another terminal. From July 1936, to June 1939, approximately 28 lists of consignees desiring Howard delivery were furnished to Encinal by Swayne & Hoyt, Ltd., Pacific Coast agent of Calmar Steamship Corporation. Calmar rarely calls at any East Bay terminal except Encinal, its regular East Bay terminal. Ordinarily, cargo destined to other East Bay terminals is discharged at San Francisco and delivered by barge.

In defense of this practice, witness for Swayne & Hoyt testified that Encinal was Calmar's agent and that the lists were sent in order to prevent misdelivery of freight not consigned for Encinal discharge. Another defense, urged by Encinal, is that the information was available to anyone at the custom house in San Francisco; and that in any event, such information was not used to the detriment or prejudice of any shipper or consignee.

The justification given is not convincing. The giving and receiving of such information was not necessary to insure proper delivery of freight. And even though it was not used to the prejudice of shippers or consignees, it was the kind of information which, as the statute reads, "may be used" to the detriment of a shipper or which "may improperly disclose his business transactions to a competitor."

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* That it shall be unlawful for any common carrier by water or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this act for transportation in interstate or foreign commerce, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used. * * *

Commenting on the similar provision of the Interstate Commerce Act, section 15 (11), the Interstate Commerce Commission stated in *Matter of Freight Bills*, 38 I. C. C. 91:

> * * * the purpose of the provision in question was to put it (the carrier) under an affirmative restraint against disclosure, apparently to the extent necessary to protect the interest of "such shipper or consignee."

Also, in *Albree* v. *Boston and Maine Railroad*, 22 I. C. C. 303, 321, that Commission said:

> the above language clearly indicates an intent upon the part of Congress to secure to every shipper immunity from a disclosure of his business from the hands of a common carrier * * *.

Conceding the purpose to be as testified, nevertheless, receiving the information was a violation of section 20.

Notice of tariff changes.—Reasonable notice of rate changes is not always accorded by San Francisco, Oakland, and Stockton. For instance, Oakland has made many rate changes without prior notice. Stockton changed its warehouse space assignment rate on August 28, 1939, effective August 11, 1939; and issued an entirely new tariff on December 15, 1939, on 15 days' notice.

We stated in *Transportation of Lumber Through Panama Canal*, 2 U. S. M. C. 143 (1939) at page 149:

> The failure of a public utility to publish and post a tariff of rates is indefensible. The failure to give adequate notice of rate changes is unjust and unreasonable to the shipping public, because sudden rate changes often result in unexpected losses to, and unjust discrimination against, the shipper or consignee. This is a disruptive factor both in the transportation and marketing of the commodity involved. The question is whether the shipping acts which we administer contemplate the correction by us of these abuses.
>
> * * * To relieve the terminal operator of the duty to give publicity to his charges for services performed by him in place of the carrier would defeat the purpose of the act. The power conferred upon us to prescribe reasonable regulations and practices in connection with the handling and delivery of property whether by carriers or terminal operators, and to prevent undue preference and prejudice in connection therewith, is broad enough to prevent the defeat of the purpose of the act by any such device or situation.

The privately owned terminals are required under State law to file on 30 days' notice. The Northwest Marine Terminal Association, comprising the marine terminals at ports on Puget Sound, the Columbia River and at Portland, Oreg., give 30 days' notice of tariff changes.

The conclusion is warranted that failure of the respondents named to give adequate notice of tariff changes is an unreasonable practice.

Free time.—Free time is the period allowed for the assembling of cargo upon, or its removal from the wharves. Upon its expiration, demurrage charges are assessed. The uniformity of the free time period allowed at the larger terminals is more apparent than real.

Generally, 10 days are permitted except that San Francisco allows 5 days in coastwise and intercoastal (in-bound) trade and 7 days in the foreign and offshore trades (in-bound). But under the stress of competition, most of the larger terminals, in cases of emergencies,[6] extend the free time either to cover the additional number of days of delay to the vessel, or, in the case of Oakland, to such number of days as "is warranted and equitable in each individual case," according to the judgment of the Port Manager. This practice appears to be based on the theory that if the shipper is not at fault the terminal operator should waive the demurrage. Obviously, when demurrage is waived, transit shed space, the most valuable in the terminal, is being wasted. This involves a cost which has to be recouped somewhere and it is unreasonable that those shippers who do not use the piers beyond the free time should be forced to bear the burden either directly or indirectly. The practice also affords an opportunity to discriminate between shippers. In *Storage of Import Property*, 1 U. S. M. C. 676, 682 (1937), we said:

> The furnishing of valuable free storage facilities to certain shippers and consignees beyond a reasonable period results in substantial inequality of service as between different shippers of import traffic, and is beyond the recognized functions of a common carrier.

And, in *Storage Charges under Agreements 6205 and 6215*, 2 U. S. M. C. 48, 52 (1939), we stated:

> All receivers of cargo must use the piers, and any preferred treatment, by charges or otherwise, of certain classes of cargo results in discrimination against other cargo.

Members of Northwest Marine Terminal Association grant no extensions of free time. They, as well as terminals at Los Angeles, provide 10 days' free time in intercoastal (out-bound) and foreign and offshore trades. In other trades these terminals, like San Francisco, grant 5 days except that at Seattle and Tacoma the time is 10 days on coastwise out-bound. The California Commission, in *Case No. 4090, supra*, after a study of the various factors involved in the assembling and distribution of cargo at San Francisco Bay ports, location of points of origin, vessels' organizations, customs clearance, efficient loading and other matters, recommended free time periods, exclusive of Sundays and holidays, as follows:

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[6] Howard, Encinal, Parr-Richmond, and Stockton publish the following provision: "When vessels are delayed beyond the free time period because of weather, accidents, break-downs or other emergencies, such free time period will be extended to cover the additional number of days of delay to the vessel."

San Francisco grants no extensions of free time. But it permits storage at reduced rates, called "bulk-head storage rates," on cargo which cannot be removed from the pier through circumstances over which the shipper has no control.

TABLE 1

	In-bound	Out-bound
	Days	*Days*
Coastwise and Inland Waterway	5	5
Intercoastal	5	7
Foreign	7	7
Transshipment	10	10

Under the recommendation, free time commences (*a*) at 8:00 A. M. of the first day following the day freight is unloaded from railroad cars or vehicles, or (*b*) at 8:00 A. M. of the first morning after complete discharge of the vessel, and terminates upon date goods are actually delivered to railway cars, vehicles, barges, or vessels. There were two exceptions to the rule for the allowance of free time: (1) Allowing Parr-Richmond 21 days, including Sundays and holidays, for the assembling of petroleum or petroleum products, in packages, destined for trans-Pacific ports, and (2) providing that in case vessel is delayed because of certain emergencies, free time will be extended 10 days, the demurrage rates prescribed, except the handling charge, to be charged thereafter against the vessel.

Counsel for the Commission recommended the prescription of these periods and exceptions thereto as reasonable regulations under section 17 of the Shipping Act, 1916. Nearly all of the witnesses who testified on this subject favored stricter free time regulations than those now in effect. With few exceptions, respondents, in their reply briefs, showed little opposition to the periods recommended, most of their comments being directed to the exceptions proposed. Witness for Parr-Richmond testified that a free time period of 21 days is necessary at that terminal for petroleum products destined to trans-Pacific ports, in order to avoid considerable overtime expense for which no compensation is received. There is a conflict of opinion as to when free time should commence, and as to the propriety of the exception extending free time when the vessel is delayed. In *Storage of Import Property*, *supra*, we prescribed the free time period and carriers were allowed to establish reasonable rules and regulations in connection therewith. On the whole, this disposition of the question has proven satisfactory.

Upon consideration of the evidence outlined above, the free time period set forth in Table 1 is found to be reasonable and proper. Respondents' rules, regulations, and practices with respect to free time, in so far as they permit free time allowances greater than outlined in said table, exclusive of Sundays and holidays, are unduly prejudicial and preferential in violation of section 16 of the Shipping Act,

1916, as amended, and unreasonable in violation of section 17 of that act. This finding is without prejudice to the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum or petroleum products when destined to trans-Pacific ports; and without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances.

Wharf demurrage and storage.—Wharf demurrage is the charge accruing on cargo left in possession of the terminal beyond the free time period. The question here is whether respondents are unduly discriminating between such cargo and that removed during the free time period. The principal evidence on this point is an analysis of the cost of providing wharf storage to determine whether that class of service is self-sustaining or is furnished at rates so low as to cast a burden upon other services.

There is a direct parallel between the problems faced by respondents and those of the wharfinger industry generally, as reported to Congress by the Federal Coordinator of Transportation. He found that:

> The diversity of interests representing parties engaged in furnishing wharfinger service is so great and the practices which have developed in the industry are so lacking in uniformity as to promote widespread discrimination between those using or desiring to use such services. The industry is suffering from over-expansion of facilities and destructive competition, causing chronically low earnings. (74 Cong. 1st sess., House Document No. 89, pp. 56–57).

The wide divergence of interests is accounted for mainly by the type of ownership and the size of the various terminals.

Generally speaking, profit-making is not the primary objective of the operators of the publicly owned terminals. Success of the terminal operations of Oakland and Stockton is measured by the industrial development of the respective cities. Carrying charges, which under the present rates cannot be paid out of terminal revenues, are met by taxation. As stated, San Francisco is precluded by law from fixing its rates so as to yield a profit. Its primary concern is to clear the piers for intransit cargo and its penalty wharf demurrage rates are designed to, and do, accomplish that purpose. However, in order to be competitive, it provides a lower "bulkhead" storage rate for cargo not occupying essential transit space.

Differences in the amount of space available for wharf storage at their terminals account largely for the conflict of interests among the East Bay operators, including Stockton. Encinal, Howard, and Stockton, due to their limited facilities, are compelled to shift or high pile much of their cargo to make room for transit operations. Encinal high piles about 86 percent, Howard 60 percent, and Stockton

68 percent of their wharf demurrage cargo. Generally speaking, these respondents favor a penalty rate high enough either to force the cargo off the pier during free time or induce the cargo owner to declare it for storage during that period. They would set the storage rate high enough to cover the cost of extra handling and high piling. On the other hand, Oakland and Parr-Richmond, with considerable unused space and little high piling required, oppose rates which reflect that expense. The following table presents a comparison of the size of transit shed areas and average number of tons handled per square foot of shed area by principal respondents for either the fiscal years 1939 or 1940.

TABLE 2

	Total square feet of shed area	Tons of general cargo handled	Average number of tons handled per square foot of shed area
Golden Gate and State	498, 920	223, 137	0.45
Oakland	714, 850	595, 029	.83
San Francisco (37 piers)	4, 147, 284	3, 789, 977	.91
Stockton	354, 495	395, 158	1.11
Parr-Richmond	239, 905	345, 716	[1] 1.44
Howard	226, 470	386, 439	1.70
Encinal	313, 710	560, 760	1.79

[1] The average at Piers 1 and 3, where most storage service is performed, is 0.60.

In addition, Stockton and Oakland have warehouse facilities adjacent to their terminals with floor space totaling 184,000 square feet and 125,180 square feet, respectively, which are available for space rental. Who the lessees will be and the rates they pay at Stockton, are matters within the discretion of the respective operators. Naturally, this space comes into competition with the limited storage facilities of other terminals. How serious this competition can be is attested by the fact that Oakland's space rate of 3 cents per square foot produces a monthly rate on canned goods of approximately 22 cents as against 37½ cents at the present daily rate. Stockton refused to disclose its present rate which superseded a rate of 1½ cents per square foot per month, which would produce a rate of only 11 cents on canned goods.

The aggressive and destructive competition arising out of these conditions has resulted in a striking lack of uniformity in charges for the same or similar services and the general breakdown of wharf demurrage rates. The following table, showing the different charges

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per ton on one important commodity group, including canned goods, is illustrative:

TABLE 3

	Number of days on hand after free time				
	3	15	30	60	90
Oakland, Stockton, Encinal, Howard, and Parr-Richmond [1]	$0.0375	$0.1875	$0.375	$0.75	$1.125
State Terminal (includes 50-cent handling charge) [2]	.65	.65	.90	1.20	1.50
Golden Gate [3]	.15	.15	.40	.70	1.00
San Francisco:					
Penalty Wharf demurrage:					
Out-bound offshore cargo [3]	.075	1.075	2.575	5.575	8.575
In-bound cargo [4]	.25	1.25	2.75	5.75	8.75
Bulkhead wharf demurrage [5]	.125	.375	.625	1.125	1.625

[1] 1¼ cents per ton per day.
[2] First 20 days 15 cents per ton; next 30 days or fraction 25 cents per ton; succeeding periods of 30 days 30 cents per ton.
[3] 2½ cents per ton per day first to third day; 5 cents per ton per day fourth to seventh day; 10 cents per ton per day for each succeeding day.
[4] 25 cents per ton for first 5 days or part thereof; 50 cents per ton for each succeeding period of 5 days or part thereof.
[5] 12½ cents per ton (W/M) for each 7 days or part thereof.

The rates have been so reduced and the rules and practices so liberalized that it is difficult to distinguish between demurrage services and warehouse storage services. Apparently the only difference is in the responsibility of the terminal, that is, to deliver to the truck from storage, while under wharf demurrage, the truck comes to the pile. At the low rate of 1¼ cents per ton per day the shipper may leave the cargo on demurrage for extended periods before it equals storage charges. Goods paying demurrage may be high piled one day, at a cost of 20 to 25 cents per ton to the terminal, and delivered the next day with no compensation other than the 1¼ cents per ton per day.

Chronically low earnings are the inevitable result of the conditions outlined above. As will be demonstrated, the present rates as a whole produce revenues which are far below the cost of the service as computed according to the Edwards-Differding formula. The general theory of this formula is that the responsibility of providing adequate revenues for essential terminal facilities rests upon the cargo and the carrier. The charge for each service is made to cover the direct cost incurred in rendering the service and some portion of the joint or overhead costs which are properly attributable to it.

Edwards and Differding analyzed costs applicable to the vessel, such as dockage and service charges, and costs in connection with cargo [6] such as tolls and wharf demurrage and storage. They de-

[6] An analysis was made of the cost of floor space, checking cargo to or from the shippers, miscellaneous handling or high piling of cargo, and overhead costs for superintendence, accounting, billing, claims, insurance, watchmen, etc.

termined the portions and costs of the physical plant to be compensated by the vessel and the cargo. In addition, they prepared a study of the pile characteristics of different commodities in connection with floor areas required for their storage. Taking the lowest combination of handling and floor space costs, that of Encinal and Howard, respectively, they constructed a scale of wharf storage and demurrage rates, hereinafter called the *4090 scale*, which was recommended by the California Commission in *Case No. 4090, supra.* See Appendix, columns 4 and 5.

The *4090 scale* is approximately 33 percent higher than the level of rates in effect in 1935, which is substantially equivalent to the present basis. In view of the testimony that costs have increased materially since 1935, and labor efficiency has decreased, there can be no question that the present level as a whole is far from compensatory. Any doubt on this score is dispelled by a study prepared for this proceeding showing a comparison of revenues, expenses, and unit costs of demurrage based on the formula. The result of the cost studies at Encinal, Howard, and Stockton, is shown in the following table:

TABLE 4

	Encinal year ended Oct. 31, 1939	Howard year ended Oct. 31, 1939	Stockton year ended June 30, 1940
Revenue	$24,289.35	$31,359.46	$15,935.80
Expense	59,572.98	45,033.49	34,441.72
Loss on basis of existing rates	35,283.63	13,674.03	18,505.92
Average monthly revenues per ton, all commodities	.312	.426	.645
Unit costs:			
Fixed costs per ton, excluding high piling	.336	.489	.972
High piling	.680	.372	.184
Variable costs:			
Overhead per ton per 30 days	.115	.153	.204
Floor space cost per square foot per 30 days	.057	.031	.077

Canned goods is the heaviest moving and most competitive commodity handled by respondents in outbound traffic. The cost per ton per month of handling this commodity, based on the unit costs developed above, excluding high piling, is approximately 88 cents at Encinal and Howard and $1.75 at Stockton.[7] The revenue at current rates is 37.5 cents. Note that Encinal, with the lowest unit cost per ton, failed by 50.5 cents per ton per month, or 134 percent, to earn the actual cost of its wharf storage service. Stockton, with the highest cost, failed by $1.375 per ton per month, or 367 percent. The comparison in the appendix of minimum costs on 14 commodities,

[7] Includes fixed cost per ton *(excluding high piling)*, overhead and floor space computed on basis of 0.057, 0.031, and 0.077 cents, respectively, by 7.4 square feet which is the space occupied by a ton of canned goods normally piled.

column 10, with present revenue thereon, column 3, indicates that costs greatly exceed earnings.

No analysis was made of Parr-Richmond's current operations because its general cargo operations are not considered typical in the East Bay area. But based on cost of floor space in 1935 of 7.83 cents at its terminal No. 3, where most storage service is performed, and the lowest unit cost for variable and nonvariable overheads found in 1935, excluding moving, high piling, and checking costs, its present rates are not compensatory. For instance, on canned goods the revenue is 37.5 cents, cost 74.21; slate granules, revenue 30, cost 64.03; and steel sheets, revenue 30, cost 36.63.

Unit costs at other terminals could not be developed because of the accounting methods they use. However, Oakland and San Francisco submitted general data which, when considered with the cost developed by Howard, Encinal, and Stockton, indicate that their rates are far from compensatory. The average monthly demurrage revenue per ton received on all commodities at Golden Gate and State terminals is 30.9 cents, and by Oakland 24.5 cents. It will be noted that Oakland's revenue is considerably below the fixed cost developed for normal piling at Encinal, the lowest cost terminal in the area, even excluding floor space cost which Oakland contends is not properly includible because the space would be idle if not used for storage.

In fact, Oakland's revenue under existing rates on canned goods does not equal its floor space cost alone, without any allowance for additional costs of handling, high piling, checking, or making partial deliveries, which services admittedly are performed as to some cargo. Unit construction costs of piers and wharves available for demurrage and storage at Oakland range from $3.84 to $4.39 per square foot as compared with $2.95 at Encinal. Therefore, it is reasonable to conclude that Oakland's space cost under the Edwards-Differding formula would not be less than at Encinal. As indicated in footnote 7, floor space cost on canned goods for 30 days at Encinal, computed according to the formula, would amount to 42 cents, which compares with Oakland's revenue for the same period of 37½ cents. The deficit of 4½ cents at Oakland would be increased to 19½ cents, if 15 cents, which is the portion of the handling charge (appendix, column 4) imposed to cover the cost of making partial deliveries, were added.

The need for an upward revision in wharf storage rates is also evidenced by the income statments of respondents for the calendar year 1939 or fiscal year 1940. The result of their operations is illustrated by the following table:

TABLE 5

	Net income	Loss
Oakland	[1] $78,950.67	[2] $95,859.43
Stockton	29,447.47	[2] 99,491.55
Encinal		20,758.30
Howard		7,473.95
San Francisco	[4] 215,356.85	

[1] If loss from airport operations be excluded.
[2] If interest on bonds paid by city (other than interest on bonds assignable to airport) be included.
[3] If revenue from county tax funds be deducted.
[4] No deduction made for depreciation.

The foregoing analysis of costs shows unmistakably that users of wharf storage service are not providing their proper share of essential terminal revenues. It must be apparent also that a disproportionate share of this burden is being shifted to users of other terminal services whose charges are based on rates considered to be reasonable in 1935. Singularly enough, Howard's deficit from all operations in 1939 would have been wiped out and a net profit shown if wharf storage charges had been based on the *4090 scale*, assuming that it would have increased revenue by 33 percent. The same would be true as to both Howard and Encinal if they had charged only the actual cost of furnishing the service in 1939 as developed by the formula.

The next question is whether granting storage at noncompensatory rates is unduly preferential and prejudicial in violation of section 16 [5] of the Shipping Act, 1916, and an unreasonable practice in violation of section 17 [6] thereof. The storage cases previously mentioned, 1 U. S. M. C. 676, and 2 U. S. M. C. 48, establish two propositions. First, the furnishing of free storage facilities beyond a reasonable period results in substantial inequality of service as between shippers. Clearly, the furnishing of such facilities at noncompensatory rates is merely a less serious form of the same offense. Second, any preferred treatment by charges or otherwise of certain classes of cargo results in discrimination against other cargo. In the latter case respondents were found to be defeating the free time regulation

[5] That it shall be unlawful for any common carrier by water, or other person subject to this Act, either alone or in conjunction with any other person, directly or *indirectly*—

First. To make or give any undue or unreasonable preference or advantage to any *particular person, locality*, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

[6] Every such carrier and every other person *subject to this act* shall establish, observe, and enforce just and reasonable regulations and practices, relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the board finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice,

prescribed in the former case by assessing merely nominal storage charges on coffee after free time. As to such charges, we stated:

> They must, therefore, be deemed to be a constituent part of a practice pertaining to the handling, storing, or delivery of property. We not only have the authority under section 17 to prescribe just and reasonable regulations and practices, but also the power to order them enforced. Clearly, therefore, any means or device tending to nullify or interfere with the enforcement of such regulations and practices must be subject to our condemnation.

The charges were found to be in violation of both section 16 and 17, and respondents were ordered to desist from establishing and collecting storage charges on coffee lower than on other import commodities. This decision was upheld in *Booth Steamship Company, et al.* v. *United States*, 29 Fed. Supp. 221. The charges here involved may or may not be nominal. But the court intimated in the *Booth case* that the charges there were more than nominal, and stated:

> The Commission * * * had the authority and the power under the Shipping Act to conduct this investigation and make its findings and conclusions and its order.

The subject of noncompensatory storage charges was exhaustively treated by the Interstate Commerce Commission in *Ex Parte 104, Part VI, Warehousing and Storage of Property by Carriers at the Port of New York, N. Y.*, 198 I. C. C. 134, 216 I. C. C. 291. This case involved the operation of warehouses by railroads serving New York through which the carriers rendered storage services to shippers below cost as an inducement to use their lines. In 216 I. C. C. 291, 351, that Commission said:

> In the instant case it is established that those persons who are able to avail themselves of storage and handling at the carriers' noncompensatory rates, and whose costs from shipside to destination are thereby reduced by the amount of the difference between compensatory rates and the noncompensatory rates, receive an undue and unreasonable preference or advantage over those persons whose commercial practices will not permit of their placing their goods in storage at New York, but require direct shipment from shipside to destination. Not only is the latter class of persons unduly or unreasonably prejudiced or disadvantaged, but such prejudice and disadvantage extends to all persons who are compelled to bear the carriers' transportation rates which are dissipated by their storage practices. The provisions of section 3 conflict with the asserted rights of the respondent carriers * * * to sell their storage at a price less than the cost of that service.

This decision was upheld by the Supreme Court in *Baltimore & Ohio Railroad Company et al.* v. *United States et al.*, 305 U. S. 507. At page 524 the court said:

> Since the carrier warehouse rates, as found by the Court * * * and Commission, are not open to all shippers alike, there is violation of §§ 2 and 3 (1) prohibiting discrimination and unreasonable prejudice. The rail transportation rates have charged against them the loss occasioned by warehousing practices designed to attract a volume of rail business.

Oakland contends that there can be no discrimination since the rates are open to all shippers alike. In a sense this is true. However, the commercial practices of those shippers who supply the major portion of tonnage handled by respondents obviously do not permit of their placing their goods in storage. Furthermore, it should not be overlooked that the practice of furnishing one service below cost has the tendency to prevent any downward revisions of rates for other services however justified they may be. Clearly, such a practice is unreasonable.

The decisions cited are ample authority for condemning the existing wharf storage rates and practices as being in violation of sections 16 and 17, prohibiting undue prejudice and unreasonable practices.

This brings us to a consideration of the level of rates which respondents should observe as a reasonable practice. Counsel for the Commission recommend prescription of the *4090 scale* shown in columns 4 and 5 of the Appendix. Those rates were designed to serve a double purpose—to clear the transit spaces within a reasonable time, and, where the terminal facilities permit, to enable the operator to store goods at rates commensurate with the cost of the service as determined in 1936. A penalty demurrage charge of 5 cents per day is exacted for the first five days beyond the expiration of free time. This charge is intended to compel the removal of cargo off the dock or into storage. Cargo which goes on storage either within or at the expiration of free time is required to pay a handling charge. This handling charge compensates the terminal operator for a portion of the fixed costs which attach to cargo that is placed on time storage. Such fixed costs include handling, delivery to consignee at the end of storage, high piling where required, billing, and certain overhead expenses incidental to the receiving and delivery of cargo on storage. Storage charges are provided on basis of a fifteen-day period. The rates and charges were based upon a consideration of cost of providing the service, ability of the cargo to pay, and competitive conditions. The California Commission states that the proposed increase averages less than 15 cents per ton per month on all commodities for the periods over which they are stored.

The soundness of the Edwards-Differding studies, which are embodied in the proposed scale, is amply demonstrated by the record. However, various objections have been raised to the scale and its method of application.

Howard favors a daily, as well as a period basis. It contends that the abrupt increase of charges on the sixth day after expiration of free time would discourage short-term storage, especially on canned goods, and divert cargo to warehouses. Mr. Differding testified that a period basis, which is applicable at the San Francisco

facilities, would be more equitable than a daily basis which is now in effect at East Bay terminals and Stockton. His objection to a daily basis is that it allows the cargo owner to remove his goods before they have been on storage long enough to cover all fixed charges. He expressed doubt that the collection of storage charges could be properly policed if the cargo owner is allowed to choose between a daily and a period basis.

Howard and Encinal contend that the proposed handling charges and period storage rates are too low Encinal would more than double the handling charge on certain commodities; Howard on practically all. Both favor a monthly period basis with slightly increased charges. Admittedly, the *4000 scale* is too low. But with only general testimony as to the increased cost since 1935 of record and no current data as to the other rate-making factors, we would not be justified in attempting to fix compensatory charges on individual commodities. Stockton favors the proposed basis generally but advocates the addition of a wharf-placement charge to cover the cost of transferring storage cargo from the wharf to off-wharf storage areas.

Oakland and Parr-Richmond, with a large amount of unused transit space available, criticize the inclusion of the cost of high piling and extra handling because at their terminals little additional handling of cargo is necessary. This argument overlooks the fact that the handling charge is directly related to the most efficient use of floor space. If it was cheaper to leave goods as the stevedores or the shipper dropped them, this cost was used; but where the savings in floor space cost more than compensated for the expense of high piling over the period the goods remained on storage, costs based on high piling were used as they resulted in a lower cost to the shipper. Also, the argument ignores the necessity for an adequate return on the costs of floor space because if the cargo is not handled by high piling or otherwise, it follows that additional costs are automatically incurred. Consequently, the return of revenue to the terminal operator for the transit shed floor space must be derived from an increase in the wharf demurrage rates to compensate the terminal for the excess space used when the goods are not high piled, in comparison with the economy of space which is accomplished when the goods are high piled. The result would be a substantial increase in the wharf demurrage and storage rates or, in the alternative, the wharf demurrage should be plussed by a handling charge.

There is also the general objection made by Oakland and San Francisco that the Edwards-Differding studies did not cover their operations. But this fact loses its significance when it is demonstrated that the average monthly revenue per ton received by Oakland is

lower than the fixed cost per ton of the lowest cost terminal in the Bay area, even excluding costs of high piling, variable overhead and floor space; and its revenue under existing rates on canned goods is lower than its cost of floor space alone. It is not believed that any increases in storage rates would result from the establishment of the *4090 scale* at the San Francisco assigned piers.

Many other matters, dealing with individual problems in connection with wharf storage, were touched upon by various respondents. However, the present record will not support an order designed to do more than correct, to a limited extent only, the basic problem of respondents, namely, chronically low earnings.

Upon consideration of all the evidence, we are of the opinion that the *4090 scale*, including the 5-cent penalty rate, should be adopted. This conclusion does not rest upon the theory that such basis is a "cure-all," but that it (1) will bring about uniformity on a minimum basis which incidentally is not in excess of the cost of the service to any of the respondents, (2) that it will remove many of the abuses disclosed by the record, and (3) that it will provide a standard from which departures can be made on individual commodities as they appear to be justified by further proof.

In considering further relief, respondents should not overlook the possibilities of solving their problems through section 15 agreements. In *Transportation of Lumber, etc., supra* we refrained from prescribing rules and regulations for terminals, with the statement that:

> For the present we suggest that self-regulation through the medium of section 15 agreements approved by us is a much simpler and more satisfactory solution of the problem. A cooperative working arrangement among the terminals, designed to bring about a stable terminal rate structure for the handling of intercoastal lumber, would not only promote the orderly transportation and marketing of lumber, but would foster fair and regulated competition among the terminals themselves.

Respondents have taken the first step in this direction by forming associations and filing cooperative working agreements which have been approved by us. These agreements, fully implemented and utilized, and strictly adhered to, will go far toward avoiding further regulation.

Leasing and rental arrangements.—The remaining question is whether the practice of Oakland and Stockton of leasing or renting space in warehouses adjacent to their piers at rates below their regular wharf storage rates is unreasonable and unduly preferential of the lessees of such space. In its reply brief, Oakland states that its facilities so used will henceforth be used for other purposes and that it will discontinue the dual set of rates at all operative facilities.

Witness for Stockton testified that property stored in its leased facilities is there awaiting sale and that subsequently it may enter into either water, rail, or truck transportation. He stated that when cargo in water transportation is stored in the warehouses the regular tariff rates are applied. The record does not warrant a finding that the practice in question is unlawful. However, respondents are admonished that any space rental device used for the purpose of unduly discriminating between storers of cargo in water transportation is strictly in violation of section 16 of the Shipping Act, 1916, as amended.

FINDINGS

We find:

1. That respondents including Board of State Harbor Commissioners for San Francisco Harbor, Board of Port Commissioners of the City of Oakland and Stockton Port District, are "other persons subject to this act," as defined in section 1 of the Shipping Act, 1916, as amended.

2. That respondents Board of Port Commissioners of the City of Oakland, Howard Terminal, and Stockton Port District are carrying out agreements within the purview of section 15 of the Shipping Act, 1916, as amended. Said agreements, namely the agreement between Board of Port Commissioners of the City of Oakland and McCormick Steamship Company, dated March 1, 1932, the agreement between said Board and Howard Terminal, dated November 5, 1914, and the agreement between Stockton Port District and Port of Stockton Grain Terminal, dated July 23, 1936, should be filed immediately with the Commission for approval. Pending compliance, the record will be held open.

3. That respondent Encinal Terminals collected service charges from McCormick Steamship Company and Quaker Line on cargo billed to, but not delivered at Encinal, notwithstanding Encinal performed no service in connection with such cargo. Said practice is not authorized by Encinal's tariff and is unreasonable in violation of section 17 of the Shipping Act, 1916, as amended.

4. That respondent Encinal Terminals has knowingly received from Swayne & Hoyt, Ltd., lists of consignees desiring delivery at another terminal, without the consent of said consignees. Said act is in violation of section 20 of the Shipping Act, 1916, as amended.

5. That respondents Board of State Harbor Commissioners for San Francisco Harbor, Board of Port Commissioners of the City of Oakland and Stockton Port District have failed in certain instances to give reasonable notice of tariff changes. Unless good cause exists for shorter notice, 30 days' prior notice of tariff changes should be

accorded by said respondents. No order in this connection is deemed necessary now, but any shipper or consignee adversely affected by lack of adequate notice of tariff changes should bring the matter to our attention.

6. That there is lack of uniformity in, and application of, free time rules, regulations, and practices of respondents; and that the manner in which they are applied affords opportunity for unequal treatment of shippers. Said rules, regulations, and practices are unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced a regulation providing that free time allowances should be no greater than the periods set forth in Table 1 of this report, exclusive of Sundays and holidays, without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances and to the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum products when destined to trans-Pacific ports.

7. That respondents' rates, rules, regulations, and practices relating to wharf demurrage and wharf storage are lacking in uniformity; that, as a whole, respondents are according wharf storage services at noncompensatory rates which result in unequal treatment of users and nonusers of such services. Said rates, rules, regulations, and practices are unduly prejudicial and preferential in violation of section 16, and unreasonable in violation of section 17 of the Shipping Act, 1916, as amended. We prescribe, and shall order enforced as a reasonable regulation, (1) a penalty charge of 5 cents per ton per day upon cargo remaining beyond the free time period and not declared for storage; when cargo is not declared upon the expiration of the fifth day, it shall automatically go into storage and the rates and charges hereinafter prescribed shall thereafter apply, (2) the handling charges appearing in column 4 of the Appendix to be charged when cargo goes into storage, and (3) the rates for 15-day periods or fractions thereof appearing in column 5 of the Appendix, to be charged while cargo is in storage after it has been declared for storage or after it automatically goes into storage upon the expiration of the fifth day after the end of the free time period. The rates and charges herein prescribed are considered to be on a minimum basis, and the finding is without prejudice to the establishment of higher rates and charges wherever justified, and should not be construed to require the reduction of present rates which are higher than the prescribed level.

8. That in the enforcement of the regulations herein prescribed, it is necessary that respondents file their tariffs with the Commission.

An appropriate order will be entered.

APPENDIX

Comparative statement showing for East Bay terminals, daily wharf demurrage rates and revenue for 30 days under existing tariffs: rates proposed by California Railroad Commission in case 4090 and revenue thereunder for 30 days: and minimum cost of storage with normal piling for 30 days on those commodities for which floor space requirements are available

[Rates, revenue, and costs in cents per ton of 2,000 pounds]

Commodity	Rate and revenue under existing tariffs		Rates and revenue under Case 4090			Minimum cost per ton for 30 days			
			Rates			Floor space cost			
	Daily rate	Revenue 30 days	Handling charge	Storage per 15-day period or fraction	Revenue for 30-day period	Square feet required per ton	Cost at 3.19 cents per square foot	All other costs	Total costs
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Merchandise, n. o. s.	2	60	40	20	80				
Ammonia, sulphate of	1½	45	30	15	60	15.38	49.06	45.23	94.29
Apricot kernels	1¼	37½	30	25	80				
Beans, dried, in sacks [1]	1	30	15	12½	40	10.00	31.90	45.23	77.13
Canned goods, n. o. s. in cases, out-bound	1¼	37½	25	12½	50	7.40	23.60	45.23	68.83
Cotton	1¼	37½	30	15	60	14.00	44.66	45.23	89.89
Cotton linters	1¼	37½	30	20	70	17.00	54.23	45.23	99.46
Compound, viz, cleaning, scouring, and washing, in packages	1¼	37½	15	12½	40	7.54	24.05	45.23	69.28
Fertilizers:									
Nitrate of soda, in sacks						6.85	21.85	45.23	67.08
Potash, in sacks						7.43	23.70	45.23	68.93
Ammonia, phosphate, cyanamide, superphosphate, urea	1½	45	30	15	60				
Fruit, dried, in bags or cases	1¼	37½	30	15	60				
Grain, n. o. s.	¾	22½	25	12½	50	7.52	23.99	45.23	69.22
Hops, in bales	4	120	30	45	120				
Iron and steel, held in uncovered areas	1	30	20	10	40				
Meal and meal cake (oil cake, sesame seed meal)	1¼	37½	30	15	60				
Peas, dried	1¼	37½	15	12½	40				
Pipe, iron and steel, held in uncovered areas	1	30	15	12½	40				
Rice, in sacks	1¼	37½	30	15	60				
Scrap, iron or steel	1	30	15	10	35				
Seed, mustard, hemp or sesame	1¼	37½	30	15	60	15.38	49.06	45.23	94.29
Shook	2¾	82½	30	25	80				
Sisal	3	90	50	17½	85	24.10	76.88	45.23	122.11
Soda ash, bags	1½	45	30	15	60	12.27	39.14	45.23	84.37
Steel Sheets	1	30	15	10	35	1.66	5.30	45.23	50.53
Sugar	1¼	37½	30	15	60	7.00	22.33	45.23	67.56
Tin Plate	1	30	15	10	35				
Tires, pneumatic	2	60	50	75	200				
Tomato, puree	(2½ cents per case per season) [2]		(2½ cents per case per season) [2]						
Vehicles, motor, on wheels	10	300	50	125	300				
Wool:									
In bales	3	90	30	30	90				
In bags	5	150							
Veneer, wallboard	7	210	50	50	150				

[1] *Exception.*—When beans are held on wharf demurrage for period beyond which a total of $1 per ton of 2,000 pounds has been assessed within a season, no further charge will be made for that season. Under this provision "season" ends Aug. 31 next.

[2] When season wharf demurrage rate is requested by shipper at time of delivery of merchandise to terminal, the rate for the season commencing on and after Aug. 15 and ending Mar. 1 next, is 2½ cents per case, payable in advance.

NOTE.—*Daily penalty rate proposed by California Commission.*—A charge of 5 cents per ton per day shall be assessed upon all cargo remaining beyond the free time period and not declared for storage, except that when cargo is not declared upon the expiration of the fifth day the demurrage rates set forth above (columns 4 and 5) shall thereafter apply.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 11th day of September, A.D., 1941

No. 555

PRACTICES, ETC., OF SAN FRANCISCO BAY AREA TERMINALS

This case having been instituted by the Commission on its own motion and without formal pleading, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondent Encinal Terminals be, and it is hereby notified and required to cease and desist, and hereafter abstain from the violations of the Shipping Act, 1916, as amended, herein found in findings No. 3 and No. 4.

It is further ordered, That respondents be, and they are hereby, notified and required to cease and desist, on or before October 27, 1941, and thereafter to abstain from allowing greater periods of free time than the periods set forth in Table 1 of the report herein, exclusive of Sundays and holidays, without prejudice to the establishment of reasonable rules and regulations in connection with free time allowances and the establishment of a free time period not in excess of 21 days, including Sundays and holidays, on petroleum products when destined to trans-Pacific ports;

It is further ordered, That respondents be, and they are hereby, notified and required to cease and desist, on or before October 27, 1941, and thereafter to abstain from publishing, demanding or collecting wharf demurrage and wharf storage rates which shall be less than the minimum rates found reasonable in finding No. 7 herein, namely, (1) a penalty charge of 5 cents per ton per day to be charged on cargo remaining beyond the free time period and not declared for storage; when cargo is not declared upon the expiration of the

fifth day, it shall automatically go into storage, (2) the handling charges appearing in column 4 of the Appendix hereto to be charged when cargo goes into storage, and (3) the rates for 15-day periods or fractions thereof appearing in column 5 of the Appendix hereto, to be charged while cargo is in storage after it has been declared for storage or after it automatically goes into storage upon the expiration of the fifth day after the end of the free time period;

It is further ordered, That respondents be, and they are hereby, notified and required to file with the Commission and keep open to public inspection, schedules showing all the rates and charges for the furnishing of wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water;

It is further ordered, That these proceedings shall be held open pending compliance with the order herein, and that said order be without prejudice to the rights of respondents or any of them, or of any interested party to apply in the proper manner for a modification as to any specified rate, charge, rule, or regulation; and

It is further ordered, That as to all other matters not specifically covered by this order, this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.
Secretary.

UNITED STATES MARITIME COMMISSION

No. 604

LONG BEACH LUMBER COMPANY, INC.

v.

CONSOLIDATED LUMBER COMPANY

Submitted September 10, 1941. Decided September 23, 1941

Defendant, a wharf operator, found not to have refused delivery of lumber to complainant on January 6, 1941. Complaint dismissed.

Ralph K. Pierson and *Samuel P. Block* for complainant.
J. H. Peckham, Jr. for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. Our conclusions agree with those which he recommended.

By complaint filed April 14, 1941, as amended, complainant, Long Beach Lumber Company, Inc., a corporation engaged in the wholesale and retail lumber business at Long Beach, Calif., alleges that on January 6, 1941, it called at defendant's public wharf to take delivery of lumber shipped by water to it from Marshfield, Oreg., that delivery was refused by defendant, and that such refusal constituted undue prejudice and disadvantage in violation of section 16 of the Shipping Act, 1916. Defendant is Consolidated Lumber Company, a corporation operating, among other things, a public lumber wharf at Wilmington, Calif. A cease and desist order is sought.

When lumber is discharged at defendant's wharf it is taken to its storage yard by motor lumber carriers and put in convenient piles at designated locations where it remains until called for by consignees' trucks. Then a lumber carrier picks it up and carries it

to a place of rest under an electrically operated stationary hoist which, in turn, lifts the pile onto consignees' trucks, which must be in position under the hoist to receive the lumber. When a consignee calls at defendant's wharf, its truck driver secures a loading slip from a clerk in the dock office situated about 100 feet from the hoist. The slip identifies the lumber and its location in the yard. The truck driver then presents the slip to defendant's hoist operator so that the carrier can bring the designated lumber from the yard to the hoist. At times, the delivery slip is given directly to a carrier operator.

Defendant's employees are members of various labor unions. On January 6, 1941, complainant had been declared unfair to labor by the unions and its place of business was being picketed. Union members often decline to handle cargo consigned to persons being picketed, although there are instances of record where they have not refused. There is no evidence of any prior refusal of defendant's employees.

According to complainant's witnesses, it sent a Ford truck, driven by Leroy McLaughlin, to defendant's wharf to take delivery of the lumber in issue on January 6, 1941. McLaughlin testified that he arrived at defendant's dock office, secured from the clerk a loading slip, and was met by an unidentified labor union representative not employed by defendant, who stated that he would determine whether or not the hoist operator would load complainant's truck. McLaughlin asserted that he gave the carrier operator the loading slip, that the lumber was placed under the crane, and that a conversation ensued between the hoist operator, carrier driver, and union representative, resulting in a statement by the hoist operator that he would not load complainant's truck. McLaughlin admitted that at no time was the truck under the hoist in position to load the lumber. He stated that upon being told the lumber would not be loaded, he drove the empty truck out of the yard. To refresh his memory as to the date he called at defendant's wharf, this witness said that he consulted a book in which dates of calls are written by truck drivers and agreed to bring the book to the hearing, but it developed that the book could not be located.

Witness C. S. Jones, complainant's manager, testified that he sent McLaughlin to receive the lumber and that when it was not delivered he telephoned defendant on January 6, and was told by defendant's manager that so long as complainant was picketed there was no use in trying to get the lumber and that defendant's employees would not load it. He stated that he did not send another truck for the cargo and that it was eventually switched out by rail.

Defendant denies that McLaughlin was the truck driver sent by complainant on January 6. Witness Jack Moore, called by defendant, testified that he was complainant's employee on that date and was sent by complainant as a driver of its Chevrolet truck to take delivery of the lumber in issue. He testified that an agent of the teamsters' union stopped him as he entered defendant's yard and told him not to load the lumber. Moore, nevertheless, entered and got the loading slip from defendant's dock clerk, gave it to the hoist operator, and parked the truck near the dock office. While in that position, Louis G. Meyers, a union field representative of Truckdrivers Local 692, but not an employee of defendant, entered into conversation with Moore. Without waiting for the lumber, Moore drove out of the yard and left the employ of complainant two days later. Moore had a permit of Sawmill Workers Union No. 2607, which union had members in the employ of defendant. He was identified by complainant's manager as having been an employee of complainant on January 6 and was identified by defendant's dock clerk and hoist operator, as well as by Louis Meyers, as complainant's truck driver who called for the lumber at that time. The dock clerk testified that no other driver than Moore called that day for complainant's lumber. The hoist operator stated that McLaughlin was in the yard about a week later, and that he did not refuse to load for Moore. Meyers testified that when he informed Moore that complainant was picketed Moore drove away without placing the truck under the hoist. Meyers has frequently been ordered off defendant's yard by its superintendent. All witnesses agreed that complainant's truck was never placed under the hoist in position to receive the lumber.

Defendant's manager had no recollection of a telephone conversation with complainant's manager on January 6. However, he stated that on January 14 he had a telephone conversation with a Mr. Jones of complainant's company to the effect that if complainant would send a truck every effort would be made to perfect delivery. No truck was sent at that time for the lumber in issue, but trucks were sent for some millwork at defendant's yard and were hand-loaded from a shed under supervision of defendant's superintendent, notwithstanding pickets were still at complainant's yard. That testimony was not refuted. It appears that there was a Don Jones, as well as C. S. Jones, who has authority to act for complainant. Defendant's manager also testified that the instructions to all of the employees of defendant are to deliver all cargo received at its wharf.

The record is convincing that the lumber was not delivered to complainant because of the representations made to complainant's

truck driver by a union official not employed by defendant and that complainant's truck driver drove away without placing complainant's truck in a position to receive delivery. It is also clear from the record that defendant performed its duties by allowing complainant's truck to enter the yard, issuing the loading slip, and carrying the lumber from the storage yard to the hoist.

We find that defendant did not refuse delivery of complainant's lumber. The complaint will be dismissed.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 23rd day of September A. D. 1941.

No. 604

LONG BEACH LUMBER COMPANY, INC.

v.

CONSOLIDATED LUMBER COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) R. L. McDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 603

RATES, CHARGES, AND PRACTICES OF L. & A. GARCIA AND CO

Submitted September 22, 1941. Decided October 9, 1941.

By "brokerage" payments to shippers and by otherwise reducing freight charges, respondent allowed persons to obtain transportation for property at less than the regular rates by unjust and unfair means, and unduly preferred certain shippers and unduly prejudiced and discriminated against other persons shipping under similar circumstances, in violation of sections 16 and 17 of the Shipping Act, 1916, as amended.

In not filing with the Commission as required, rates, charges, rules, and regulations for and in connection with the transportation of property from the port of New York to Havana, Cuba, respondent knowingly and willfully violated the rules and regulations of the Commission prescribed in *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470.

Paul D. Page, Jr., and *Samuel D. Slade* for the Commission.
Renato C. Giallorenzi for respondent.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Respondent, L. & A. Garcia and Co., filed exceptions to the report proposed by the examiner, and the case was orally argued. Our conclusions agree with those of the examiner.

This proceeding, which was instituted by us on our own motion, is an investigation into and concerning the lawfulness of respondent's rates, charges, and practices. Respondent is a partnership organized in Puerto Cortez, Honduras, on January 10, 1938, and has been operating, since January 1, 1939, as a common carrier by water engaged in the transportation of property between the port of New York and Havana, Cuba. It owns and operates 4 vessels, the S. S. *Neptuno*, S. S. *Coriseo*, M. S. *Jupiter*, and M. S. *San Luis*, all of Honduran registry, and from September 18, 1939, to March 23, 1940, it had under charter the S. S. *William Hansen*.

Respondent is charged with violations of sections 16 [1] and 17 [2] of the Shipping Act, 1916, as amended, by paying "brokerage" to certain shippers, and by failure to observe its tariff on certain shipments; and with knowingly and willfully violating the rules and regulations [3] prescribed in the order in *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470, by not filing its tariffs with the Commission within 30 days from the date they became effective.

There is no dispute as to the facts.

(1) We find these to be the facts with respect to payment of "brokerage": Respondent paid "brokerage" to shippers on 28 shipments [4] transported on the *William Hansen*, which sailed from New York, N. Y., for Havana, Cuba, on December 13, 1939, and on 15 shipments [5] on the *Neptuno*, which sailed from New York for Havana on April 11, 1940. The payments amounted to about 2.5 percent of the freight charges, except that on shipments covered by B/L Nos. 41–45, *William Hansen*, and B/L No. 3, *Neptuno*, they were 11 percent or more. A shipper of hardware (B/L No. 59) and a shipper of medicinal and pharmaceutical preparations (B/L No. 27) were paid brokerage, while two other shippers making shipments of these articles on the same

[1] Sec. 16. * * * That it shall be unlawful for any common carrier by water, or other person subject to this act, either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

[2] Sec. 17. That no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors.

[3] (1) Every common carrier by water in foreign commerce shall file with the Commission schedules showing all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, to foreign points on its own route; and, if a through route has been established with another carrier by water, all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, from points in continental United States, not including Alaska or the Canal Zone, on its own route to foreign points on the route of such other carrier by water. The schedules filed as aforesaid by any such common carrier by water in foreign commerce shall show the point from and to which each such rate or charge applies; and shall contain all the rules and regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates or charges.

(2) Schedules containing the rates, charges, rules, and regulations in effect on the effective date of this order shall be filed as aforesaid on or before October 1, 1935, and thereafter any schedule required to be filed as aforesaid, and any change, modification, or cancelation of any rate, charge, rule, or regulation contained in any such schedule shall be filed as aforesaid within thirty (30) days from the date such schedule, change, modification, or cancelation becomes effective.

[4] B/L Nos. 26–30, 41–45, 48–61, and 65–68.

[5] B/L Nos. 3, 5–7, 9, 11–13, 16, 39, 40, 42, and 66–68.

voyage of the *William Hansen* received no brokerage. Respondent's United States manager testified: "There were instances when there was brokerage paid to the shippers when they acted on their own behalf in booking the merchandise, and in many instances there is no brokerage at all." He acknowledged that the payments affected the transportation rates and that they were obtained through bargaining.

Respondent states that except in the cases of B/L Nos. 41–45, *William Hansen*, and B/L No. 3, *Neptuno*, the 28 shipments on the former vessel and the 15 shipments on the latter referred to above, were made by a forwarder and contends that "It is entirely proper to pay forwarding agents commissions, as the brokerage paid can in no way be construed to be a deduction of the freight rates as found in *Lehigh Valley R. R. Co.* v. *United States*," 243 U. S. 444. On the contrary, the court in that case held that the forwarder was to all legal intents the shipper of the goods and that any payment made by a carrier to a shipper, whether by way of salary, commission, or otherwise, in consideration of his shipping goods over the carrier's line was prohibited.

(2) We find the following to be the facts with respect to tariff departures: Without tariff authority, respondent made a deduction of 10 percent from the freight rate of $1.05 per 100 pounds or cubic foot W/M on a shipment of plumbing supplies which moved on the *Neptuno* sailing April 11, 1940, under B/L No. 3. This deduction was made pursuant to a "confidential" arrangement between respondent and the shipper and was not mentioned by respondent when reporting the freight charges collected on the shipment in response to an order issued by us under section 21 of the Shipping Act, 1916, as amended. Previously, on a shipment of like traffic on the *William Hansen* sailing December 13, 1939, under B/L No. 63, the full rate of $1.05 was charged, because the shipment weighed less than the minimum then required under a tariff rule which permitted a 10-percent deduction on shipments above a certain minimum. This rule was canceled on January 1, 1940. The shipment of April 11, 1940, also weighed less than the minimum required under the canceled rule.

(3) Respondents charged one shipper a rate of 43 cents per 100 pounds, minimum weight 24,000 pounds, on common glassware transported on the *William Hansen* (B/L Nos. 9, 11, 12, 13, 19, 20, and 22), while other shippers (B/L Nos. 50, 57, and 63) were charged a rate of 51 cents on common glassware transported on the same vessel. Only one shipment, B/L No. 11, met the minimum which respondent considers to justify the application of the 43-cent rate.

Respondent contends that there is no showing of discrimination as to the 10-percent deduction on plumbing supplies, since it does not appear that different rates were charged on these articles shipped "at

the same time and on the same vessel and subject to the same tariff." However, the shipments were subject to the same rate and moved over the same line on vessels sailing from and to the same ports. Thus the transportation services were substantially similar and the rate of $1.05 should have been applied without deduction on both shipments. This is sufficient. See *Mitchell Coal & Coke Co.* v. *Pennsylvania R. Co.*, 181 Fed. 403, 411.

Respondent disclaims any intention on its part to discriminate between the above-mentioned shippers of common glassware. The application of the prohibitions against undue preference and unjust discrimination does not depend upon whether a carrier intends to violate the statute. The intention to charge one shipper the rate of 43 cents and the intention to charge the other shipper 51 cents is sufficient.

(4) The facts in respect to respondent's failure to file its tariff in compliance with the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, are found to be as follows: Respondent transported and collected freight charges on 65 shipments consisting of more than 100 different descriptions of articles on the *William Hansen* sailing December 13, 1939. At that time, respondent had filed no tariff schedules with us since May 4, 1939, notwithstanding repeated attempts made by our Division of Regulation to secure such filings. Respondent's United States manager, in November 1939, gave assurances to the Division that tariffs would be filed within 10 days. Finally, respondent's Freight Tariff No. 2, which purported to be applicable to traffic from United States Atlantic ports to Havana, effective May 5, 1939, and which expired December 31, 1939, canceling all previous tariffs, was filed with us on February 5, 1940, after respondent's attention had been called to section 806 (d) of the Merchant Marine Act, 1936, as amended, providing a penalty for knowingly and willfully violating our orders, rules, or regulations.

Respondent gives as reasons for its noncompliance with the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, that it was still in the process of organization and was handicapped by the death in June 1939 of Lisardo Garcia, who had charge of the filing of tariffs, that the number of its employees was limited, and that its rates were constantly being readjusted in competition with other carriers in the trade. It states that "There is not a scintilla of evidence to prove any wilful disregard on the part of L. & A. Garcia & Co. to evade any of the provisions of Docket No. 128, with regard to filing a tariff with the Commisison." With this contention we cannot agree. The fact that 9 months elapsed between filings, that a filing within 10 days was promised in November 1939, and not made until February 1940, and the fact that respondent repeatedly ignored the

requests from our Division of Regulation, indicate all too clearly that respondent, aware of the rules and regulations, subordinated compliance therewith to its own convenience.

Based on the findings of fact hereinbefore made in paragraphs numbered (1) and (2), we further find that by "brokerage" payments to shippers, and by the 10-percent deduction on the shipment of plumbing supplies on the *Neptuno*, respondent allowed persons to obtain transportation for property at less than the regular rates then established and enforced on its line by unjust and unfair means, in violation of section 16 "Second" of the Shipping Act, 1916, as amended; and unduly preferred such persons and unduly prejudiced and unjustly discriminated against other persons shipping under similar circumstances whom respondent paid lesser amounts of or no "brokerage" or charged the regular rates then established and enforced on shipments of plumbing supplies, in violation of section 16 "First" and section 17 of the Shipping Act, 1916, as amended.

Based on the findings of fact hereinbefore made in paragraph numbered (3), we further find that respondent unduly preferred one shipper of common glassware and unduly prejudiced and unjustly discriminated against other shippers of common glassware, in violation of section 16 "First" and section 17 of the Shipping Act, 1916, as amended.

On basis of the findings of fact in paragraph numbered (4), we further find that in not filing with us as required, rates, charges, rules and regulations for and in connection with the transportation of property on the voyage of the *William Hansen*, respondent knowingly and willfully violated the rules and regulations prescribed in *Section 19 Investigation, 1935, supra.*

The violations committed by respondent by allowing persons to obtain transportation for property at less than the regular rates then established and enforced on its line by unjust and unfair means and by not complying with the rules and regulations prescribed in *Section 19 Investigation, 1935, supra*, will be certified to the Department of Justice for prosecution.

An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 9th day of October A. D. 1941.

No. 603

RATES, CHARGES, AND PRACTICES OF L. & A. GARCIA AND CO.

This case, which was instituted by the Commission on its own motion, having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondent be, and it is hereby, notified and required to cease and desist and hereafter to abstain from the violations found in said report to have been committed by said respondent; and

It is further ordered, That the violations found in said report to have been committed by respondent by allowing persons to obtain transportation for property at less than the regular rates then established and enforced on its line by unjust and unfair means and by not complying with the rules and regulations prescribed in *Section 19 Investigation, 1935*, 1 U. S. S. B. B. 470, be certified to the Department of Justice for prosecution.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 608

SUGAR RATES—PUERTO RICO TO U. S. ATLANTIC AND GULF PORTS

Submitted January 12, 1942. Decided January 16, 1942

Proposed increased rates on sugar from Puerto Rico to Atlantic and Gulf ports not shown unlawful. Order of suspension vacated and proceeding discontinued.

Roscoe H. Hupper for respondents.
John H. Eisenhart, Jr. and *Robert M. Jones* for intervener.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective January 2, 1942, respondents,[1] common carriers by water in interstate commerce, proposed to increase the rates from 20 to 28 cents per 100 pounds for the transportation of raw and refined or turbinated sugar from Puerto Rico to Atlantic and Gulf ports. Upon protests of the Office of Price Administration, Resident Commissioner of Puerto Rico, and Association of Sugar Producers of Puerto Rico, the operation of the schedules was suspended until May 2, 1942. The Office of Price Administration and Association of Sugar Producers of Puerto Rico requested permission to withdraw their protests before the hearing. At the hearing the Office of Price Administration intervened "due to its interest in the effect that an increase in freight rates for the movement of sugar to the United States may have on the price of sugar in the United States and on the production of sugar in the Territory of Puerto Rico."

Sugar moves principally from Puerto Rico to Atlantic ports under contract in full cargoes and is competitive with that produced in Cuba. Respondent Bull Insular charters all of its vessels used in this trade. Respondent New York and Porto Rico Steamship Company maintains combination passenger and cargo vessels which carry small

[1] Bull Insular Line, Inc., Lykes Bros. Steamship Co., Inc., The New York and Porto Rico Steamship Company, and Waterman Steamship Corporation.

quantities of sugar but most of the tonnage transported by it moves at charter rates.

Respondents rely upon recent increased operating costs resulting primarily from war conditions and the contemporaneous rates on sugar from Cuba to Atlantic and Gulf ports. From an exhibit of record it appears that the 28-cent rate, including allowances for fuel cost, stevedoring and other operating items, as well as war risk insurance, life insurance on crew and war risk P. & I. insurance and personal effects, applied to the new charter rates approved by us, provides a net earning of $3,137.65 per voyage. This net earning does not take into account overhead, crew bonuses, possible delays in port or longer steaming time due to war conditions or other contingencies.

Respondents direct attention to the fact that on December 5, 1941, the Commission announced a schedule of rates for the transportation of sugar from Cuba to Atlantic and Gulf ports of the United States as the maxima in which it will concur under the Ship Warrants Act. Those rates range from 32 cents to 39 cents per 100 pounds. While such rates cannot be regarded as a conclusive measure of maximum reasonableness in the Puerto Rican trade, they must be recognized as competitive rates and as a factor, among others, in weighing the rates herein involved.

Protestants failed to offer any testimony in opposition to the proposed rates. There is nothing of record indicating that the proposed rates will adversely affect the movement of sugar from Puerto Rico. Nor is there any indication that the proposed increases will in any manner affect the price of sugar in the United States or curtail the production of sugar in Puerto Rico.

The record in this case does not disclose that the suspended schedules are unlawful. Accordingly we find that the suspended schedules have not been shown to be unlawful. An order will be entered vacating the order of suspension and discontinuing this proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 16th day of January, A. D. 1942

No. 608

SUGAR RATES—PUERTO RICO TO U. S. ATLANTIC AND GULF PORTS

It appearing, That by order dated January 1, 1942, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices in the schedules enumerated and described in said order, and suspended the operation of said schedules until May 2, 1942;

It further appearing, That investigation of the matters and things involved has been had, and that the Commission on the date hereof, has made a final report containing its conclusions and findings thereon, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have not been shown to be unlawful;

It is ordered, That the order heretofore entered in this proceeding suspending the operation of said schedules, be, and it is hereby, vacated and set aside, and that this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 610

SURCHARGE—MATSON NAVIGATION COMPANY, AMERICAN PRESIDENT LINES, LTD., AND THE OCEANIC STEAMSHIP COMPANY

Submitted January 19, 1942. Decided January 20, 1942

Surcharge of 35 percent on Pacific Coast/Hawaiian freight rates found justified

Richard D. Daniels and *William Radner* for respondents Matson Navigation Company and The Oceanic Steamship Company.

Robert M. Jones for Office of Price Administration.

Ralph H. Hallett and *John F. McArt* for Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION.

Respondents seek permission to increase their present surcharge of 10 percent on Pacific Coast/Hawaiian freight rates to 35 percent, on less than statutory notice. The surcharge is to offset additional costs resulting from war-time operations. We ordered a formal investigation into the matter and public hearing was held January 19, 1942.

Matson's computation of the surcharge sought is contained in the statement below. Estimated additional revenue needed is based on latest closed voyage statements covering voyages terminated prior to December 7, 1941, of three typical ships. Revenue is computed at the present basic rates exclusive of the existing surcharge of 10 percent. Expenses embrace, among other items, charter hire at the maximum charter rates, fixed by the Commission and announced in our Press Release 1117, war-risk insurance and war-risk crew bonuses, and a claim for additional overhead to cover the alleged deficiency of overhead allowance in the prescribed *1117 charter scale.*

	Manukai 13,180 DWT 13 knots	Maunawili 9,900 DWT 13 knots	Diamond Head 8,000 DWT 9¾ knots
Revenue at rates effective Oct. 1, 1941	$158,418.65	$126,244.85	$110, 494. 03
Expenses (estimated):			
Charter hire (P. R. 1117 scale), fuel, stevedoring, port costs, etc	165, 315. 07	125, 979. 63	120, 191. 88
Insurance—War risk Hull @ 2% on $75 ton	19, 770. 00	14, 850. 00	12, 000. 00
P & I	3, 500. 00	2, 500. 00	2, 500. 00
Crew life @ 1½%	3, 150. 00	2, 925. 00	2, 850. 00
Crew internment at ¼%	1, 861. 50	1, 752. 00	1, 730. 00
Personal effects at 2%	210. 00	194. 00	195. 00
Crew bonus and overhead deficiency in P. R. 1117 scale	10, 086. 24	9, 757. 07	12, 712. 95
Total	203, 892. 81	157, 957. 70	152, 179. 83
Claimed loss	45, 474. 16	31, 712. 85	41, 685. 80
Percent claimed loss to revenue	28. 70%	25. 12%	37. 73%
Average percent—weighted according to number of types of vessels			34. 93%

Matson claims that it would require a surcharge of 38½ percent to cover all increased costs without any part thereof being absorbed by the existing rate schedule. It shows, however, that the surcharge would be only 31.06 percent if calculated on basis of the *1117 charter scale* without allowance for the alleged deficiency for overhead in that scale as shown in the above table.

A better approach to the problem is to base the surcharge upon actual costs incurred solely as the result of war-time operation. This excludes consideration of the *1117 scale* because Matson is not chartering ships at those rates. Therefore, expenses based thereon are purely hypothetical costs. The surcharge should reflect the extra cost of war risk insurance, war risk crew bonus and cost resulting from increased length of voyage. Lifting the insurance and bonus cost figures from the above table and adding increased length of voyage expenses, we have the following results:

	Manukai	Maunawili	Diamond Head
Total increased expense	$52, 374. 02	$41, 428. 56	$39, 714. 54
Percent increased expense to revenue	33. 06%	32. 82%	35. 94%
Weighted average			35. 18%

Respondents' war risk insurance, except Protection and Indemnity, is provided by the Commission. P. & I. insurance is carried by

private companies at rates deemed by us to be reasonable. Crew bonuses are included at amounts fixed by the Maritime War Emergency Board. Costs included for increased length of voyage are computed on basis of the normal cost for the period of the delay plus extra fuel and port costs which would be incurred.

After making necessary assumptions as to increased length of voyage, which are based upon the best available information, and considering the insurance, bonus and other costs reasonable, we conclude that a surcharge of 35 percent is not excessive.

This conclusion is without prejudice to our right to revise the surcharge in the light of changed conditions, and to any proceeding that may arise under the Shipping Act, 1916, as amended, and related acts, involving said surcharge or the rates to which it may be applied.

Respondents will be required to submit for analysis, monthly operating statements of actual freight movements and revenue and expense. This procedure will properly safeguard the public interest and permit future revisions to be made in the surcharge consistent with actual performance under war conditions as shown by completed voyage results.

An appropriate order will be issued.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 20th day of January, A. D. 1942

DOCKET NO. 610

SURCHARGE—MATSON NAVIGATION COMPANY, AMERICAN PRESIDENT LINES, LTD., AND THE OCEANIC STEAMSHIP COMPANY

This case, which was instituted by the Commission on its own motion by order dated January 13, 1942, having been heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents be permitted to publish, file and post schedules, pursuant to the Intercoastal Shipping Act, 1933, as amended, establishing effective on not less than one (1) day's notice a surcharge of 35 percent of their existing freight rates as shown in their filed tariffs applicable to freight transported between Pacific Coast ports of the United States and Hawaii;

It is further ordered, That respondents furnish to the Commission not later than thirty (30) days after the end of each calendar month, the following statements showing the results of operations for the preceding calendar month, beginning with the month of December 1941:

Detailed statement of operating revenues, operating expenses, and other income items, with balance transferred to profit and loss.

Detailed statement of revenues and expenses of individual voyages included in the accounts for the month, including data showing the number of tons of cargo westbound and eastbound, and number of voyage days segregated between days at sea and days in port.

Summary of the above individual voyage statements.

Revenue resulting from the surcharge, and all individual items of extraordinary expense on which the surcharge is based shall be separately shown on the above statements.

In addition to the above, information respecting the rates, valuations and other pertinent data for each type of insurance or other extraordinary expense shall be reported.

It is further ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 612

SURCHARGE—UNITED STATES ATLANTIC AND GULF-HAITI CARRIERS

No. 613

SURCHARGE—NEW YORK AND CUBA MAIL STEAMSHIP COMPANY AND STANDARD FRUIT AND STEAMSHIP COMPANY (UNITED STATES/EAST COAST MEXICO SERVICE)

Submitted January 26, 1942. Decided January 29, 1942

Surcharge of 22 percent on freight rates for transportation between ports in the United States and ports in Haiti and East Coast of Mexico not excessive

A. J. Pasch for all respondents; *Hendrik S. Muller* for Royal Netherlands Steamship Company; *W. C. Harban* for New York and Cuba Mail Steamship Company; *F. J. Rolfes* for Standard Fruit and Steamship Company.

Gonzalo Abaunza for Cia Mexico de Navegacion; *J. H. Eisenhart, Jr.*, and *Robert M. Jones* for Office of Price Administration.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Respondents in these two proceedings submitted applications to exact a surcharge of 22 percent on their rates for transportation between ports in the United States and ports in Haiti and on the East Coast of Mexico, upon 15 days' notice. This surcharge is contended to be necessary in view of additional costs accruing because of wartime conditions. Formal investigation as respects the lawfulness and propriety of the surcharge in each of the two trades concerned was ordered by us on January 22, 1942, and a consolidated public hearing thereon was conducted on January 26, 1942. No shipper presented testimony at the hearing. As to each of the trades

the rates for transportation involved are substantially those in effect on September 1, 1940. Pursuant to stipulation between respondents and the Office of Price Administration, and pending outcome of negotiations between the stipulating parties, we are requested by respondents not to consider the surcharge in either trade in connection with iron and steel scrap.

On January 10, 1942, we approved applications by certain carriers operating in the Caribbean trades for a surcharge of 22 percent. Such carriers operate between Atlantic and Gulf ports of the United States and ports in the West Indies, Caribbean Sea, on the East Coast of Central America, and in Panama, including the Canal Zone. Respondents testify in the present proceedings that, in the applications approved by us as indicated, there may have been a too strong reliance by them and other carriers on the interpretation accorded to the phrase "West Indies/Caribbean Area"; and that their services between United States ports and ports in Haiti and on the East Coast of Mexico, respectively, are part of such an intricate pattern with the other services as to make them, generally speaking, interdependent with those services. It is further testified that the volume of traffic available between United States ports and ports in either Haiti or on the East Coast of Mexico could not of itself support a service. Respondents urge that because of this interrelationship the surcharge approved by us on January 10, 1942, should likewise be approved in connection with Haitian and East Coast of Mexico services.

DOCKET NO. 612

Respondents involved in this proceeding are Grace Line, Inc., Koninklijke Nederlandsche Stoomboot Maatschappij N. V. (Royal Netherlands Steamship Company), Lykes Bros. Steamship Company, Inc., and Panama Rail Road Company (Panama Rail Road Steamship Line). Grace Line and Panama Rail Road are not operating in the trade between the United States and Haiti. Lykes Bros. service in that trade is sporadic. In these circumstances we are convinced that consideration as to whether a surcharge should be permitted should be confined to Royal Netherlands, which operates regularly in this trade, and to Lykes Bros. Freight vessels only are involved.

Respondents' figures to support their application for surcharge are predicated upon a round-trip voyage of a composite vessel of Royal Netherlands. These figures are shown in the reproduction below of respondents' Exhibit No. 3:

JANUARY 24, 1942.

Composite Estimate of a Voyage—New York–Port-au-Prince–La Guira–Maracaibo, returning to New York via Curacao and Haitian ports

Revenue:		
1,500 tons out, @ $18.00	$27,000	
500 tons in, @ $8.50	4,250	
		$31,250
Operating Expenses:		
Loading and discharging 2,000 tons and harbor dues	$12,000	
Fuel	1,600	
Wages	5,500	
Subsistence	550	
Commissions	2,500	
Vessel supplies	1,200	
Maintenance and repair	4,375	
Insurance (ordinary marine)	1,470	
Insurance, war risk ¾%	4,760	
Depreciation, 4%	455	
Overhead, including terminal expenses	1,900	
	$36,310	
22%		6,875
		38,125
		36,310
		$1,815

Above figures do not include cost and/or delay, etc., incidental to arming and degaussing or the cost of maintaining the Amsterdam, Holland, office.

It will be noted that there is no segregation of items to show extra expense incurred due to wartime conditions. For example, it is testified that war bonuses to seamen are included in the item "Wages." But nowhere is the amount of such bonuses given; nor is it shown what portion of the expenses is attributable to voyage lengthened or delayed by war conditions. Exhibit 3 discloses, however, that the illustrative vessel operates at a voyage loss of 16.2 percent in revenue, and that a surcharge of 22 percent would give a profit of only 5.8 percent.

Respondents have been requested to file figures segregating items of expense due to wartime conditions, and to submit figures showing vessel-operating statements on all voyages terminated since November 1, 1941.

DOCKET NO. 613

Standard Fruit and Steamship Company submitted no figures to substantiate its application, but the schedule submitted by New York and Cuba Mail Steamship Company was said to be typical of the

revenue and expenses of Standard. The figures for New York and Cuba Mail are for a particular freight vessel and for a particular combination passenger-cargo vessel both for a voyage in September 1940 and under present estimates. Respondents have been requested to submit figures showing vessel-operating statements on all voyages terminated since November 1, 1941. The following tables are a résumé of the schedule referred to above:

Freight vessel

	September 1940	Estimated	Increase	Percent increase
Total revenues	$68,880.14	$107,936.29	$39,056.15	56.7
Tons carried	8,627.00	12,779.00	4,152.00	48.1
Average revenue per ton	7.98	8.45	.47	5.9
Total expenses, including overhead	63,485.07	117,261.86	53,776.79	84.7
Average expenses per ton	7.36	9.18	1.82	24.7
Net increase in expenses:				
Actual				28.0
Per ton				18.8

Cargo-passenger vessel

	September 1940	Estimated	Increase	Percent increase
Total revenues	$65,120.84	$74,653.84	$9,533.00	14.6
Total expenses, including overhead	50,487.61	97,114.13	46,626.52	92.4
Net increase in expenses				77.8

The following is the weighted average from the above:

27 voyages of freighters @ 28%	756	
50 voyages of passenger vessels @ 77.8%	3,890	
77	4,646	
Average—weighted		60.3%

CONCLUSIONS

The fact that these respondents are servicing their respective trades with vessels which are also used in other trades in the same voyages in the Caribbean area and are either using combination passenger and freight vessels, refrigerator vessels, or are in competition with them, makes it impossible to determine with any accuracy, the financial effect of the earnings from these two trades as compared with the maximum ceiling set by the Commission with respect to time charters of freight vessels only. However, it is believed that the earnings of respondents from the basic rates and the proposed surcharges will not exceed such ceiling. Respondents' unfavorable revenues at the present time, to a very considerable extent, are due to war-time conditions. A surcharge of 22 percent is not excessive.

Accordingly, permission to exact, on or after 15 days from date hereof, a surcharge not exceeding 22 percent of respondent's rates

effective as of September 1, 1940, applicable to freight, except iron and steel scrap, transported by them between ports in the United States and ports in Haiti and on the East Coast of Mexico, respectively, is granted. In addition to the submission by respondents of the data required to be filed by them as hereinbefore mentioned, they will be required to submit for analysis monthly operating statements of actual freight movements, revenue, and expense in connection with their respective services to Haiti and East Coast of Mexico. This will permit revision to be made in the surcharge consistent with respondents' actual performances under wartime conditions as more definitely shown by the completed voyage results, and properly safeguard the public interest. Our conclusion that the surcharge of 22 percent is not excessive is without prejudice to any such revision, or to our right to revise the surcharge in the light of changed conditions otherwise shown; or to any proceeding that may arise under the Shipping Act, 1916, as amended, and related acts, involving the surcharge or the rates on which it may be applied.

An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 29th day of January A. D. 1942

No. 612

SURCHARGE—UNITED STATES ATLANTIC AND GULF-HAITI CARRIERS

No. 613

SURCHARGE—NEW YORK AND CUBA MAIL STEAMSHIP COMPANY AND STANDARD FRUIT AND STEAMSHIP COMPANY (UNITED STATES/EAST COAST MEXICO SERVICE)

These proceedings, instituted by the Commission on its own motion by orders of January 22, 1942, having been heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That, in connection with the surcharge to be established pursuant to this report, respondents Koninklijke Nederlandsche Stoomboot Maatschappij N. V. (Royal Netherlands Steamship Company), Lykes Bros. Steamship Company, Inc., New York and Cuba Mail Steamship Company, and Standard Fruit and Steamship Company, shall furnish the Commission not later than 30 days after the end of each calendar month the following statements showing the results of their respective operations in the two trades involved for the preceding calendar month, beginning with the month of December 1941:

Detailed statement of operating revenues, operating expenses, and other income items, with balance transferred to profit and loss.

Detailed statement of revenues and expenses of individual voyages included in the accounts for the month, including data

showing the number of tons of cargo north-bound and south-bound, and number of voyage days segregated between days at sea and days in port.

Summary of the above individual voyage statements.

Revenue resulting from the surcharge, and all individual items of extraordinary expenses on which the surcharge is based shall be separately shown in the above statements.

In addition to the above, information respecting the rates, valuations, and other pertinent data for each type of insurance or other such extraordinary expenses shall be reported.

It is further ordered, That these proceedings be, and they are hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 601

G. C. SCHAEFER, DOING BUSINESS AS CONSOLIDATED FREIGHT FORWARDING COMPANY

v.

ENCINAL TERMINALS

Submitted November 6, 1941. Decided February 3, 1942

Respondent's use of its terminal facilities in its railroad pool car business, and its practices in connection therewith found not to be in violation of sections 16 and 17 of the Shipping Act, 1916. Complaint dismissed.

J. Richard Townsend for complainant.
Ira S. Lillick and *Joseph J. Geary* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed by complainant and respondent's request for oral argument was denied. Our conclusions agree with those recommended by the examiner.

By complaint filed February 19, 1941, complainant, G. C. Schaefer, doing business as Consolidated Freight Forwarding Company, an individual engaged in forwarding railroad pool cars of canned goods from Oakland, Calif., to middle western points, alleges that on October 25, 1940, respondent, Encinal Terminals, inaugurated a canned goods pool car service involving use of its wharves and other terminal facilities to receive, store, and assemble canned goods for loading railroad cars, and that respondent's use of its terminal facilities for such purposes and its practices in connection therewith are in violation of sections 16 and 17 of the Shipping Act, 1916. Respondent is an "other person subject to the Act" as defined in section 1 of the Shipping Act,

1916, engaged at Alameda, Calif., in operating docks and other terminal facilities in connection with common carriers by water.

Complainant seeks an order (1) directing respondent to assess and collect its tariff charges on canned goods handled in its rail pool car service; (2) prohibiting performance of such service without assessing and collecting charges not less than the cost of the service; and (3) prohibiting such service upon respondent's terminal facilities.

On March 22, 1941, respondent filed a motion to dismiss the complaint on the grounds that (1) the Commission does not have jurisdiction over the subject matter in that the rail pool car service involves interstate commerce by railroad; (2) that the facts alleged do not constitute violations of the Shipping Act, 1916; and (3) there is pending before Congress legislation designed to confer jurisdiction upon the Interstate Commerce Commission to regulate freight forwarders. In reply to this motion complainant alleged, and sought to prove later at the hearing, (1) that respondent does not collect its tariff charges on canned goods handled on its docks in connection with its rail pool car service, although the tariff charges are applied on other canned goods; (2) that respondent is performing its rail pool car service on its docks at rates less than the cost of performing the service which is equivalent to a rebate; and (3) that use by respondent of its docks for rail pool car service causes congestion and added expense in handling other cargo. By order of May 1, 1941, we dismissed respondent's motion and assigned the case for hearing.

Complainant's business is conducted in an inland warehouse served by a railroad track and a roadway. The bulk of the canned goods handled by complainant originates at canneries in California and is transported at shipper's expense to complainant's warehouse by truck in less than truckloads. Complainant also receives, by truck or rail from respondent's terminal, canned goods originating in California and canned pineapple shipped by vessel from Hawaii. Transfer charges on pineapple are absorbed by complainant. Complainant receives the canned goods, assembles them into lots, called enclosures, from various suppliers for various buyers, loads them into railroad cars, and ships them as consignor to himself or his warehouse agents at interior points, such as Chicago, Ill., and St. Louis, Mo. Except as to store-door deliveries, complainant's operation ends at the interior warehouse where the goods are unloaded, sorted, and made available to the purchasers who call for them. The shipments move at carload rates plus a charge for each enclosure. Complainant is not subject to regulation.

The facts with respect to respondent's pool car operations are found to be as follows. The methods used by both complainant and respondent are substantially the same. The bulk of canned goods

handled by Encinal is received by truck and some by rail, a substantial portion of which is shipped beyond in water transportation. Thus shippers are able to deliver full truckloads to Encinal at minimum truckload rates. Not only is the difference between truckload and less-than-truckload rates saved, but a split-delivery charge is avoided for delivery of part of the goods for water transportation to Encinal and part to complainant for rail movement. The motor carrier services are independent of respondent's operations. Respondent also handles Hawaiian pineapples and papaya, and salmon from the Pacific northwest received by vessel. The water haul is terminated when the goods are placed in respondent's warehouse and the regular terminal charges are assessed and collected thereon. Shippers of pineapple using Encinal's pool car service do not incur the expense or inconvenience of transferring the goods to complainant's warehouse.

Canned goods received by truck are placed by the truck drivers on pallett boards in the shed at locations designated by respondent's receiving clerks. Pool carloads, which average 74,579 pounds with an average of 12.76 enclosures, require an average of 400 square feet of space in which to be assembled. The goods remain on the facility an average of 5.3 days. When a carload has been assembled, a jitney truck capable of moving rapidly and lifting 4 to 6 tons, picks up the loaded pallett boards and moves them into the car where the goods are stacked. Jitney trucks are also used to unload incoming rail cars. At times, goods are placed in open spaces outside the shed if the outbound car is to move shortly after receipt. Clerks tally incoming and outgoing cases and make office records of spaces occupied. One clerk can handle as many as 15 trucks at the same time. No additional employees have been required to handle Encinal's pool car business.

Respondent offers pool car service on shipments to eleven middle western cities with both warehouse and, except at two points, store-door delivery. Through charges for this service, with warehouse delivery, range from 7.5 to 10 cents per 100 pounds; for store-door delivery the through charges range from 10 to 13.5 cents. Out of these charges, Encinal retains amounts ranging from 3.5 to 6 cents for warehouse delivery and 2.5 to 6 cents for store-door delivery. The remainder is paid to the distributing warehouses. The major portion of the movement is to Chicago, Ill., on which the charge is 7.5 cents for warehouse delivery and 10 cents for store-door delivery. Encinal retains 3.5 cents where warehouse delivery is called for and 2.5 cents in the case of store-door delivery at Chicago. The charges are prepaid. Encinal fixes its charges on the same basis as complainant in so far as the rates of the latter can be determined.

Additional revenue of 56 cents per ton for carloading plus 10 cents per ton for checking is received from the railroad on pineapple which averages 28 percent of each pool car. Encinal also collects car unloading charges from the railroad on canned goods received by rail. On canned goods taken from storage for shipment in pool cars, respondent has received the regular terminal charges for checking and storage. Up to the date of hearing respondent had forwarded a total of 39 pool cars, 25 of which moved to Chicago, 3 to St. Louis, 6 to Milwaukee, 1 to Minneapolis, 3 to Cleveland, and 1 to Detroit.

Respondent admits complaint's allegation that it does not charge itself the regular terminal tariff charges for transferring freight between rail cars and trucks, for carloading, and for wharf demurrage on canned goods handled in pool car service. As stated, water transportation has ended, and the regular terminal charges have been collected by Encinal, on pool car canned goods received by vessel. These goods, together with those received by truck and rail, are assembled and shipped by respondent as a freight forwarder, Encinal being both the consignor and the consignee. We find that respondent's pool car business is an independent private venture, separate and apart from its terminal operations, and that the tariff charges in question are not applicable to the traffic handled in such enterprise. We further find that the alleged violations of sections 16 and 17 of of the act, based upon respondent's failure to apply the tariff in question, have not been sustained.

Complainant alleges that respondent is furnishing pool car service at less than cost, which in turn enables it to accord patrons unwarranted advantages both in connection with their rail pool car and water-borne traffic.

In support of its allegation that respondent's pool car service is being rendered at less than cost, complainant offers certain evidence to establish the cost of such service. The distribution costs hereinbefore stated are based upon direct evidence. Certain other costs are based upon a study made of these costs at private terminals in the San Francisco Bay area, in 1935, by Dr. Ford K. Edwards and Mr. T. G. Differding for the California Railroad Commission in its Case No. 4090 (1936), with an addition of 10 percent included to reflect alleged increased cost since that date. The Edwards-Differding study, however, was not directed to the costs of rail pool car service, as no such service was then being offered by any of the terminals, and offers no indication as to what a number of costs involved in such rail pool car service might be. Complainant attempts to supply the deficiency by building up hypothetical costs of assembling, floor space, carloading and forwarding and enclosure receipt, without any

factual basis in the record to support them. Complainant's cost study thus appears to be based on too many assumptions unsupported by factual evidence to be conclusive. An analogy is sought to be made by complainant between cost of forwarding and enclosure receipt in water pool car service and in rail pool car service on the assumption that the operations are similar. Revenue received by Encinal from the railroad for checking cargo to rail car is not credited by complainant against the cost of carloading on the assumption that it is offset by the cost of loading pool cars which is alleged to be higher than that for loading average cars of canned goods, and the allegation that it is an unlawful rebate. Complainant also uses the cost of assembling water pool car shipments, which is higher than the cost as to rail pool car shipments, on the assumption that such higher cost is offset by an undisclosed cost of high-piling rail pool car shipments. None of these assumptions is supported by factual evidence. Disposition of the factor of dockage costs, included in the service charge on water pool car shipments, is unexplained. Whatever weight the study offered by complainant deserves, it does not support the contention that respondent's pool car service is a rebating device, or that it unjustly burdens other terminal services, and so we find. We further find that the alleged violations of sections 16 and 17 of the act, based upon the contention that respondent's services are rendered at below cost, have not been sustained.

The alleged undue advantages accruing to Encinal's patrons are the savings in trucking costs and the cost of transferring pineapple to complainant's warehouse hereinbefore mentioned. Shippers of canned goods who use both Encinal's steamship and rail pool car service are alleged to be preferred by respondent, while those who use Encinal's steamship service and complainant's rail pool car service are alleged to be prejudiced. The motor carrier rates involved are paid by shippers to such carriers and are wholly independent of respondent's services. Whether or not pineapple moves in rail pool cars, Encinal collects all of its terminal charges thereon. There is no evidence that respondent has failed to apply its terminal charges on outbound canned goods moving by water. Shippers who patronize both complainant and respondent testified, but had no criticism to offer against Encinal's pool car service or practices in connection therewith. The record fails to show that any shipper using respondent's wharf in connection with rail pool cars has been accorded any different treatment than any other shipper using the same facilities for the same purpose. It is apparent, therefore, that while complainant is at a competitive disadvantage in securing business, no shipper has been injured by the conduct of respondent's pool car

service. We find, therefore, that the advantages in question do not result in violations of sections 16 and 17 as alleged.

Complainant's contention that respondent's practice of using its wharf for rail pool car operation is unreasonable in violation of section 17 is based upon alleged performance of service at less than cost, resulting congestion of wharves and dissipation of terminal revenue. The only evidence offered to prove that respondent's rail pool car service results in congestion and added expense in connection with the handling of other cargo is the fact that high-piling is practiced by Encinal, and that it maintains an inland warehouse in addition to the wharf. It is not shown to what extent high-piling results from the handling of pool car freight. No connection is shown between rail pool car operations and the inland warehouse. During the period between February 10, 1941, and June 4, 1941, respondent transferred a number of cases of canned goods from its facilities to complainant's warehouse at a total expense, according to complainant's estimate, of $89.29. This, together with the fact that the goods were handled and assembled by respondent for no apparent charge, constitutes the facts supporting complainant's claim of dissipation of terminal revenues. The record does not show whether this item was charged against respondent's pool car operations or its terminal operations. We find that the allegation that respondent's use of its terminal facilities results in an unreasonable practice in violation of section 17 has not been sustained.

The complaint will be dismissed.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 3rd day of February A. D. 1942

No. 601

G. C. SCHAEFER, DOING BUSINESS AS CONSOLIDATED FREIGHT FORWARDING COMPANY

v.

ENCINAL TERMINALS

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon,

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 609

LUMBER RATES—U. S. ATLANTIC AND GULF PORTS TO PUERTO RICO

Submitted January 22, 1942. Decided February 5, 1942

Proposed rates on lumber from United States ports on the Atlantic and Gulf of Mexico to Puerto Rico found not justified. Suspended schedules ordered canceled, without prejudice to the establishment of a surcharge based upon actual costs incurred as the result of war-time operation.

S. P. Gaillard, Jr., and *E. Myron Bull* for respondents.

John H. Eisenhart, Jr., *Robert M. Jones*, and *George D. Rives* for Office of Price Administration.

Eduardo R. Gonzalez for the Government of Puerto Rico.

REPORT OF THE COMMISSION

By THE COMMISSION:

By schedules filed to become effective January 12, 1942, respondents[1] proposed to increase rates on lumber from United States ports on the Atlantic and Gulf of Mexico to Puerto Rico as follows:[2] Cypress, fir, gum or yellow pine, from $14 to $17; other than cypress, fir, gum or yellow pine from $15 to $18, and ties, from $12 to $13.50. Upon protest, the operation of the schedules was suspended until May 10, 1942.

The lumber shipped from the United States to Puerto Rico exceeds 100,000,000 feet per year. At least 50 percent of it is used by the United States Government. It is chiefly southern pine, which constituted over 90 percent of the volume shipped in 1941.

The lumber carried by respondents moves from ports on the Gulf of Mexico and the South Atlantic. Those participating in the transportation are Waterman, Lykes, and Bull, operating from ports on the East Gulf, West Gulf, and South Atlantic, respectively. New

[1] Waterman Steamship Corporation, Lykes Bros. Steamship Co., Inc., Bull Insular Line, Inc., and The New York and Porto Rico Steamship Company, hereinafter called Waterman, Lykes, Bull, and New York and Porto Rico Steamship Company, respectively.

[2] Rates and charges are stated in dollars per 1,000 feet, board measurement, unless otherwise specified.

York and Porto Rico Steamship Company, which operates only from the North Atlantic, does not carry lumber. The principal movement is by vessels of Waterman.

Within the last few years the price of lumber has risen over 75 percent. Between January 1938 and the close of 1940, the price of southern pine boards, representing a large percentage of the lumber shipped to Puerto Rico, rose from $17.43 to $32.55 per thousand feet. Following an admonition to the industry by the Office of Price Administration, the price fell to $32 in July 1941. A subsequent rise in the price brought about the establishment of a ceiling on southern pine, effective September 5, 1941. At the end of 1941 the price was $30.61. During the period of these price changes, resulting in an increase of $13.18, the transportation rate was increased $2.

The Office of Price Administration points out that the proposed increase of $3 in the transportation rate would more than offset the savings in price which it has accomplished. It also compares respondents' rates with those prevailing in other trades, but the comparison is not accompanied by any showing of similarity of transportation conditions in the different trades.

Respondents endeavor to show that, based on the maximum time-charter rates fixed by the Commission in General Order 49, both their present and proposed rates on lumber result in a deficit. According to a statement which they submit, as corrected pursuant to agreement at the hearing, at such charter rates a steamship, such as Waterman's *Maiden Creek*, *Kofresi*, or *Afoundria*, of 7994 deadweight tons, a speed of 13 knots, and sailing from Mobile and New Orleans to San Juan, Ponce, and Mayaguez with 3,400,000 feet of lumber, would incur a deficit of $16,882.45 at the present rate of $14 and a deficit of $6,682.45 at the proposed rate of $17. Revenue and expenses are arrived at as follows:

Revenue

3,400,000 ft. @ $14	$47,600.00
3,400,000 ft. @ 17	57,800.00

Expenses

Charter hire	33,000.00
Cargo handling	21,250.00
Fuel oil	1,800.34
Port charges	362.10
Agency fees (not covered by overhead)	1,190.00
Crew overtime (charterer's portion)	438.19
Overhead (charterer's)	4,417.05
P. and I.	600.00
Dockage	925.00
Miscellaneous	499.77
	$64,482.45

Deducting expenses for overhead and P. and I., which are included in the *General Order 49 scale* of charter rates, the deficits would be $11,865.40 and $1,665.40, respectively. Revenue from a landing or lighterage charge of $1.50 at Puerto Rico, less a toll of 35 cents paid to the Government of Puerto Rico, reduces the figure of $11,865.40 to $7,955.40 and converts the deficit of $1,665.40 to a profit of $2,244.60. It is testified that there is a "de luxe type of delivery" accorded in Puerto Rico which includes services not covered by the $1.50 charge or the transportation rate. These services, however, appear to be connected with the delivery of lumber by consignees to their customers, not with the transportation. According to respondents' witness, they are services "generally furnished by the wholesaler to the retailer, after the wholesaler has taken the stock." While, no doubt, respondents should require the payment of compensation for performing such services, the transportation rate or charge is not the proper means for securing such payment.

Respondents base their statement on a voyage time, including days in port, of 33 days for the transportation of a full cargo of lumber. Such cargoes are exceptional. On the other hand, voyages of Waterman's vessels made in June, July, and August 1941, with a typical cargo, which includes other commodities, as well as lumber, averaged 17¾ days. Figures showing actual revenue and expenses are not submitted.

Waterman owns the vessels which it operates. This excludes consideration of the *General Order 49 scale* because Waterman is not chartering ships at those rates. Therefore, expenses based thereon are purely hypothetical costs. *Surcharge—Matson Navigation Company et al.*, decided January 20, 1942. Respondents do not seek to justify the increased rates proposed on the ground of increased costs due to war-risk insurance, war-risk crew bonus, etc., and no evidence was presented with respect thereto.

We find that the proposed rates have not been justified. The suspended schedules will be required to be canceled and the proceeding discontinued, without prejudice to the establishment of a surcharge based upon actual costs incurred as the result of war-time operation.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 5th day of February A. D. 1942

No. 609

LUMBER RATES—U. S. ATLANTIC AND GULF PORTS TO PUERTO RICO

It appearing, That by order dated January 10, 1942, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order and suspended the operation of said schedules until May 10, 1942;

It further appearing, That a full investigation of the matters and things involved has been had and that the Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules on or before May 10, 1942, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933, and that this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) A. J. WILLIAMS,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 571

ALASKAN RATES

No. 572

ALASKA RATE INVESTIGATION NO. 2

No. 611

SURCHARGE—ALASKA TRADE

Submitted Febrary 17, 1942. Decided March 31, 1942

On further bearing, rate base and fair rate of return for respondents Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company determined.

Basic rate structures of Alaska Steamship Company and Northland Transportation Company found unreasonable.

Surcharges on adjusted rates determined.

Special rates to Navy Department and Siems-Drake Puget Sound Company found unduly prejudicial, and an unreasonable practice.

Appropriate order entered.

Additional appearances:

Ernest Gruening, Governor of Alaska.

Anthony J. Dimond, Delegate in Congress from Alaska.

Henry Roden, Attorney General of Alaska.

John H. Eisenhart, Jr., *Robert M. Jones*, and *George Rives* for Office of Price Administration.

Frederick A. Delano, *Ralph J. Watkins*, *R. F. Bessey*, and *James C. Rettie* for National Resources Planning Board.

G. Lloyd Wilson for Office of Defense Transportation.

Edwin A. Stone for Quartermaster Corps, United States Army.

Winston Jones for United States Navy.

A. B. Smith for United States District Engineers.

John Laylin, *Ira L. Ewers*, *Pendleton Miller*, and *Henry Schurman* for respondents.

Omar O. Victor, *Harrison Combs*, *Robert Howe, Jr.*, *A. W. Dickinson*, *Ray Ward*, *Glenn Carrington*, *W. C. Arnold*, *Edward W. Allen*, *Ralph L. Shepherd*, and *Sam Nicholls*, for interveners.

Paul D. Page, Jr., Solicitor, U. S. Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

In *Alaskan Rates*, 2 U. S. M. C. 558, we found, among other things, that the rate structures as a whole of respondents Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company had not been shown to be unreasonable and that the rate structure of Santa Ana Steamship Company would not, for the future, be unreasonable. Those determinations were predicated upon the relation of net operating income from Alaskan service to the fair value of respondents' property devoted to that service based upon a record embracing the calendar year 1940.

On October 25, 1941, Alaska Steamship Company, Alaska Transportation Company, and Northland filed a joint petition for reconsideration of fair value of the property of those respondents.

On December 30, 1941, Alaska Steamship Company filed a petition for authority to establish an emergency surcharge of 45 percent of its freight rates and passenger fares on less than statutory notice for the sole purpose of offsetting unavoidable increases in expenses being incurred as the result of the present war. In support of its petition respondent estimated the cost of various items of war risk insurance and crew bonuses and showed their relation to gross revenues of two typical voyages. We granted the petition, and the surcharge became effective January 7, 1942. Similar relief has been accorded Northland and Alaska Transportation Company.

Immediately following authorization of the surcharge we received numerous protests from Alaskan individuals, corporations, labor unions, Chambers of Commerce, and civic associations as well as from the Governor of Alaska and the Delegate in Congress from Alaska. By order of January 15, 1942, we instituted on our own motion a proceeding of investigation concerning the propriety and lawfulness of the surcharge under No. 611 and the matter was heard in Washington, D. C., on January 23, 1942. At the hearing United States Smelting Refining and Mining Company, the United Mine Workers of America, the Delegate in Congress from Alaska, the Governor of Alaska, the Chairman of National Resources Planning Board, Office of Defense Transportation, Office of Price Administration, Alaska Miners Association, and National Federation of Federal Employees, Local No. 251, appeared as protestants. It became apparent from the changed conditions in the Alaskan trade, developed at the hearing, that a fair determination of the amount of a surcharge could not be made in the absence of a complete review of the rate structures in question and an analysis of net operating income during the year 1941.

By orders of January 24, 1942, we reopened for further hearing Nos. 571 and 572 and required Alaska Steamship Company, Northland, and Alaska Transportation Company to file on or before February 2, 1942, accounting and statistical data reflecting the results of operations during the year 1941. On the same date Office of Price Administration filed a petition for leave to intervene and to reopen for further testimony. On February 6, 1942, respondents Alaska Steamship Company, Alaska Transportation Company, and Northland filed a joint motion to rescind the order of January 24, in Nos. 571 and 572 and to strike the petition of Office of Price Administration, or, in the alternative, to require the Office of Price Administration to furnish a bill of particulars. The motion was denied, but Office of Price Administration was required to furnish respondents with a bill of particulars.

By order of January 30, 1942, No. 611 was assigned for further hearing. All of the these proceedings were heard together in Seattle, beginning on February 9 and ending February 17, 1942. They were submitted by oral argument on the record.

The Governor of Alaska, the Delegate in Congress from Alaska, the Attorney General of Alaska, and other parties take the position that respondents' extraordinary war costs should not be borne by the population of Alaska in the form of surcharges if steamship revenue under the basic rate structure is not adequate to meet the increased cost of operation. They state that items of war expenses should be assumed by the Nation as a whole in the form of a subsidy, an appropriation, or Government operation. It is our function in these proceedings to determine, first, whether the rate structure as a whole is just and reasonable under present conditions and, second, what additional revenue, if any, respondents need to meet the war costs and how it shall be provided. We are not authorized under law to go further. If the trade cannot stand the full cost of service then the solution rests with the legislative or executive branches of the Government.

Nos. 571 and 572

The valuations made in the prior proceedings will be brought down to December 31, 1941, upon basis of the evidence submitted at the further hearing.

Book value.—The book values[1] of respondents' owned and used

[1] The term "original cost" was used in our prior report. Vessels of respondents, with three exceptions, were acquired in used condition. The amounts shown as "book value" less accrued depreciation, reflect the cost of acquisition by respondents plus subsquent additions and betterments less accrued depreciation, except in respect to one new vessel acquired by Northland Transportation and included in "book value" at cost to the builder, plus subsequent additions and betterments.

property less accrued depreciation, as of December 31, 1941, are as follows: Alaska Steamship, $3,329,465; Northland, $869,605; Alaska Transportation, $375,647; and Santa Ana, $125,372.

Cost of reproduction new of vessels.—Cost of reproduction new of respondents' vessels as of December 31, 1939, considered in our prior report, was stipulated by counsel on the basis of the results of separate studies and subsequent conferences of engineers representing respondents and the Commission. No consideration was given to the effect of war conditions upon such cost.

At the further hearing a witness from our Construction Division testified that the increase in construction costs of new vessels of general type and design, between December 31, 1939, and December 31, 1941, averaged 22.6 percent. His conclusion was based upon a study of contract prices, including the effect of the escalator clause in the contracts, for identical vessels at various dates and covered 222 cargo vessels of the C–1, C–2, and C–3 designs in our construction program. He testified that the price trend determined by him for cargo vessels would be practically the same for combination passenger and cargo vessels. No other evidence was offered on cost of reproduction new and the conclusion of the witness was not disputed.

On the basis of an increase of 22.6 percent over the stipulated costs as of December 31, 1939, the cost of reproduction new of respondents' owned and used vessels, as of December 31, 1941, would be as follows:

	Vessels	
Alaska Steamship	16	[1]$28,443,947
Northland Transportation	5	7,261,999
Alaska Transportation	3	1,832,992
Santa Ana	1	932,986

[1] The S. S. *Victoria* is not included in this amount. It was reconditioned in 1941 and returned to service. The cost of reproduction new as of December 31, 1941, is $1,896,622.

Cost of reproduction new of vessels less depreciation.—The stipulated cost of reproduction new and cost of reproduction new less all elements of depreciation and the resulting average depreciated condition of respondents' vessels, as of December 31, 1939, are shown in the following tabulation:

	Number of vessels	Cost of reproduction new	Cost of reproduction less depreciation	Average depreciated condition (percent)
Alaska Steamship	16	$23,200,609	$11,164,576	48.12
Northland Transportation	5	5,923,327	2,927,770	49.43
Alaska Transportation	3	1,495,100	1,015,369	67.91
Santa Ana	1	761,000	372,890	49.00

The depreciation deducted represented observed physical depreciation due to wear and tear—book depreciation in the case of Alaska Transportation—and a further deduction of 30 percent for functional depreciation.

At the further hearing a witness from our Construction Division, after an examination of repair reports, testified that respondents' vessels were currently in as good condition as they were in 1939. His testimony did not cover functional depreciation. Notwithstanding that in the prior proceeding respondents stipulated that functional depreciation, equal to 30 percent of observed physical condition, existed as of December 31, 1939, witnesses for Alaska Steamship and Northland Transportation testified at the further hearing that the vessels of their fleets were not inadequate or obsolescent for the Alaska trade. They further testified that observed depreciation or deferred maintenance represents all existing depreciation. Witness for Alaska Steamship admitted that the actual physical condition of a vessel does not relate to functional depreciation. Northland's witness conceded that progress had been made from year to year in the science of marine design, engineering, and construction.

If cost of reproduction new less depreciation of vessels as of December 31, 1941, be determined by deducting from the stipulated average total depreciated condition as of December 31, 1939, the additional functional depreciation that has accrued in the 2 years to December 31, 1941, the results shown below are obtained

	Reproduction new less depreciation as of Dec. 31, 1941
Alaska Steamship (see Note 2)	$13,075,822
Northland Transportation	3,435,613
Alaska Transportation	1,163,826
Santa Ana	437,570

It should be noted, however, that these amounts greatly exceed reproduction cost less depreciation computed on basis of estimated remaining life as shown by respondents' depreciation accounting. The statement following shows the estimated average life of vessels of respondents' fleets from the year built to the time they will be fully depreciated in the accounts at the present annual rates, the average age to December 31, 1941, the estimated average remaining life from December 31, 1941, until they will be fully depreciated in the accounts, and the cost of reproduction new less depreciation as of December 31, 1941, on basis of the estimated remaining life for depreciation accounting.

	Number of vessels	Estimated average life from year built until fully depreciated in accounts	Average age to Dec. 31, 1941	Estimated average remaining life from Dec. 31, 1941, until fully depreciated in accounts at present annual rates		Cost of reproduction new less depreciation Dec. 31, 1941, on basis of estimated remaining life for depreciation accounting
		Years	*Years*	*Years*	*Percent weighted*	
Alaska Steamship [1]	16	32.6	24.8	7.8	25.46	$7,240,651
Northland Transportation	5	30.0	19.8	10.2	30.82	2,237,885
Alaska Transportation	3	32.5	22.0	10.5	33.77	618,968
Santa Ana	1	40.5	22.0	18.5	45.68	426,188

[1] The S. S. *Victoria*, reconditioned and returned to service in 1941, is not included as it has been fully depreciated for accounting purposes.

But depreciation accounting, as shown by respondents' books, does not present an undistorted view of depreciation. For instance, the 71-year old S. S. *Victoria*, which was returned to service in 1941, has been fully depreciated in the accounts. An expenditure of approximately $117,000 was made to place it in condition for its present cargo-carrying service. The S. S. *Yukon* was built in 1899 and reconditioned in 1924. In the accounts it will be fully depreciated in 2 more years. Barring accidental loss, it is reasonable to assume that it will remain in service beyond that period.

The real measure of depreciation is the extent to which service capacity has been exhausted. Wear and tear, obsolescence and inadequacy, as determined by inspection, are factors in depreciation to be given appropriate weight in determining the extent to which service capacity has been exhausted. But observation alone is not sufficient. In addition, a careful analysis must be made of past experience, and informed judgment as to future trends must be applied. We will make no specific finding of the amount of accrued depreciation or reproduction new less depreciation as of December 31, 1941, for the purposes of this proceeding. In ascertaining the rate base, consideration will be given to all data of record on the question.

Working capital.—A witness for Alaska Steamship testified that the amount of working capital necessary to operate that respondent's business during the month of peak requirements in 1941 was $2,702,000. Based on that requirement as adjusted to reflect changed conditions since 1941, he estimated that the necessary amount for 1942 would be $3,927,000.

Respondent's claim rests upon the theory that the rate-payers should support, as a part of the rate base, its maximum investment in working capital based on the experience of the peak month of the year despite the fact that the experience of the other 11 months indicates a smaller investment. Inclusion in the rate base of an

amount computed on the basis of its average investment throughout the year will recognize the fluctuating investment from month to month and fully compensate the respondent. The tabulation below shows respondent's average investment in working capital during the year 1941 and for the months of that year that indicate the maximum and minimum net investment, based on the balances in the current asset and current liability accounts at the close of the month.

	Average (12 months)	Maximum (August)	Minimum (October)
Uncollected accounts receivable, working funds, cash in transit, prepayments, unterminated voyage expenses, tax certificates, and materials and supplies	$2,594,282	$3,424,068	$3,070,401
Less unpaid current accounts, taxes payable, and unterminated voyage revenue	1,680,889	1,883,187	2,480,704
Net investment in working capital exclusive of provision for a buffer fund of cash	913,393	1,540,881	589,697

Daily balances are not available, but ordinarily the average of monthly balances of active accounts over a yearly period with the many transactions involved would not vary greatly from true daily averages. However, the buffer fund determined hereinafter is designed to meet such variations and provide a safe margin of cash on hand.

The average investment of $913,393 in working capital during 1941, including materials and supplies but exclusive of any provision for a buffer fund of cash, is approximately $345,000 greater than the amount determined in our prior report. This increase is due mainly to large increases in all accounts receivable, balances from greatly expanded traffic, longer delays in collections from the Government and its contractors, voyage delays retarding collections, increased uncollected insurance claims, prepaid insurance, and the impounding of funds to pay increased taxes.

Respondent's claim for $3,927,000 as its working capital requirement for 1942 is necessarily based on estimates. It is approximately 45 percent greater than the amount claimed for 1941, the increase being based on an estimated increase of 45 percent in uncollected revenue by reason of the existing surcharge, increased insurance claims, prepaid insurance, and costs of operation. Under existing conditions, a forecast of the many factors that will affect operations in the Alaskan trade in 1942 and the resulting investment in working capital involves so much speculation that we are unable to accord any weight to the estimate.

In our prior report we determined $500,000 was a reasonable amount for a buffer fund of cash. The respondent has claimed

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$500,000 for 1941 and $750,000 for 1942. The average monthly operating expenses in 1941 were approximately $730,000, exclusive of depreciation charges. Changed conditions justify an increase in the buffer fund and we conclude that $625,000 is a reasonable amount therefor.

We find the total amount of working capital to be included in the fair value of respondent Alaska Steamship's property should not reasonably exceed $1,550,000.

Respondent Northland claimed no specific amount for working capital at the further hearing. However, it furnished data for the record from which we have computed from the balances in the current asset and current liability accounts at the close of each month during 1941 its average investment in working capital during that year and the month that indicates the maximum investment. These amounts are $91,483 and $346,957, respectively. The most favorable month, December, indicates that respondent had no such investment.

The average monthly operating expenses in 1941, including overheads, were approximately $158,000, which amount we conclude is a reasonable measure for a buffer fund of cash.

We find the total amount of working capital to be included in the fair value of respondent Northland's property should not reasonably exceed $250,000.

Alaska Transportation claimed no specific amount for working capital at the further hearing. From monthly balances in the current asset and current liability accounts we have computed its average investment in working capital during 1941 to be $82,440, the maximum monthly investment as $122,979, and minimum monthly investment to be $55,497. Average monthly operating expenses during 1941 were approximately $50,000 which we conclude is a reasonable amount for a buffer fund.

We find the respondent Alaska Transportation's total investment in working capital to be included in the fair value of its property should not reasonably exceed $135,000.

No specific amount was claimed by Santa Ana for working capital. Analysis of its common carrier operations during the year 1941 indicates that the amount to be included in the fair value of its property should not exceed $80,000, the same amount determined in our prior report.

Conclusions as to fair value.—At the further hearing respondents made no contentions respecting the specific amount of fair value of their properties. However, in their petition for reconsideration of fair value, they contended that controlling weight should be given to cost of reproduction less depreciation. We are not bound to do this as a matter of law. In *Fed. Power Comm. et al.* vs. *Natural Gas*

etc. Co. et al., (Nos. 265, 268—October Term, 1941) decided March 16, 1942, the Supreme Court stated:

> The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances. Once a fair hearing has been given, proper findings made, and other statutory requirements satisfied, the courts cannot intervene in the absence of a clear showing that the limits of due process have been overstepped. If the Commission's order, as applied to the facts before it and viewed in its entirety, produces no arbitrary result, our inquiry is at an end.

Under this decision, our duty is to approach the question of value from a practical standpoint, and to resolve the problem it presents in the light of actual experience as opposed to theory and speculation, without reaching an arbitrary result.

Some weight should be given reproduction cost, otherwise no value could be included for the S. S. *Victoria* which has been entirely written off the books; and little value could be assigned to the S. S. *Yukon*, which will be written off in 2 years. These two ships are insured for substantial amounts and, barring accident, will probably see service for several years to come.

It should be emphasized that we are valuing property currently in use, not property that may replace it in the future. The history of this property was reviewed at length in the prior report. Points not stressed therein were the extremely favorable terms upon which the vessels were acquired and the wide variance between cost of acquisition and replacement cost.

The tabulation following shows on the basis of per built weight ton, on which reproduction costs herein have been estimated, the gross book value, gross book value less depreciation, reproduction cost new, and reproduction cost less depreciation, based on adjustment of depreciated condition in our prior report, of respondents' vessels as of December 31, 1941.

	Alaska Steamship Co.	Northland Transportation Co.	Alaska Transportation Co.	Santa Ana Steamship Co.
Freight vessels:				
Gross book value	$45	$37	$144	$62
Gross book value less accrued depreciation	17	17	115	58
Reproduction cost new	420	591	562	544
Reproduction cost new less depreciation	207	245	357	255
Combination passenger and freight vessels:				
Gross book value	188	193	----	----
Gross book value less accrued depreciation	78	119	----	----
Reproduction cost new	587	693	----	----
Reproduction cost new less depreciation	264	352	----	----

It is apparent from the above comparison that respondents' investment in their vessels is out of all proportion to current costs of re-

placement. Most of the vessels were acquired at bargain prices much below the cost of their construction.

Considering all relevant factors and recognizing that the property of each respondent is an integrated operating enterprise and a going concern, we conclude, for the purpose of this proceeding, that the total fair value of the property owned and used by respondents in Alaskan common carrier and other service during the year 1941 does not exceed the following amounts:

	Vessels	Other physical property	Working capital	Total
Alaska Steamship	$5,840,000	$145,000	$1,550,000	$7,535,000
Northland	1,505,000	10,000	250,000	1,765,000
Alaska Transportation	573,000	1,000	135,000	709,000
Santa Ana	185,000	27,000	80,000	292,000

The above findings include the value of vessels and working capital which were devoted to operations during 1941 other than Alaskan common carrier service. The values of property devoted to such other service that should be deducted from the above findings of total value for the purpose of determining the fair value of property devoted to Alaskan common carrier service is shown below.

	Vessels	Working capital	Total
Alaska Steamship	$149,000	$36,000	$185,000
Northland	297,000	48,000	345,000
Alaska Transportation	72,000	17,000	89,000
Santa Ana	50,000		50,000

(1) *We find, for the purpose of this proceeding, that the fair value of respondents' properties owned and used in Alaskan common carrier service during the year 1941 does not exceed the following amounts:*

	Vessels	Other physical property	Working capital	Total
Alaska Steamship	$5,691,000	$145,000	$1,514,000	$7,350,000
Northland	1,208,000	10,000	202,000	1,420,000
Alaska Transportation	501,000	1,000	118,000	620,000
Santa Ana	135,000	27,000	80,000	242,000

Our finding of the fair value of property of Alaska Steamship devoted to Alaskan common carrier service during 1941 exceeds the finding of $6,650,000 in our prior report by $700,000. The difference is accounted for by an increase of $264,000 in investment in working capital, $280,000 for additional investment in terminal property and

value of one vessel returned to service, and $221,000 which is the net result of increased construction costs less additional depreciation, less $65,000 which is the difference in value of property engaged in non-Alaskan service in 1941. The fair value of property of the other respondents during 1941 is slightly less than determined in our prior report. The difference is accounted for largely by deductions of the value of property used in non-Alaskan service and the net effect of increased construction costs less depreciation.

Rate of return.—In our prior report we found that the fair rate of return should not exceed 7.5 percent. We are requested by counsel for respondents to review the testimony and fix a rate of 10 percent in the "hazardous and unbalanced" Alaskan trade. As stated in the former report, the hazards of the trade are underwritten through insurance paid for by the shippers.

In view of the circumstances that have intervened since the prior decision, we are of opinion that a reduction should be made in the rate of return. The element of competition considered in the prior case has virtually disappeared. The earnings of respondents in 1941 have substantially increased over 1940. For instance, Alaska Steamship's net income is up 14.8 percent, and Northland's increased 27.8 percent. Furthermore, not all of the burden of emergency war costs should be shifted to the shippers. As stated by the Supreme Court in *Covington and Lexington Turnpike Co.* v. *Sandford*, 164 U. S. 578, 596, "It cannot be said that a corporation is entitled, as of right, and without reference to the interests of the public, to realize a given percent upon its capital stock. * * * The rights of the public are not to be ignored. * * * The public cannot properly be subjected to unreasonable rates in order simply that stockholders may earn dividends."

(2) *We find that the rate of return on the fair value of the property of Alaska Steamship Company, Northland Transportation Company, and Alaska Transportation Company devoted to Alaskan common-carrier service should not exceed 6 percent.*

Net operating income.—Alaska Steamship's net water-line operating income for the calendar year 1941 amounted to $845,128. This figure includes an adjustment of $67,523 representing income and excess-profits taxes estimated by us as allocable to charter operations which respondents assigned to Alaska common-carrier operations. The amount should be restored to net income for the reason that the charter operations should bear their proportion of these taxes. If respondent had collected the normal rates on traffic handled under the Siems-Drake contract, hereinafter discussed, its gross revenue would have been increased by approximately $333,000 and net income about $152,000 after income and excess-profits taxes.

The net water-line operating income from Northland's Alaska service for the calendar year was $97,500.

Alaska Transportation's operations for the calendar year 1941 show a net profit of $5,253. Excluding net charter revenue, the Alaska water-line operations of this company show a loss of $13,862. (See Appendices 1, 2, and 3 for details of net income.)

Santa Ana's Alaskan common-carrier operations showed a net income of $84,009 before income taxes. These taxes were estimated by respondent to be $29,400, leaving net water-line operating income of $54,609.

Conclusions as to reasonableness of rate structure.—The fair value of property devoted to Alaskan service in 1941 and the net operating income therefrom for that year, as found herein, together with the resulting rate of return are summarized in the following tabulation:

Respondent	Fair value	Net operating income	Rate of return (percent)
Alaska Steamship	$7,350,000	$845,128	11.50
Northland	1,420,000	97,500	6.87
Alaska Transportation	620,000	[1] 15,862	None

[1] Loss.

Alaska Steamship's return is 5.50 percent, or $404,128, in excess of the fair return of 6 percent on the fair value herein determined. If this respondent had collected normal rates on the Siems-Drake traffic the total excess earning over a fair return would have been $556,128, or 7.57 percent. Northland's return is $12,300, or 0.87 of 1 percent, in excess. Alaska Transportation, with an operating deficit, earned no return.

(3) *We find that the basic rate structures as a whole of Alaska Steamship Company and Northland Transportation Company are, and for the future, will be unreasonable to the extent they yield net income from Alaskan common carrier operations in excess of 6 percent of the respective fair values found herein.*

These respondents will be required immediately to file new tariff schedules effecting general reductions in conformity with the findings herein.

No findings are made as to Santa Ana's rates inasmuch as that respondent assesses no surcharge, and its future operations are uncertain.

Lawfulness of particular rates.—The Office of Price Administration is concerned insofar as transportation rates affect price levels. It asserts that respondent's rates on dry foodstuffs are too high with relation to rates on other commodities. The rate on hardy fruits and

vegetables from Seattle to Ketchikan is 23¾ cents per cubic foot, whereas that on general merchandise is 20¾ cents per cubic foot. A wide variety of commodities moves under the general merchandise or N. O. S. rate, including many items of foodstuffs, such as groceries, corn, tomatoes, sugar, canned chicken, and crackers. Other illustrative commodities included in this item are wrenches, playing cards, stoveware, matresses, bathtubs, and atomizers. The unsupported comparison is of little value. A witness for Office of Price Administration testified, but did not show, that respondents' rates on dry foodstuffs were relatively high when compared with rates maintained by carriers in the Hawaiian and Puerto Rican trades. No attempt was made to compare transportation conditions in those trades.

Another witness for Office of Price Administration showed the total freight transported by, and total freight revenue of Alaska Steamship during the years 1939 and 1940, broken down into commodity classifications, and the ratio of revenue to tons carried. It was testified that the amount of revenue derived from transportation of food products was out of proportion to the remaining groups of commodities on the basis of total tons transported. No consideration was given to such transportation factors as stowage, value of commodities, competitive conditions, regularity of movement, packing characteristics, susceptibility to claims or perishable nature of commodities. During the year 1940, 29 percent of tons carried by Alaska Steamship moved under the description of less-than-carload quantities. This item is not broken down into commodities so that it is impossible to get a true ratio as between food products and other commodities even assuming it is proper to measure the rates on particular commodities in this manner. Clearly, evidence of such character does not demonstrate that the basic rate structure is out of balance.

We found in the original report herein that special lower rates applicable on property moving from Seattle to Japonski Island and to Woman's Bay under a contract between Siems-Drake Puget Sound Company and the Navy Department had not been shown to be unlawful. As stated previously, Alaska Steamship's loss in revenue on this traffic in 1941, on the basis of normal rates, approximated $333,000. We are now of opinion, in the light of war conditions and the evidence of record, that maintenance of such rates places an undue burden on the remainder of that respondent's traffic to the extent that the lower rates reduce the revenue and, therefore, the base upon which surcharges are figured, thereby increasing the ratio of surcharges to the total revenues and the amount of the surcharges which other shippers will be required to pay, and resulting in undue preference in favor of Siems-Drake Puget Sound Company and the Navy Department

and in undue prejudice to other shippers and in an unreasonable practice. Respondent Alaska Steamship will be required to cancel any rates lower than those which would normally apply.

The record discloses general dissatisfaction in Alaska with the joint rates maintained by Alaska Steamship and Alaska Railroad. In the original report we expressed the opinion that such joint rates should be canceled and proportional water rates published in lieu thereof. However, action on the matter has been deferred at the request of the Interior Department which has complete control over the rates charged by the Alaska Railroad.

No. 611

As hereofore stated, we granted the 45 percent surcharge on basis of data showing that Alaska Steamship needed that much additional revenue to meet additional war costs of operation. The surcharge was designed to cover the cost of war risk hull insurance, crew life insurance, crew bonuses, and expenses of voyage delays due to the war. Insurance covering seagoing personnel and crew bonuses is required by orders of the Maritime War Emergency Board appointed by the President.

At the hearing complete data, including voyage statements, was offered by respondents reflecting all voyages terminated between December 7, 1941, and the date of the hearing. Alaska Steamship showed the results of 12 voyages, the last terminating on January 14, 1942. Revenues and war costs of these voyages are summarized in Appendix 4. It will be observed that, as of the date of the hearing, the existing surcharge has been more than justified.

Since the hearing, changes in insurance rates and crew bonuses have been made. Also, it is likely that voyage delays have been shortened. Respondents are required to furnish monthly revenue and expense statements showing complete details of their operations and segregating emergency war costs. However, the January statements are not of record. In the absence of such data our calculations as to Alaska Steamship's service beyond Southeastern Alaska will be based upon the evidence of record.

Northland showed the results of seven voyages terminated between December 7, 1941, and the date of the hearing. We conclude from that data that the surcharge as of the date of hearing has been justified. However, the Commission is advised that both the items of crew bonuses and insurance rates have been reduced so far as their application in Southeastern Alaska is concerned. Appendix 5 is an estimate of revenues and expenses based upon Northland's showing, but reflecting subsequent reductions in the items of bonuses and insurance rates.

National Resources Planning Board states that increased prices in Alaska resulting from a 45 percent surcharge would have a serious effect upon civilian morale and would precipitate a large exodus of population and rapid deterioration of economic life there. According to its figures retail prices of 45 standard food items increased an average of 15 percent in Juneau during the 9-month period prior to the establishment of the surcharge. Surveys of Anchorage, Sitka, and Petersburg covering the same period reveal increases of 16, 19, and 14 percent, respectively. Following the effective date of the surcharge, other sharp increases in price of foodstuffs occurred. Using the situation in Anchorage as illustrative, the Board shows that, as to lard, sugar, sirup, canned vegetables, navy beans, and prunes, average retail prices advanced 13.57 percent, although the surcharge resulted in an average increase of only 2.32 percent of the actual freight charges on quantities required by a family of four for the period of 1 year. For example, the price of 70 pounds of lard prior to January 7 was $17.50. After that date the price advanced to $21.00, an increase of $3.50, whereas the surcharge resulted in an increase of only 47 cents for the transportation of that quantity. A similar study of the relation of the surcharge to prices at Juneau as of February 2, 1942, was made by the Commission's staff. The retail price of a pound of bacon shipped from Seattle was, on February 2, 40 cents. The surcharge increased the transportation cost 3 mills per pound, or 0.7 of 1 percent of the retail price at Juneau.

The Board fears that increased freight charges on building material will increase building costs and rents in the territory. Reverting again to the Commission's study of Juneau prices, it appears that for the transportation of cement the surcharge amounted to an increase of 64 cents per barrel of 380 pounds. The price per barrel at Juneau was $6.70 on February 2, 1942. The wholesale price of a keg of nails at Seattle on February 2 was $4.25. The wholesale delivery price at Juneau was $5.20, which included wharfage and handling charges at Seattle and Juneau, and ocean freight plus the surcharge. The retail price at Juneau was $10.00, whereas the surcharge amounted to only 24 cents, or 2.4 percent of the retail price.

The record is convincing that the surcharge has had a serious effect upon the prices in Alaska, but in many instances this effect is caused, not so much by the extent of the increased transportation charges as by the pretext these increases give to wholesalers and retailers to increase their prices by much greater amounts. It is also clear that many other factors, over which we have no control, contribute even more seriously to the growing difficulties in Alaska. The mining industry can hardly get priorities for new machinery

and maintenance equipment. Due to the defense construction employment and rising wage scale it is hard for Alaskan industries to meet increased overhead and retain normal labor personnel.

(4) *We find that the existing surcharge of 45 percent has not been shown to have been unreasonable in the past or unreasonable for the future on rates to and from ports in Alaska other than in Southeastern Alaska. We further find that said surcharge is, and for the future will be, unreasonable to the extent it exceeds or may exceed 20 percent on rates to and from ports in Southeastern Alaska.*

Respondents will be required to submit for analysis, monthly operating and voyage statements showing revenue and expenses of freight and passenger movements in connection with their respective services. Our findings are without prejudice to any revisions in the light of changed conditions.

An appropriate order will be entered.

APPENDIX 1

ALASKA STEAMSHIP COMPANY

Comparison of revenues, expenses, and net water-line operating income—Alaskan service

	1941	1940	Increases or decreases
Water-line operations—revenues:			
Freight	$6,801,888	$4,500,027	$2,301,861
Passenger	3,880,125	2,771,432	1,108,693
Mail	370,732	273,830	96,902
Express	63,214	41,556	21,658
Excess baggage	7,852	4,839	3,013
Bar and radio	92,265	61,093	31,172
Rents of buildings and other property	1,029	1,300	[1] 271
Wharfage and miscellaneous	249,460	191,888	57,572
Total	11,466,565	7,845,965	3,620,600
Water-line operations—expenses:			
Maintenance of equipment	1,372,510	1,120,531	251,979
Maintenance of terminals	52,677	17,384	35,293
Traffic expenses	228,018	222,608	5,410
Transportation expenses:			
Operation of vessels	4,329,033	3,152,585	1,176,448
Operation of terminals	2,050,549	1,311,128	739,421
Incidental transportation expenses	128,198	295,163	[1] *168,965*
General expenses	904,749	715,168	189,581
Charter hire	114,837	129,768	[1] *14,931*
	9,180,571	6,964,335	2,216,236
Less charter expenses	123,843	152,224	28,381
Total	9,056,728	6,812,111	2,244,617
Net water-line operating revenue	2,409,837	1,033,854	1,375,983
Water-line tax accruals	1,499,935	429,500	1,070,435
Water-line operating income	909,902	604,354	305,548
Miscellaneous rents	64,774	56,201	8,573
Net water-line operating income—Alaskan Service [2]	845,128	548,153	296,975

[1] Decrease.

[2] The total net income from all operations is made up as follows:

	1941	*1940*
Net water-line operating income—Alaska operations	$845,128	$548,153
Dividend income	300	15,225
Income from securities	4,900	400
Net revenue charter hire	124,214	96,668
Miscellaneous	2,945	86,836
Total	977,487	747,282
Deductions:		
Income and excess profits taxes allocated to charter operations	67,523	------
Interest on unfunded debt	58,116	3,260
Miscellaneous fixed charges	19,503	27,407
Net loss on miscellaneous property	9,316	------
Total deductions	154,458	30,667
Total net income	823,029	716,615

APPENDIX 2

NORTHLAND TRANSPORTATION CO.

Comparison of revenues, expenses, and net water-line operating income—Alaska service

	1941	1940	Change from 1940
Number of voyage terminations	72	63	9
Nautical miles traveled	153,573	147,593	5,980
Number of voyage days	1,144	953	201
Number of passengers carried	17,644	12,428	5,216
Revenue tons cargo carried	139,598	89,423	50,175
Operating revenue:			
Freight	$1,164,353.90	$756,989.75	$407,364.15
Passenger	584,792.65	454,836.07	129,956.58
Mail	9,743.68	6,236.25	3,507.43
Other voyage revenue	24,679.81	29,188.77	[1] *4,508.96*
Total operating revenue	1,783,570.04	1,247,250.84	536,319.20
Operating expense:			
Vessel expense	912,646.34	705,189.86	207,456.48
Voyage expense	340,097.54	221,002.03	119,095.51
Total vessel operating expense	1,252,743.88	926,191.89	326,551.99
Direct profit—vessel operations	530,826.16	321,058.95	209,767.21
Inactive vessel expense	21,748.67	36,199.57	[1] *14,450.90*
Depreciation	78,482.40	77,504.08	978.32
Administrative and general expense and taxes except Federal income tax	202,201.13	138,289.42	63,911.71
Other deductions or other income, net	1,652.93	73.15	1,579.78
Total other expenses	304,085.13	252,066.22	52,018.91
Gross profit—Alaskan operations	226,741.03	68,992.73	157,748.30
Federal income tax—estimated	129,241.27	14,770.55	114,470.72
Net water-line operating income—Alaskan operations [2]	[3] 97,499.76	54,222.18	43,277.58

[1] Decrease.

[2] Net Alaskan income has been increased by $2,965 representing the elemination from other deductions of interest paid during 1941.

[3] The reported net profit from all operations in 1941 was $261,681.89, made up as follows:

Net profit from intercoastal operations	$6,289.67
Net profit from charter operations	122,863.75
Net profit from foreign operations	35,502.91
Net profit from Alaska dock operations	1,490.80
Net profit from Alaska operations	94,534.76
Total per income statement	261,681.89

APPENDIX 3

ALASKA TRANSPORTATION COMPANY

Comparison of revenues, expenses, and net water-line operating profit (deficit)—Alaska service

	1941	1940
Vessel Operations:		
Revenue	$617,918.00	$394,295.00
Expenses—Including depreciation	584,837.00	456,424.00
Profit (or loss) vessel operations	33,081.00	[1] *62,129.00*
Charter Revenue—Net	19,115.00	----------
Total	52,196.00	[1] *62,129.00*
Administrative and other expenses	46,943.00	34,084.00
Net water-line operating profit	5,253.00	[1] *96,213.00*

[1] Loss.

APPENDIX 4

ALASKA STEAMSHIP COMPANY

Summary of war risk costs, including voyage delay costs, of 12 voyages completed in December 1941 and January 1942, and the relationship of those costs to the voyage freight and passenger revenue—based on exhibits in docket No. 611

Exhibit	Vessel	Voyage	Freight and passenger revenues	War risk costs, including voyage delays [1]	Percentage war risk costs are of revenue
A	Alaska	328	$35,416	$36,346	102.63
B	Baranof	91	64,283	33,965	52.84
C	do	92	67,102	52,443	78.15
D	Columbia	46	39,144	31,735	81.07
E	do	47	36,192	24,110	66.62
F	Denali	47	38,443	22,951	59.70
G	Mount McKinley	83	63,893	32,836	51.39
H	do	84	78,506	33,014	42.05
I	Oduna	99	37,360	21,273	56.94
J	Victoria	265	51,211	24,548	47.93
K	Yukon	304	68,682	37,679	54.86
L	do	305	63,797	37,679	59.06
Totals and weighted average			644,029	[1] 388,579	60.34

[1] Does not include war risk P. & I. insurance and internment insurance items shown in the exhibits in the total amount of $41,913. These risks were not carried and did not retroactively affect these voyages.

APPENDIX 5

NORTHLAND TRANSPORTATION COMPANY

Summary of war risk costs, including voyage delay costs, of 7 voyages in December 1941 and January 1942 and the relationship of those costs to the voyage freight and passenger revenue—based on exhibits in docket No. 611 and application of maximum currently approved war-risk rates

	Freight and passenger revenue	War-risk costs including crew bonus [1]		War-risk costs excluding crew bonus	
		Amount	Percent o revenue	Amount	Percent of revenue
S. S. *Northland:*					
Voyage 291	$9,571	$4,979	52.02	$3,932	41.08
292	20,337	5,024	24.70	3,977	19.55
293	21,712	4,913	22.63	3,861	17.78
294	28,358	4,035	14.23	3,146	11.09
S. S. *North Sea:*					
Voyage 130	23,126	10,990	47.52	9,427	40.76
131	29,260	9,010	30.79	7,286	24.90
132	28,294	9,692	34.25	7,707	27.24
Totals and weighted averages	160,658	48,643	30.28	39,336	24.48
Totals and weighted averages, if *Northland* voyage 291 and S. S. *North Sea* voyage 130, both of which covered the period in which Dec. 7, 1941, fell, be excluded as not fairly representative	127,961	32,674	25.53	25,977	20.30

[1] Insurance values are based on our General Order No. 53, and insurance rates on the War Shipping Administration's Rate Bulletin H-1.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 31st day of March A. D. 1942

No. 571

ALASKAN RATES

No. 572

ALASKA RATE INVESTIGATION NO 2

No. 611

SURCHARGE—ALASKA TRADE

These cases having been at issue on further hearing, and having been duly heard, and full investigation of the matters and things having been had, and the Commission, on the date hereof, having made and entered of record a report on further hearing stating its conclusions and decision thereof, which report is hereby referred to and made a part hereof;

It is ordered, That respondents Alaska Steamship Company and Northland Transportation Company be, and they are hereby, notified and required to file with the Commission in the manner prescribed by section 2 of the Intercoastal Shipping Act, 1933, on or before May 1, 1942, schedules effecting reductions in their basic rates and fares in conformity with finding No. 3 herein;

It is further ordered, That respondent Alaska Steamship Company be, and it is hereby notified and required to cease and desist, on or before April 6, 1942, and thereafter to abstain from publishing, demanding, or collecting for the transportation of any property whatsoever shipped by or for the account of the Navy Department or Siems-Drake Puget Sound Company, rates which are less than those named in its duly published and filed tariff schedules;

It is further ordered, That respondents Alaska Steamship Company, Alaska Transportation Company, and Northland Transportation Company be, and they are hereby required to cease and desist, on or before April 6, 1942, from publishing, demanding, or collecting a surcharge in excess of 20 percent of existing freight rates and pas-

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senger fares for transportation between ports in the State of Washington and ports in Southeastern Alaska, and between ports in Southeastern Alaska;

It is further ordered, That respondents Alaska Steamship Company, Alaska Transportation Company, and Northland Transportation Company, be, and they are hereby, required to furnish the Commission not later than 30 days after the end of each calendar month the following statements showing the results of their respective operations for the preceding calendar month, beginning with the month of March 1942:

Detailed statement of operating revenues, operating expenses, and other income items, with balance transferred to profit and loss;

Detailed statement of revenues and expenses of individual voyages included in the accounts for the month, segregated to show separately the revenues and expenses applicable to southeastern Alaska and to southwestern Alaska and other areas, including data showing the number of tons of cargo and passengers north-bound and south-bound, number of voyage days segregated between days at sea and days in port, and the number of days delay;

Summary of the above individual voyage statements.

Revenue resulting from the surcharge, and all individual items of extraordinary expenses on which the surcharge is based shall be separately shown in the above statements.

In addition to the above, information respecting the rates, valuations, and other pertinent data for each type of insurance or other such extraordinary expenses shall be reported.

By the Commission:

[SEAL] (Sgd) W. C. PEET, Jr.,
Secretary.