

Decision No. 33573

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of maximum or minimum, or maximum and minimum rates, rules and regulations of all common carriers as defined in the Public Utilities Act of the State of California, as amended, and all highway carriers as defined in Chapter 223, Statutes of 1935, as amended, for the transportation, for compensation or hire, of any and all commodities. )

ORIGINAL

Case No. 4246

BY THE COMMISSION:

Additional Appearances

- W. M. Hume, for Basic Vegetable Products.
- L. R. Keith, for Cannery League of California.

SUPPLEMENTAL OPINION AND ORDER

Decision No. 33559 of October 1, 1940, in the above entitled proceeding, modified the minimum rates, rules and regulations theretofore established for the transportation of canned goods and related articles by common, radial highway common and highway contract carriers. As so modified, effective November 1, 1940, class and commodity rates formerly applicable to shipments consisting of articles listed in Item No. 610-D of Highway Carriers' <sup>1</sup>Tariff No. 2, regardless of the manner in which they were packaged, now apply only to shipments of those articles in packages designated in that item. Higher minimum rates provided elsewhere in the tariff apply to shipments of the commodities involved when they are

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<sup>1</sup> Appendix "D" to Decision No. 31606, as amended.

not packaged so as to conform to the requirements of Item No. 610-D. These increased rates were established upon petition of the rail lines and were based upon the record made at public hearings. By petition filed subsequent to the issuance of said Decision No. 33559, Sacramento Chamber of Commerce seeks reinstatement of certain rates cancelled by that decision. Evidence concerning the Chamber's petition was received at a public hearing had at San Francisco on October 28, 1940, before Examiner Earl S. Williams.

Petitioner claimed that, in effect, Decision No. 33559 excluded from rates established for canned goods and articles normally grouped therewith numerous articles which are usually shipped in bulk in shipping containers or in packages not specified in Item No. 610-D. The effect of these exclusions, petitioner said, was to materially increase the rates on numerous articles long accorded canned goods rates. It contended that the evidence submitted in support of the rail lines' petition did not justify such increased rates and that it was clear from the language in Decision No. 33559 that the Commission had intended that increases should affect only articles which were not canned goods or were not ordinarily grouped with canned goods for rate making purposes.

Witnesses for petitioner submitted evidence showing the packaging normally used by the concerns which they represented in the shipment of various articles named in Item No. 610-D. They testified that these articles when so packaged had long been described as canned goods or accorded the same rates in common carrier tariffs. These witnesses urged that in all instances where customary packaging was excluded from the canned goods rates provided by Highway Carriers' Tariff No. 2 the tariff be amended by providing for such packaging.

Petitioner recommended that the usual packaging of the

commodities involved be provided for in Item No. 610 series by establishing the general requirement that the articles listed be shipped in earthenware, glass or metal cans. in boxes, or in bulk in barrels or kegs. Several individual articles were said to be packaged differently and, in such cases, it was recommended that specific provision be made in the item for the packaging peculiar to the commodity.<sup>2</sup> The suggested packing requirements were proposed to be made subject to Section 3 of Rule 5 of the Western Classification, which provides that rates on freight in boxes will also apply on such freight in fibreboard boxes in metal strapped bundles or crates, and that rates on freight in barrels will also apply on such freight in hogsheads, pipes, puncheons, tierces, casks, drums, half-barrels, quarter-barrels, sixth-barrels and eighth-barrels. Under the proposal, Item No. 300 of the tariff, the so-called "liberalized packing rule," was said to be unnecessary, and it was recommended that Item No. 300 be made inapplicable in connection with rates referring to Item No. 610 series for commodity description.<sup>3</sup>

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The articles for which individual treatment was said to be necessary are: cocoanut, prepared; fish and meats; garlic and onion powder and chips; and milk and buttermilk. Petitioner urged that, in addition to the package requirements of general application, these commodities, except fish and meats, be permitted to enjoy canned goods rates when shipped in bulk in boxes or in double bags or in multiple-wall paper bags. Fish, they said, should be accorded canned goods rates in bulk in boxes, meats those rates in bulk in crates or boxes.

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Rates referring to Item No. 610 series for commodity description are provided in the tariff in Item No. 320-A, which designates a rating of 90 per cent of fourth class for less-than-carload shipments of "Canned Goods as described in Item No. 610 series;" Item No. 360-A, which provides ratings of fourth class when in minimum shipments of 20,000 pounds and fifth class when in minimum shipments of 30,000 pounds on "Groceries and Grocers' Supplies" named in that item, including "Canned Goods and other articles as described in Item No. 610 series;" and Items Nos. 620-A and 630-A, which name mileage and point-to-point rates on "Canned Goods and Other Articles as described in Item No. 610 series" when in minimum shipments of 20,000 and 30,000 pounds.

In general, the rail lines were in accord with the proposed changes. They pointed out that if these changes were made both inner and outer package requirements would be provided. This, they said, was necessary to limit the application of canned goods rates to commodities properly identified as canned goods. They readily admitted that their previous proposal had not made provision for customary packaging of certain of the commodities involved, and urged that this be remedied by adoption of the package requirements proposed by petitioner, Sacramento Chamber of Commerce, or preferably by adoption of the package requirements of the Pacific Freight Tariff Bureau Exception Sheet, modified to the extent necessary to reflect packing practices peculiar to designated articles. The rail lines objected, however, to the canned goods rates being made applicable to fish, cooked, pickled or preserved, with or without fruit or vegetable ingredients, in bulk in boxes; meats, cooked, cured or preserved, with or without cereal or vegetable ingredients, in bulk in crates or boxes; and sausage casings, pickled or salted, in bulk in barrels. These commodities, they said, had no place in a canned goods item and should be treated separately in the Highway Carriers' Tariff whether rates the same as, or different than, the canned goods rates were proscribed.

Shipper interests not represented by the Sacramento Chamber of Commerce supported the contention that the description of canned goods and related articles established by Decision No. 33559 was inadequate, in that it failed to provide canned goods rates for certain of the commodities involved as they were ordinarily packaged. Some of these shippers urged the adoption of the Chamber's proposal. Others indicated that they preferred the alternative proposal of the rail lines because under that proposal Item No. 610 series would restrict canned goods rates to the articles which they

considered properly described as canned goods. None of these shippers indicated that they required a broader canned goods description than that provided by the Chamber's proposal. The position of the highway carriers was not disclosed.

It is clear from the further evidence of record that by Decision No. 33559 several articles formerly described as, or grouped with, canned goods for rate making purposes in Highway Carriers' Tariff No. 2 were subjected to increased rates when shipped in packages of general use. As the petitioner pointed out, it is apparent from that decision that the Commission did not intend to exclude canned goods articles or commodities ordinarily grouped therewith from the canned goods rates when packaged in a customary manner. With respect to the commodities not ordinarily grouped with canned goods, but so grouped in Item No. 610-D, it is apparent from Decision No. 33559 that it was not intended to provide increased rates for these commodities when, as normally packaged, they possess transportation characteristics similar to canned goods.

The contentions of the rail lines and certain shipper interests that fish in bulk in boxes, meats in bulk in crates or boxes, and sausage casings in bulk in barrels should be accorded separate tariff treatment, rather than be grouped with canned goods, rest upon the premise that the item in question may properly list only articles identified as canned goods or long associated with canned goods in rate making. In so far as these commodities as so packaged are concerned, there is nothing in this record which would support a conclusion that separate tariff treatment should result in the assessment of higher rates than those for canned goods. The most that this record might justify in this regard is separate listing of these three commodities at rates equivalent to the canned goods rates. Item No. 610 series of the Highway Carriers'

Tariff is a description or listing of articles to which designated rates will apply. While it is true that the majority of the commodities described in that item are articles generally known as canned goods there is little, if any, foundation for the contention that only canned goods articles should properly be listed therein. The item does not purport to describe canned goods commodities exclusively, as evidenced by its heading "Canned Goods and Other Articles." Segregation of the articles listed under that heading in the tariff into canned goods commodities and other articles would, on this record, appear to serve no useful purpose.

The showing made in support of petitioner's proposals is persuasive that all of the commodities listed in Item No. 610-D of Highway Carriers' Tariff No. 2 should be accorded the rates making reference thereto when packaged in the manner designated in the proposals. The tariff changes recommended by the petitioner will be made. At the same time related changes will be made in the tariff for the purpose of clarification.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that Highway Carriers' Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended) be amended by substituting therein, to become effective December 1, 1940, the revised pages attached hereto and by this reference made a part hereof, which pages are numbered as follows:

2nd Revised Page 37 (cancels 1st Revised Page 37)  
5th Revised Page 47 (cancels 4th Revised Page 47)

IT IS HEREBY FURTHER ORDERED that increases in published rates or charges of common carriers required to be made as a result of amendments to Appendix "D" (Highway Carriers' Tariff No. 2) of said Decision No. 31606, by Ordering Paragraph 1 hereof, shall be made effective on December 1, 1940, on not less than one (1) day's

notice to the Commission and to the public; and that reductions in published rates or charges resulting from the aforesaid amendments may be made effective on December 1, 1940, if the carrier so elects, on not less than one (1) day's notice to the Commission and to the public.

IT IS HEREBY FURTHER ORDERED that in all other respects Decision No. 31606, as amended, shall remain in full force and effect.

This order shall become effective on the date hereof.

Dated at San Francisco, California, this 19<sup>th</sup> day of November, 1940.

Ray L. Rice  
James D. Sullivan  
Walter W. ...  
M. ...  
Justus J. Cameron  
Commissioners.

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)	
	EXCEPTIONS TO WESTERN CLASSIFICATION AND EXCEPTION SHEET (Continued)	
	<p style="text-align: center;">PACKING REQUIREMENTS</p> <p>*Except as otherwise provided, articles will not be subject to the packing requirements of the Western Classification or Exception Sheet, but may be accepted for transportation in any container or any shipping form, providing such container or form of shipment will render the transportation of the freight reasonably safe and practicable.</p> <p>*Except as otherwise provided, if two or more ratings are provided for an article in the form in which it is shipped (e.g., set up or knocked down, nested or not nested, compressed or not compressed, folded flat or not folded flat), subject to different packing requirements, the lowest of such ratings will apply.</p>	
310 8-7-39	Beverages, malt, viz.: Ale, Beer, Beer Tonic, Porter, Stout, less carload .....	<p style="text-align: center;">Class Rating</p> <p style="text-align: center;">4</p>
320-B Cancels 320-A	*Canned Goods and Other Articles as described in and subject to the provisions of Item No. 610 series, less carload .....	90% of 4
330-A Cancels 330	<p>Carriers (used packages), second-hand, empty, as described in and subject to the provisions of Item No.*300 series of the Exception Sheet:</p> <p>Less than carload .....</p> <p>(1) Subject to minimum rate of 15 cents per 100 pounds or actual 4th class rate, whichever is lower.</p> <p>Carload:</p> <p>Minimum weight 12,000 pounds .....</p> <p>Minimum weight 30,000 pounds .....</p> <p>(2) Not to exceed less than carload rate.</p>	<p>(1) One-half of 4</p> <p>(2) B</p> <p>(2) E</p>
340 8-7-39	Flowers, fresh, cut, less carload .....	1
350 8-7-39	Fruit, dried, including Raisins, Prunes (dried), Figs (dried), and Fig Pulp or Fig Paste, less carload .....	90% of 4
*Change, Decision No.		
EFFECTIVE DECEMBER 1, 1940		
<p style="text-align: center;">Issued by The Railroad Commission of the State of California, San Francisco, California.</p> <p>Correction No. 160</p>		



Item No.	SECTION NO. 3	COMMODITY RATES (Continued)
	(Applies in connection with rates or ratings making specific reference hereto.)	
	**Canned Goods and Other Articles, in earthenware, glass or metal cans in boxes, or in bulk in barrels, except as otherwise provided (see Note 1), not subject to Item No. 300 series, viz.:	
	Beans and Pork, Breads, Brine, Broths, Butter, fruit, Butter, peanut (peanut paste), Buttermilk (not Casein), not powdered or flaked,	Milk (not malted), Buttermilk (not Casein) or Dry Milk Solids, powdered or flaked, in packages named, or in fibre cans, or in bulk in boxes, or in double bags, or in multiple-wall paper bags,
	Catsup, Child, ground, Chowders, Cocoanut, prepared, in packages named, or in bulk in boxes, or in double bags, or in multiple-wall paper bags, Corn,	Mince Meat, Molasses or Syrup (except coloring, flavoring, fruit, malt, or medicated), Mustard (prepared),
610-E Cancels 610-D	Dressing, salad,	Oil, olive or salad, Olives, Onion Chips, in packages named, or in bulk in boxes, or in double bags, or in multiple-wall paper bags,
	Feed, animal, containing more than 50 per cent of meat, in metal cans,	Onion Powder, in packages named, or in bulk in boxes, or in double bags, or in multiple-wall paper bags,
	Fish, cooked, pickled or preserved, with or without fruit or vegetable ingredients, in packages named, or in bulk in boxes,	Paste, tomato, Pectin, fruit or vegetable, Pickles (Cauliflower, Cucumber, Dill Weed, Kraut, Mangoes, Onions and Tomato),
	Fish Roe, cooked, pickled or preserved,	Pie Preparations (fruit in syrup or in paste form compounded with flour or sugar and flavored),
	Fruit (not fresh), crushed, Fruit (not dried, evaporated or fresh) in liquid other than alcoholic liquor,	Pimentos (canned peppers), Puddings, Pulp, fruit or vegetable, Purée, tomato,
	Garlic Chips, in packages named, or in bulk in boxes, or in double bags, or in multiple-wall paper bags,	Ravioli (prepared), with or without cheese, meat or vegetable ingredients, Rice-and-milk cooked,
	Garlic Powder, in packages named, or in bulk in boxes, or in double bags, or in multiple-wall paper bags,	
	Hominy, Honey, in bulk in metal cans,	Sandwich Spread, Sauces, Condiments or Relishes, prepared,
	Jam, Jelly,	Sausage, Sausage Casings, pickled or salted, in bulk in barrels,

Juico, clam,  
Juico (not syrup) fruit, unfer-  
mented,  
Juico, tomato,  
Juice, vegetable,

Macaroni (prepared), with or  
without cheese, meat or vege-  
table ingredients,  
Meats, cooked, cured or pre-  
served, with or without cereal  
or vegetable ingredients, in  
packages ramod, or in bulk in  
crates or boxes,  
Milk (condensed or evaporated),  
liquid,

Soups,  
Spaghotti (prepared), with or  
without cheese, meat or  
vegetable ingredients,  
Syrups,

Vegetables (not dehydrated,  
dried, evaporated nor  
fresh),  
Vermicolli (prepared), with  
or without cheese, meat or  
vegetable ingredients,  
Vinegar,

Welsh Parobit.

NOTE 1.-Rates or ratings applicable to shipments in boxes will apply  
also to such shipments in fireboard boxes in metal strapped  
bundles or crates.

Rates or ratings applicable to shipments in barrels will apply  
also to such shipments in hogsheds, pipes, puncheons, tiercos, casks,  
drums, half-barrels, quarter-barrels, sixth-barrels, eighth-barrels  
or kegs.

\* Reduction,      ♦ Increase, Decision No.

EFFECTIVE DECEMBER 1, 1940

Issued by The Railroad Commission of the State of California,  
San Francisco, California.  
Correction No. 161