

**ORIGINAL**

Decision No. 32040

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of rates, )  
rules, classifications and regulations for )  
the transportation of property, exclusive of )  
property transported in dump trucks, for )  
compensation or hire, over the public highways )  
of the City and County of San Francisco. )  
Case No. 4084

In the Matter of the Establishment of maximum )  
or minimum, or maximum and minimum rates, )  
rules and regulations for the transportation )  
of property, for compensation or hire, over )  
the public highways, by all Radial Highway )  
Common Carriers and Highway Contract Carriers )  
between, and by all City Carriers within the )  
cities of Oakland, Albany, Alameda, Berkeley, )  
Emeryville and Piedmont, in the County of Alameda. )  
Case No. 4108

In the Matter of the Investigation and Establish- )  
ment of rates, charges, classifications, rules, )  
regulations, contracts and practices, or any )  
thereof, of EAST BAY DRAYAGE & WAREHOUSE CO., )  
HASLETT WAREHOUSE COMPANY, INTERURBAN EXPRESS )  
CORPORATION, KELLOGG'S EXPRESS & DRAYING CO., )  
MERCHANTS EXPRESS CORPORATION, PEOPLES EXPRESS, )  
SPECIAL DELIVERY SERVICE CO., UNITED PARCEL )  
SERVICE, UNITED TRANSFER COMPANY, and WEST BERKE- )  
LEY EXPRESS & DRAYING COMPANY, operating as High- )  
way Common Carriers, for transportation of property )  
for compensation over the public highways of the )  
State of California, between the cities of Oakland, )  
Albany, Alameda, Berkeley, Emeryville and Piedmont, )  
in the County of Alameda, and for accessorial )  
services incident to such transportation. )  
Case No. 4109

In the Matter of the Establishment of just, reason- )  
able and non-discriminatory maximum or minimum or )  
maximum and minimum rates, rules, classifications )  
and regulations for the transportation of property )  
for compensation or hire over the public highways )  
of the City of Los Angeles. )  
Case No. 4121

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. )  
Case No. 4246

In the Matter of the Establishment of maximum or )  
minimum, or maximum and minimum rates, rules and )  
regulations of all carriers as defined in the City )  
Carrier's Act of the State of California (Statutes )  
1935, Chapter 312, as amended) for the transporta- )  
tion over the public highways within any city or )  
city and county in the State of California, for )  
compensation or hire, of any and all commodities. )

Case No. 4434

BY THE COMMISSION:

Appearances

L. H. Wolters, for Golden State Company, Ltd.  
J. J. Deuel, for California Farm Bureau Federation.  
George T. Hurst, for The Atchison, Topeka and Santa Fe  
Railway Company and Santa Fe Transportation Company.  
John L. Amos, Jr., for Western Pacific Railroad Company,  
Sacramento Northern Railway and Tidewater and  
Southern Railway Company.  
F.K. Clifford, for The Truck Owners Association of  
Northern California and for John M. Desch,  
Secretary, The National Traffic Committee of The  
Truck Owners Association of Northern California.

SUPPLEMENTAL OPINION

In these proceedings the Commission has established minimum  
rates, rules and regulations for the transportation of property within  
the San Francisco, East Bay, Los Angeles and San Diego drayage areas  
and for line-haul traffic throughout the state. <sup>1</sup> By petition,

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These rates and the rules and regulations by which they are governed  
have been incorporated in tariffs issued by the Commission. The tar-  
iffs are: City Carriers' Tariff No. 1 which is applicable to drayage  
within the City and County of San Francisco and which reproduces the  
provisions of Exhibit "A" of Decision No. 28632 (39 C.R.C. 636), as  
amended, in Case No. 4084; City Carriers' Tariff No. 2 - Highway Car-  
riers' Tariff No. 1, the East Bay Drayage tariff, applicable within  
and between the cities of Alameda, Albany, Berkeley, Emeryville, Oak-  
land and Piedmont, and which reproduces the provisions of Appendix "A"  
of Decision No. 29217 (unreported), as amended, in Cases Nos. 4108 and  
4109; City Carriers' Tariff No. 4 - Highway Carriers' Tariff No. 5,  
Appendix "A" of Decision No. 32504 (42 C.R.C. 239), as amended, applic-  
able within a defined area in Los Angeles County known as the "Los  
Angeles Drayage Area"; City Carriers' Tariff No. 7 - Highway Carriers'  
Tariff No. 9, Appendix "A" of Decision No. 35055 (unreported), as  
amended, in Cases Nos. 4246 and 4434, applicable within the so-called  
"San Diego Drayage Area" consisting of defined territory in San Diego  
County; and Highway Carriers' Tariff No. 2, Appendix "D" of Decision  
No. 31606 (41 C.R.C. 671), as amended, in Case No. 4246 applicable to  
line-haul traffic on a state-wide basis.

Golden State Company, Ltd. urges that the rate bases so prescribed be modified by the establishment of second class rates for the transportation, in less-carload quantities, of a commodity known as "frozen concentrated sweet cream fat";<sup>2</sup> and that the Commission find second class rates just, reasonable and nondiscriminatory for past shipments.

A public hearing was had at San Francisco before Examiner Mulgrew.

The commodity involved is comparatively new, the process by which it is derived from cream having been developed in 1935. It is used chiefly in manufacturing ice cream and ice cream powders. It is also used by bakers and candy manufacturers as well as by others who have occasion to reconstitute liquid milk from dry milk products. No uniform designation of this commodity has as yet been adopted by the trade or by any governmental authority. It has been variously known as "frozen concentrated sweet cream fat," "frozen cream," "plastic cream" and "butter grease." The first of these designations has generally been used in publishing rates. These voluntarily established rates have usually been of the same volume as the rates applicable to like transportation of butter. In Western Classification No. 71 C.R.C.-W.C. No. 4 of R.C. Fyfe, Agent, the description employed for the commodity here in question is "Butter fat or cream, frozen." In connection with this description, only a carload rating is provided. The carload rating, third class, is the same as that on dairy butter. The classification provides a second class less-carload rating for butter.

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This commodity is also known by other names to which reference will hereinafter be made.

Like dairy butter, the product here in issue is derived from cream. It has the plastic qualities of butter and differs from that commodity chiefly in the butter fat content which is less than the 80 per cent required for butter. This difference is not one which is discernable from a cursory examination of the two commodities. Indeed, the sweet cream fat has the appearance of unsalted dairy butter and is of like texture. As a source of fat, the former replaces the latter in some of the usages which have hereinbefore been discussed.

The two commodities require comparable refrigeration to protect them from deterioration and are shipped and stored in the same types of containers. Their densities are 58 and 54 pounds per cubic foot for butter and sweet cream fat, respectively. The wholesale values on the date of the hearing were 48½ cents per pound for butter and 53 cents per pound for the fat.

Petitioner's transportation manager and an assistant rate expert for the Commission testified with respect to the provisions of the Commission's minimum rate tariffs affecting determinations of less-carload rates for shipments of sweet cream fat. They said that the classification used in connection with these tariffs, Western Classification No. 71, does not name a specific less-carload rating. They also said that, because of the classification's provisions with respect to NOIBN (not otherwise indexed by name) ratings and its rule (No. 17) affecting the establishing of rates by analogy, the applicable rating cannot be determined under an NOIBN description or under the analogy rule.

The transportation manager also took the position that, where tariff rates are named for property generally but no rate or basis for determining the rate for particular transportation is provided, the regulatory agency is empowered to prescribe reasonable rates and charges for shipments which have been handled before an appropriate tariff revision is made. In support of his position, the witness referred to National Reduction Corporation v. Director General (95 I.C.C. 284) wherein the Interstate Commerce Commission held:

"The charges which were collected were therefore assessed without tariff authority. At the same time it was defendant's duty to impose, and complainant's duty to pay, reasonable charges for the transportation services rendered."

Reasonable charges were then determined by the Commission and used as bases for the adjustment of charges.

An exhibit submitted by the transportation manager discloses that the less-carload classification ratings specifically provided for various frozen foods are not below second class even in those instances where lower ratings are provided for the same articles not frozen. Ratings of second class and higher on foods, the exhibit also discloses, are applicable to such articles in either a frozen or not frozen state.

California Farm Bureau Federation supported and no one opposed petitioner's proposals.

From the record made, it is clear that sweet cream fat possesses transportation characteristics substantially similar to those possessed by dairy butter. For less-carload shipments the Western Classification provides a second class rating on butter, except on butter frozen solid for which no less-carload rating is provided. For other commodities classified second class and higher, less-carload

the ratings provided for the articles frozen are the same as the not frozen ratings. Under the circumstances, it appears that the use by common carriers subject to the Public Utilities Act of rates higher than their second class rates in determining charges for transportation of sweet cream fat in less-carload quantities was not and is not justified. They will be required to revise their tariffs accordingly. In regard to past shipments handled by these carriers, the record does not identify the shipments nor describe the circumstances surrounding this transportation. Should interested carriers and shippers not be able to reach agreements with respect to the proper adjustment of these charges, they may refer such matters to the Commission for further attention. Shipments transported by city, radial highway common and highway contract carriers were not subject to outstanding minimum rate orders and any appropriate adjustments of charges may be made without the Commission's authorization. The record shows no need for the establishment of rates for these carriers at this time.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that common carrier respondents subject to the Public Utilities Act be and they are hereby ordered and directed to establish rates not higher than their second class rates for the transportation of frozen concentrated sweet cream fat in less-carload quantities; and that said carriers be and they are hereby authorized to adjust charges on past shipments of this commodity in such quantities to the bases produced by their second class rates in effect at the time of shipment.

IT IS HEREBY FURTHER ORDERED that the tariff publications to be made by the aforesaid common carriers pursuant to the requirements of the preceding ordering paragraph hereof shall be made on or before July 1, 1944, on not less than three (3) days' notice to the Commission and to the public,

IT IS HEREBY FURTHER ORDERED that in all other respects the petition of Golden State Company, Ltd., filed December 15, 1943, in the above entitled proceedings be and it is hereby denied.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 9<sup>th</sup> day of May, 1944.

Richard L. Lusk

Francis R. Havens

Francis W. Cowley

Wm. J. Russell  
Commissioners