

Decision No. 42652

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
into the rates, rules, regulations,)
charges, allowances and practices)
of all common carriers, highway car-)
riers, and city carriers, relating)
to the transportation or property.)

Case No. 4808

Appearances

Allen K. Pentilla and A. W. Brown, for petitioner,
and for various other manufacturers and dis-
tributors of paints and paint materials.
Frank M. Chandler and Larry M. Fites, for Truck
Owners Association of California, protestant.
Eugene A. Read, for Oakland Chamber of Commerce,
and William Meinhold and Marshall Sayles, for
Southern Pacific Company, interested parties.

SUPPLEMENTAL OPINION

By petition, The Sherwin-Williams Co. of California seeks
the establishment of reduced less-than-carload and less-than-truck-
load minimum rates for the transportation of paint, varnish or
lacquer removing, reducing or thinning compounds.

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

Highway Carriers' Tariff No. 2 (Appendix "D" to Decision
No. 31606, as amended) sets forth state-wide minimum class and com-
modity rates for the transportation of general commodities by common
and highway carriers. The class rates are applicable to the commod-
ities under consideration here. They are governed by the ratings
specified in the Western Classification and by certain exceptions
thereto. The transportation of the compounds in issue is subject to
a 3rd class rating. Petitioner proposes that a 4th class rating be

established for this transportation. The proposal is supported by a trade association of paint manufacturers, by petitioner's affiliated companies and by two competing manufacturers.

At the hearing, petitioner's traffic manager testified on behalf of his company, its affiliates, the trade association and one of the competing companies. His testimony was corroborated by the traffic manager of the other competitor. Petitioner's witness pointed out that paints, varnishes and lacquers were subject to 4th class rates. He said that the weights of the compounds were similar to the weights of varnishes and lacquers and that the values of the compounds were generally much lower than the value of the other products. By way of illustration, he referred to a paint and varnish remover and to a varnish made by his company. Both products, the witness said, weighed 8 pounds per gallon. The value of the remover, he stated, was only 21 cents per pound, against a value of 75 cents per pound for the varnish. Other comparisons made by the witness were a thinner weighing 7.5 pounds valued at 17 cents, an enamel weighing 12.5 pounds valued at 63 cents, and a paint weighing 15.2 pounds valued at 34 cents. The range in weight per cubic foot disclosed by his figures is from 53.2 pounds for a thinner to 108.6 pounds for a paint. The range in value is from 17 cents per pound or \$1.28 per gallon for a thinner to 76 cents per pound or \$6.84 per gallon for a lacquer and 63 cents per pound or \$7.88 per gallon for an enamel.

All of the products above referred to, the traffic manager said, were packed and shipped in the same sort of containers. The containers, he claimed, were adequate for the protection of the goods in transit and met requirements for the packaging of inflammable and other dangerous articles. The risk entailed in handling the various articles, the witness asserted, was slight. He said that his company had filed only nine claims on California traffic for the period

September 1948 through July 1949, that these claims aggregated \$187.33, and that none of them involved the compounds.

The traffic manager also testified that petroleum naphtha was the principal ingredient of the removing, reducing and thinning compounds. He referred, as examples, to a thinner containing 99 per cent naphtha and a reducer containing 59 per cent naphtha. He pointed out that naphtha, like paints, varnishes and lacquers, was subject to a 4th class rating. Additionally, he said that exception ratings generally applicable to motor carrier transportation throughout the nation established the same classification basis for the compounds as for paints, varnishes and lacquers. All of these articles, the witness pointed out, were accorded the same rating under the minimum rate structure established by the Commission for the East Bay drayage area (City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A, Appendix "A" of Decision No. 41362 of March 23, 1948, as amended, in Cases Nos. 4108 and 4109).

The Oakland Chamber of Commerce called attention to Trunk Line Territory Motor Carrier Rates, 24 M.C.C. 501 (1940), in which the same classification rating was prescribed for thinners, reducers, removers, paints, varnishes and lacquers in connection with the establishment of minimum rates for highway carrier transportation.

Truck Owners Association of California opposed the granting of the petition. Its rate witness claimed that the compounds were less dense than paints, that the volume of compounds shipped in less-than-carload and less-than-truckload lots was small, that the minimum rate level was too low, and that a reduction in the rates on compounds was unwarranted. He also testified that the State Vehicle Code required that truck equipment used for transportation of the

commodities in question be placarded to disclose the inflammable nature of the cargo and that the carriers were faced with restrictions on the movement of such cargo through tunnels and over bridges.

In Decision No. 32609 of December 5, 1939, in Case No. 4246, in which the classification of paints, varnishes and lacquers, the compounds here in question, and other articles was considered by the Commission, the 4th class rating formerly applicable only to paints was extended to lacquers and varnishes. The Commission said that a convincing showing had been made that paints, varnishes and lacquers should be accorded a parity of ratings and that the 4th class rating for paints would not be unduly low for varnishes and lacquers. The showing included average densities and values of paints, varnishes and lacquers but not of the compounds and other commodities. The weight per cubic foot was shown as ranging from 50 pounds for varnishes to 72.65 pounds for paints. The range in value per gallon was shown as from 82 cents for varnish to \$1.82 for lacquers. With respect to the compounds and other commodities then under consideration, the Commission said that no showing had been made of their densities, values or other transportation characteristics, and that the fact that they had been voluntarily accorded lower ratings in other territories did not establish the reasonableness and propriety of a lower rating for the traffic involved.

It has now been shown that the transportation characteristics of paint, varnish or lacquer removing, reducing or thinning compounds are such that the continued maintenance of higher minimum rates for those commodities than for paints, varnishes and lacquers is not warranted. It has been demonstrated, moreover, that the 4th class rating proposed by petitioner would give appropriate effect to the densities and values involved, as well as to the other rate-making considerations involved. The petition will, therefore, be granted.

Upon consideration of all the facts and circumstances of record, we are of the opinion and hereby find that the proposed reduced rating and rates for paint, varnish or lacquer removing, reducing or thinning compounds has been justified.

O R D E R

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

IT IS HEREBY ORDERED that Decision No. 31606, as amended, in Case No. 4246, be and it is hereby further amended by incorporating in Highway Carriers' Tariff No. 2 (Appendix "D" of said Decision No. 31606, as amended), to become effective February 1, 1950, the revised pages attached hereto and by this reference made a part hereof, which pages are numbered as follows:

Eleventh Revised Page 5 cancels Tenth Revised Page 5
Fourth Revised Page 39 cancels Third Revised Page 39

IT IS HEREBY FURTHER ORDERED that any tariff publications of common carrier respondent filed pursuant to this order may be made effective not earlier than February 1, 1950, and on not less than five (5) days' notice to the Commission and to the public.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 27th day of December, 1949.

A. J. Anderson
Justice F. Wallace
David P. Luce
Herbert P. Potter
Commissioners

INDEX OF COMMODITIES (Continued)			
COMMODITY	Item Number	COMMODITY	Item Number
Candles (M)	723-727	#Compounds, paint, lacquer or varnish reducing, removing or thinning	377
Candy	360	Compound, radiator or cleaning (M)	723-727
Canned Goods and Other Articles as described in Item No. 610 series	320, 360, 610 620, 630	Compound, rust preventing or removing (M)	723-727
Cants, Wheel, wooden	660, 690	Compound, type cleaning (M)	723-727
Cants, wooden	365	Compound, waterproofing (M)	723-727
Caps, column	660, 690	Confectionery	360
Caps, Sand Line	365	Containers, Beverage	600
Carriers (used packages)	330	Cooler Closets	660, 690
Cases (Built-in Pictures)	660, 690	Corn	(1), 652, 652½, 654
Casing, Door and Window Panel	660, 690	Corn Cobs	652, 652½, 654
Casing Shoes	365	Cornice Brackets	660, 690
Castings, Swing Post	365	Corn, Kaffir	652, 652½, 654
Catchers, Tubing	365	Corn Steep Water	652, 652½, 654
Catsup	(1)	Countershafts, Oil Well	365
Cement, pipe fitting (M)	723-727	Covers, cotton cloth	335
Cement, portland (building)	635	Covers, Guy Wire	660, 690
Cereal and Nuts combined	360	Covers, Thief Hole	365
Cereal Food	360	Cow Peas	652½, 654
Cereal Food Preparations	655, 656	Cranes, Derrick	365
Cereals, cooked	655, 656	Cross Arms, wooden	660, 690
Chaff	652, 652½, 654	Crystals, Citrus Fruit Juice	360
Charcoal (M)	652½, 654	Cupboards	660, 690
Cheese (including cottage and pot cheese) (M)	315, 605	Cylinders, Well Pump	365
Chests of Drawers	660, 690	Darso	652, 652½, 654
Chili, ground	(1)	Derrick Cranes	365
China Closets	660, 690	Derricks	365
Chloride of Lime Bleach	730	Dessert Preparations	360
Chocolate	360	Disinfectants	730
Chocolate Coating	360	Distillers' Grains	652, 652½, 654
Chops	652, 652½, 654	Doors	660, 690
Chowders	(1)	Drain Pipe Solvent	730
Citrus Fruit Juice		Dressing, Automobile Top (M)	723-727
Powders or Crystals	360	Dressing, Belt (M)	723-727
Clamps	365	Dressing, Salad	(1)
Clamps, Disconnecting, Drilling, Drive or Gas Packing	365	Drill Bitheads	365
Clay, Fire (M)	365	Dry Milk Solids	(1)
Clippings	652, 652½, 654	Durra	652, 652½, 654
Coating, Chocolate	360	Dust, Elevator	652, 652½, 654
Cocoa	360	Earth, Infusorial	650
Cocanut, prepared	(1)	Eggs, Shelled	360
Coffee	360	Egyptian Wheat	652, 652½, 654
Coffee Substitutes	360	Elevator Dust	652, 652½, 654
Colorings, Confectioners	360	Elevators, Pipe or Sucker Rod	365
Columns	660, 690		
Compound, anti-freeze (M)	723-727		
Compound, carbon removing (M)	723-727		

Compound, cleaning (M)	723-727	Emmer	652, 652 ¹ / ₂ , 654
Compounds, Cleaning		Engines (M)	365
Scouring or Washing	730	Ether (M)	723-727
Compound, electrical		Exterminators, vermin (M)	723-727
insulating (M)	723-727	Extracts	360
Compounds, Flavoring	360	Extracts, Malt	600
Compounds, Food Curing,		Farina	652, 652 ¹ / ₂ , 654
Preserving or Seasoning	360	Feed, Animal	(1), 652, 652 ¹ / ₂ ,
Compounds, Lard	360		654
Compounds, Oil Well		Feed, Barley Hay	652 ¹ / ₂ , 654
Drilling Mud	365	Feed, Bean Straw (M)	652 ¹ / ₂ , 654
Compound, paint thinning (M)	723-727		

Addition, Decision No.

42662

(1) See "Canned Goods and Other Articles as described in Item No. 610 series."

(M) Denotes articles on which application of rates is limited to mixed shipments.

EFFECTIVE FEBRUARY 1, 1950

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 389

Fourth Revised Page ... 39

 Cancels

Third Revised Page 39

HIGHWAY CARRIERS' TARIFF NO. 2

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Concluded)	
	EXCEPTIONS TO WESTERN CLASSIFICATION AND EXCEPTION SHEET (Concluded)	Class Rating
370	Ice cream, less carload-----	2
*377-A Cancels 377	Paints or Varnishes, not otherwise indexed by name in the Western Classification, Bronzing Liquids, Lacquers or Shellacs, liquid or paste, less carload----- Paint, Lacquer or Varnish Reducing, Removing or thinning compounds, not otherwise indexed by name in the Western Classification, less carload-----	4
380	Salt, common, less carload-----	90% of 4
390-A Cancels 390	Sugar (Applies only in connection with rates which are subject to a minimum weight of less than 10,000 pounds)-----	90% of 4
400-A Cancels 400	Vermouth or Wine, domestic, having a declared value of not more than \$2.00 per gallon, less carload-----	4

(Reduction) Decision No: ... 42652
(*Change)

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Correction No. 390