

ORIGINAL

Decision No. 44866

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 )	Case No. 4808
carriers, highway carriers and city )	
carriers relating to the transportation )	
of property. )	

Appearances

Arlo D. Poe, Frank M. Chandler and L. M. Fites,  
 for Truck Owners Association of California.  
 Arlo D. Poe, for Motor Truck Association of  
 Southern California.  
 Willard S. Johnson, for J. Christenson Co.  
 F. W. Kerrigan, for Moser Frozen Food Freight  
 Lines.  
 Cliff Northam, for Coast Counties Refrigerated  
 Truck Line.

SUPPLEMENTAL OPINION

Minimum rates for the transportation of general commodities by highway carriers are set forth in the Commission's Highway Carriers' Tariff No. 2. This tariff is not applicable to fresh fruits or fresh vegetables; rates for those commodities are in Highway Carriers' Tariff No. 8. The Transportation Department issued an informal ruling that the rates in Tariff No. 8 applied to frozen fresh fruits and frozen fresh vegetables. Subsequently, in order

---

<sup>1</sup>  
 This ruling was issued on June 30, 1950. It was designated as Informal Ruling No. 9. The "Notice" which is a part of each informal ruling of the Department is reproduced below:

"The ruling set forth above is an informal ruling of the Transportation Department of the Public Utilities Commission of the State of California, made in response to questions propounded by the public, indicating what is deemed by the Department to be the correct application and interpretation of the particular minimum rate tariff involved. This ruling is tentative and provisional and is made in the absence of formal decisions upon the subject by the Commission."

that the matter might receive the Commission's formal consideration, a public hearing was scheduled for the receipt of evidence thereon. The customary notice of hearing was given interested parties. The hearing was had at San Francisco on September 18, 1950, before Examiner Mulgrew.

The commodities involved are foods prepared for future human consumption. They have been frozen to prevent spoilage and must be kept under low temperatures. Their preparation, although varying somewhat according to the particular food, follows a general pattern. Fruits and vegetables in their natural state are cleaned, inedible parts are discarded and the produce is otherwise processed. For example, peaches are peeled, pitted, and sliced, halved or quartered; peas are removed from their pods, the immature or overripe peas rejected and the remainder graded for size; other produce is given the treatment required by its characteristics and consumer preferences as to preparation. Sugar or syrup is then added to the fruits. Some fruits are also treated with an ascorbic acid mixture to prevent darkening. The vegetables are scalded with boiling water or steam. Both the fruits and vegetables are then packaged and frozen. Fruits and vegetables so treated, along with frozen juices, poultry and such so-called "frozen specialities" as fish, are known to the trade as "frozen" or "quick frozen" foods. They are said to be designated as "fresh" in order to describe the condition of the product at the time it was processed and frozen.

From the processing plants the frozen foods are transported by highway carriers to cold storage facilities or to wholesalers. There is also a highway carrier movement from warehouse to wholesaler and some movement between warehouses. The wholesalers use proprietary truck equipment generally operated by salesman-drivers to

handle the goods from their places of business or from warehouses to the retailers. In both the for-hire and proprietary transportation operations maximum temperatures should not exceed 5 degrees. Lower temperatures are usually desirable, if not essential. Insulated equipment is used. Mechanical refrigeration devices must be provided in order to give dependable and satisfactory service. Suitable equipment costs considerably more than the equipment required to haul property for which low temperatures need not be maintained.

Carrier witnesses testified that the rates charged for frozen fruits and vegetables had generally been not less than the 5th class rates in Highway Carriers' Tariff No. 2 on truckload shipments and not less than the 2nd class rates in that tariff on less-truckload shipments. They pointed out that the tariff is subject to the Western Classification; that the items of that publication which assign the foregoing ratings describe frozen fresh fruit as "Fruit, fresh, cold pack (frozen fresh fruit either sweetened or not sweetened)" and frozen fresh vegetables as "Vegetables, fresh or green, cold pack (frozen fresh or green vegetables either sweetened or not sweetened);" and that other classification items assigning different ratings to fresh fruits describe them as "Fruits, fresh (not cold pack nor frozen)" and fresh vegetables as "Vegetables, fresh or green (not cold pack nor frozen)." The fresh fruit and fresh vegetable ratings, they also pointed out, are inapplicable because of the exemption in Highway Carriers' Tariff No. 2. Commodity rates for that produce are provided in Highway Carriers' Tariff No. 8.

The witnesses said that, until the Transportation Department had issued Informal Ruling No. 9, it had been generally accepted that the exemption of fresh fruits and vegetables in Highway Carriers' Tariff No. 2 did not cover cold pack or frozen fruits or vegetables and, likewise, that the commodity rates on fresh fruits and

vegetables in Highway Carriers' Tariff No. 8 were not applicable to these frozen food items. They claimed that the 5th and 2nd class rates in Highway Carriers' Tariff No. 2 were observed as minimum rates pursuant to this understanding. The carrier witnesses testified further that the higher rates had covered, to some extent at least, the additional expense of providing the low-temperature refrigeration required for frozen foods. Subsequent to the issuance of Informal Ruling No. 9, they asserted, they had been able to maintain the class-rate level only on less-truckload shipments. The highway common carriers operating under tariffs on file with the Commission assertedly have been unable to cope with the competition of permitted carriers. Some of the latter class of carriers were said to have made rate and minimum weight concessions in order to attract desirable truckload traffic. The tariff filing common carriers have no such flexibility in their rates and therefore cannot compete effectively.

The carrier witnesses also pointed out that the Highway Carriers' Tariff No. 8 rates were designed for fresh produce transported to market and that market produce does not require insulated trucks or other special equipment. They asserted that the produce rates were not proper for frozen foods because of the entirely different transportation characteristics of these articles.

Counsel for the carriers claimed that, under the tariffs as they now stand, Highway Carriers' Tariff No. 8 rates - the fresh fruit and vegetable rates - are inapplicable. The frozen foods, he said, are not fresh fruits or vegetables. He claimed that the exemption of fresh fruits and vegetables in Highway Carriers' Tariff No. 2 has no force for the same reason. He suggested, however, in view of the competitive situation created by the issuance of Informal Ruling No. 9 holding to the contrary, that Tariffs Nos. 2 and 8 be clarified by adding "not frozen" after the descriptions of fresh

fruits and vegetables therein. The description cold pack used in the classification along with frozen in designating exclusions from the fresh products, he said, was another term for frozen.

It is not disputed and the record shows that so-called "frozen fresh fruits" and "frozen fresh vegetables" are processed foodstuffs as distinguished from fresh fruits and vegetables in their natural state. It is obvious, moreover, that the transportation characteristics of the processed foods differ substantially from the characteristics of the unprocessed articles. It has been shown that the exemption in Tariff No. 2 and the rates in Tariff No. 8 are not designed for, and do not properly cover, the frozen foods in question. Clarification of these tariffs along the lines suggested by the carriers is desirable and necessary. This clarification should, in the interest of uniformity, follow the wording of the classification limitation "not cold pack nor frozen" instead of "not frozen" as suggested by the carriers.

Upon consideration of all of the facts and circumstances of record, we are of the opinion and hereby find that revision of the descriptions fresh fruits and fresh vegetables is justified to the extent hereinbefore indicated and as provided by the order herein.

In view of the foregoing formal determination by the Commission, the Transportation Department's Informal Ruling No. 9 will be rescinded.

#### O R D E R

Based on 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) Nineteenth Revised Page 14 cancels Eighteenth

Revised Page 14; that Decision No. 33977, as amended, in Case . No. 4293, be and it is hereby further amended by incorporating in Highway Carriers' Tariff No. 8 (Appendix "C" of said Decision No. 33977, as amended) Seventh Revised Page 8 cancels Sixth Revised Page 8; and that the aforesaid revised pages, attached hereto and by this reference made a part hereof, shall become effective November 1, 1950.

IT IS HEREBY FURTHER ORDERED that tariff publication required or authorized to be made by common carriers as a result of the order herein shall be made effective not later than November 1, 1950, and not earlier than five (5) days after the effective date of this order; and that such publications may be made effective on not less than five (5) days' notice to the Commission and to the public.

In all other respects said Decisions Nos. 31606 and 33977, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 3<sup>rd</sup> day of October, 1950.

W. E. Anderson  
Justus F. Brewer  
Walter J. Farrell  
Harold P. Kula  
Genevieve Platten  
Commissioners

Cancels

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)		
	<p style="text-align: center;">APPLICATION OF TARIFF - COMMODITIES (Items Nos. 40 and 41 Series)</p> <p>Rates in this tariff apply for the transportation of all commodities, except the following:</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <p>Accessories, motion picture, Automobiles, set up,</p> <p>Baggage, Butter, dairy (Subject to Note 8), Buttermilk, liquid (Subject to Note 2),</p> <p>Carriers (used packages), empty returning or forwarded for return loads (Subject to Note 1), Cement, hydraulic, masonry, natural or Portland—also lime, common (including magnesium lime, hydrated or hydraulic lime, quick or slaked), cement flue dust, and/or limestone, powdered, shipped in mixed shipments with cement—when transported in shipments of 38,000 pounds or more, or when transported in shipments of lesser weights subject to the rates, rules and regulations, including the minimum charge computed on a minimum weight of 38,000 pounds, which are set forth in City Carriers' Tariff No. 8—Highway Carriers' Tariff No. 10 (Appendix "A" to Decision No. 44633 of August 8, 1950, or as amended, in Case No. 4208) (Subject to Note 9), Cement Clinker,</p> <p>Cheese (including cottage cheese and pot cheese) (Subject to Note 8), Commodities transported under the vehicle unit rates, rules and regulations of City Carriers' Tariff No. 4 - Highway Carriers' Tariff No. 5, applicable within Los Angeles and Orange Counties, Commodities transported in bulk in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles, Commodities of abnormal size or weight which because of such size or weight require the use of and are transported on low-bed trailers, Commodities weighing 100 pounds or less per package or piece when delivered from retail stores, or when returned to the original retail store shipper via the carrier which handled the outbound movement (Subject to Note 3),</p> </td> <td style="vertical-align: top; width: 50%;"> <p>Cotton, Cream (Subject to Note 2),</p> <p>Directories, telephone, Eggs (other than shelled, desiccated or frozen),</p> <p>Fertilizers, as described in Items Nos. 535, 540 and 550 series of the Exception Sheet, Film, motion picture, Fodder, Bean, Cane, Corn or Peas (Subject to Note 7), Fruit, dried, unmanufactured and unprocessed (Subject to Note 4), *Fruit, fresh (not cold pack nor frozen), Fungicides, agricultural, Furniture, household appliances and other home furnishings, transported from retail stores where they have been sold at retail by a retail merchant, or transported from retail customers to retail stores (Subject to Note 3),</p> <p>Hops, House Trailers, set up, Ice Cream Mix, unflavored, Insecticides, agricultural,</p> <p>Leaves, Cactus, dried (Subject to Note 7), Livestock, Logs (wood) (Subject to Note 10),</p> <p>Margarine (Subject to Note 8), Milk, liquid (Subject to Note 2),</p> <p>Newspapers; newspaper supplements, sections or inserts; (not scrap or waste), Nuts, edible, in the shell,</p> <p>Pits, fruit, Poultry, live or dressed,</p> <p>Sea Shells, crushed, ground, powdered or disintegrated (Subject to Note 5), Seed, cotton, Seeds, field, as described in Note 6, Shell Marl, crushed, ground or powdered, Straw (Subject to Note 7), Sulphur,</p> </td> </tr> </table>	<p>Accessories, motion picture, Automobiles, set up,</p> <p>Baggage, Butter, dairy (Subject to Note 8), Buttermilk, liquid (Subject to Note 2),</p> <p>Carriers (used packages), empty returning or forwarded for return loads (Subject to Note 1), Cement, hydraulic, masonry, natural or Portland—also lime, common (including magnesium lime, hydrated or hydraulic lime, quick or slaked), cement flue dust, and/or limestone, powdered, shipped in mixed shipments with cement—when transported in shipments of 38,000 pounds or more, or when transported in shipments of lesser weights subject to the rates, rules and regulations, including the minimum charge computed on a minimum weight of 38,000 pounds, which are set forth in City Carriers' Tariff No. 8—Highway Carriers' Tariff No. 10 (Appendix "A" to Decision No. 44633 of August 8, 1950, or as amended, in Case No. 4208) (Subject to Note 9), Cement Clinker,</p> <p>Cheese (including cottage cheese and pot cheese) (Subject to Note 8), Commodities transported under the vehicle unit rates, rules and regulations of City Carriers' Tariff No. 4 - Highway Carriers' Tariff No. 5, applicable within Los Angeles and Orange Counties, Commodities transported in bulk in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles, Commodities of abnormal size or weight which because of such size or weight require the use of and are transported on low-bed trailers, Commodities weighing 100 pounds or less per package or piece when delivered from retail stores, or when returned to the original retail store shipper via the carrier which handled the outbound movement (Subject to Note 3),</p>	<p>Cotton, Cream (Subject to Note 2),</p> <p>Directories, telephone, Eggs (other than shelled, desiccated or frozen),</p> <p>Fertilizers, as described in Items Nos. 535, 540 and 550 series of the Exception Sheet, Film, motion picture, Fodder, Bean, Cane, Corn or Peas (Subject to Note 7), Fruit, dried, unmanufactured and unprocessed (Subject to Note 4), *Fruit, fresh (not cold pack nor frozen), Fungicides, agricultural, Furniture, household appliances and other home furnishings, transported from retail stores where they have been sold at retail by a retail merchant, or transported from retail customers to retail stores (Subject to Note 3),</p> <p>Hops, House Trailers, set up, Ice Cream Mix, unflavored, Insecticides, agricultural,</p> <p>Leaves, Cactus, dried (Subject to Note 7), Livestock, Logs (wood) (Subject to Note 10),</p> <p>Margarine (Subject to Note 8), Milk, liquid (Subject to Note 2),</p> <p>Newspapers; newspaper supplements, sections or inserts; (not scrap or waste), Nuts, edible, in the shell,</p> <p>Pits, fruit, Poultry, live or dressed,</p> <p>Sea Shells, crushed, ground, powdered or disintegrated (Subject to Note 5), Seed, cotton, Seeds, field, as described in Note 6, Shell Marl, crushed, ground or powdered, Straw (Subject to Note 7), Sulphur,</p>
<p>Accessories, motion picture, Automobiles, set up,</p> <p>Baggage, Butter, dairy (Subject to Note 8), Buttermilk, liquid (Subject to Note 2),</p> <p>Carriers (used packages), empty returning or forwarded for return loads (Subject to Note 1), Cement, hydraulic, masonry, natural or Portland—also lime, common (including magnesium lime, hydrated or hydraulic lime, quick or slaked), cement flue dust, and/or limestone, powdered, shipped in mixed shipments with cement—when transported in shipments of 38,000 pounds or more, or when transported in shipments of lesser weights subject to the rates, rules and regulations, including the minimum charge computed on a minimum weight of 38,000 pounds, which are set forth in City Carriers' Tariff No. 8—Highway Carriers' Tariff No. 10 (Appendix "A" to Decision No. 44633 of August 8, 1950, or as amended, in Case No. 4208) (Subject to Note 9), Cement Clinker,</p> <p>Cheese (including cottage cheese and pot cheese) (Subject to Note 8), Commodities transported under the vehicle unit rates, rules and regulations of City Carriers' Tariff No. 4 - Highway Carriers' Tariff No. 5, applicable within Los Angeles and Orange Counties, Commodities transported in bulk in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles, Commodities of abnormal size or weight which because of such size or weight require the use of and are transported on low-bed trailers, Commodities weighing 100 pounds or less per package or piece when delivered from retail stores, or when returned to the original retail store shipper via the carrier which handled the outbound movement (Subject to Note 3),</p>	<p>Cotton, Cream (Subject to Note 2),</p> <p>Directories, telephone, Eggs (other than shelled, desiccated or frozen),</p> <p>Fertilizers, as described in Items Nos. 535, 540 and 550 series of the Exception Sheet, Film, motion picture, Fodder, Bean, Cane, Corn or Peas (Subject to Note 7), Fruit, dried, unmanufactured and unprocessed (Subject to Note 4), *Fruit, fresh (not cold pack nor frozen), Fungicides, agricultural, Furniture, household appliances and other home furnishings, transported from retail stores where they have been sold at retail by a retail merchant, or transported from retail customers to retail stores (Subject to Note 3),</p> <p>Hops, House Trailers, set up, Ice Cream Mix, unflavored, Insecticides, agricultural,</p> <p>Leaves, Cactus, dried (Subject to Note 7), Livestock, Logs (wood) (Subject to Note 10),</p> <p>Margarine (Subject to Note 8), Milk, liquid (Subject to Note 2),</p> <p>Newspapers; newspaper supplements, sections or inserts; (not scrap or waste), Nuts, edible, in the shell,</p> <p>Pits, fruit, Poultry, live or dressed,</p> <p>Sea Shells, crushed, ground, powdered or disintegrated (Subject to Note 5), Seed, cotton, Seeds, field, as described in Note 6, Shell Marl, crushed, ground or powdered, Straw (Subject to Note 7), Sulphur,</p>		
*40-S Cancels 40-R			

Commodities when transported in dump trucks, for which rates are provided in Decision No. 32566 of November 14, 1939, as amended, in Case No. 4246, Commodities which consist of or contain materials essential to National Defense and which have been donated to and are transported for the United States Government, governmental agencies, or nonprofit organizations acting for or in behalf of said government in the collection, assembly or transportation of said commodities in connection with the recovery of said essential materials from the commodities transported,

Used Property, viz.: household goods, personal effects, furniture, musical instruments, radios, and office and store fixtures and equipment, as described in and for which rates are provided in Decision No. 32629 of December 7, 1939, as amended, in Case No. 4246, and such used property transported for the United States, state, county or municipal governments but excluded from the provisions of said Decision No. 32629, as amended, by the exception of that property therein contained,

\*Vegetables, fresh (not cold pack nor frozen),

Vegetables, dried, viz.:

Beans, (except Mesquite),

Lentils,

Onions,

Peas, (except Cow Peas),

Pepper Pods,

Voting Booths, Ballot Boxes, Election

Tents and Election Supplies, when

transported from or to polling places.

(Continued in Item No. 41 Series)

\* Change, Decision No. **44866**

EFFECTIVE NOVEMBER 1, 1950

Issued by the Public Utilities Commission of the State of California,  
San Francisco, California.  
Correction No. 412



Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
*40-E Cancels 40-D	<p style="text-align: center;">APPLICATION OF TARIFF - COMMODITIES</p> <p>Rates in this tariff apply to transportation of the following commodities (See Exception):</p> <p>Fruits, fresh or green (not cold pack nor frozen); Vegetables, fresh or green (not cold pack nor frozen), including Mushrooms, fresh; Containers, empty, second-hand, returning from an outbound paying load or forwarded for a return paying load, subject to Note 1.</p> <p>NOTE 1.—Highway carriers must determine before accepting shipment that said containers were moved filled and are being returned by the same carrier or carriers to consignor of the filled containers; or that containers shipped for return paying load will, when filled, move by the same carrier or carriers to the consignor of the original empty containers.</p> <p>EXCEPTION.—Rates in this tariff do not apply to transportation of:</p> <p>(a) Fresh or green fruits, fresh or green vegetables, or mushrooms, as described herein, when the point of destination of the shipment is a cannery, packing plant, packing shed, precooling plant, winery or processing plant; nor to the empty containers used or shipped out for use in connection with such transportation.</p> <p>(b) Citrus fruits when the point of destination of the shipment is within the Los Angeles Drayage Area, as referred to in Item No. 30 series; nor to the empty containers used or shipped out for use in connection with such transportation.</p> <p>(c) Sugar beets when the point of destination of the shipment is a beet sugar factory or a railroad loading dump.</p>
50	<p style="text-align: center;">SHIPMENTS TO BE RATED SEPARATELY</p> <p>Each shipment shall be rated separately. Shipments shall not be consolidated nor combined by the carrier. Component parts of split pickup or split delivery shipments, as defined in Item No. 11 series, may be combined under the provisions of Items Nos. 170 and 180 series.</p>
60-A Cancels 60	<p style="text-align: center;">GROSS WEIGHT</p> <p>Charges shall be assessed on the gross weight of the shipment, including container icing, if any. No allowance shall be made for the weight of containers.</p>
65	<p style="text-align: center;">UNITS OF MEASUREMENT IN QUOTATION OF RATES AND CHARGES</p> <p>Rates or accessorial charges shall not be quoted or assessed by carriers based upon a unit of measurement different from that in which the minimum rates and charges in this tariff are stated.</p>
* Change, Decision No. <b>44866</b>	
EFFECTIVE NOVEMBER 1, 1950	
<p style="text-align: center;">Issued by the Public Utilities Commission of the State of California, San Francisco, California.</p> <p>Correction No. 106</p>	