

ORIGINAL

Decision No. 50539

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 Carriers
 and City Carriers Pertaining to the
 Transportation of Fresh or Green
 Fruits and Vegetables and Related
 Items (Commodities for which Rates
 are Provided in Highway Carriers'
 Tariff No. 8).

Case No. 5438
 (Petition No. 2)

Oroville A. Schulenberg and Willard S.
 Johnson, by Willard S. Johnson, for
 petitioner.
 Bertram S. Silver and Edward M. Berol,
 by Bertram S. Silver, and Robert D.
 Boynton, for Truck Owners' Association
 of California, protestant.
M. J. Gagnon, for the Commission's staff.

O P I N I O N

Minimum rates, rules and regulations for the transportation of fresh fruits and vegetables are set forth in Highway Carriers' Tariff No. 8. By this petition Arthur Samuels, a merchant, requests amendment of that tariff so as to exempt from its provisions the transportation of cull potatoes, not fit for human consumption.¹

A public hearing was held at Stockton on May 25, 1954, before Examiner Carter R. Bishop. Subsequently thereto, statements of position were filed by the parties and the matter is now ready for decision.

¹ Specifically, petitioner requests the amendment of Item No. 40 series of the tariff by the addition of "Cull potatoes, not fit for human consumption".

Petitioner testified that he is engaged in buying and selling of burlap bags in Stockton and that, during the potato marketing season, he also buys and sells potatoes, principally culls. The culls are purchased from growers located almost entirely in the Delta producing area and are sold for feed to farmers and other persons engaged in the raising of livestock. In 1953 the points of destination ranged in distance up to 250 miles from Stockton. The transportation in question is from the potato sheds located in the fields of growth, or adjacent thereto, to the feed lots of petitioner's customers.

At the hearing counsel for petitioner stated that it is the position of the latter that the transportation here in issue is already exempt from the provisions of the aforementioned minimum rate tariff. The basis for this contention, counsel said, was that such transportation involves the movement of cull potatoes to points of destination where they are processed by chopping or by chopping and blending with other materials, which points of destination assertedly constitute processing plants, as that term is used in the exception contained in Item No. 40 series of the tariff in question.² According to counsel petitioner was informed by the Commission's staff in December 1953 that it was the informal view of the latter that the transportation in question was not exempt from the minimum rates.

Prior to the issuance of the above-mentioned informal opinion, petitioner stated, the carriers whom he employed to transport the cull potatoes charged less than the minimum rates applicable

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The exception in Item No. 40 series of Highway Carriers' Tariff No.8 provides, in part, that the rates in that tariff do not apply to the transportation of fresh or green vegetables when the point of destination of the shipment is a cannery, packing plant, packing shed, precooling plant, winery or processing plant.

to fresh vegetables. It had been his understanding and that of the carriers, he said, that such transportation was not subject to minimum rates. Petitioner testified that since the issuance of the informal opinion and up to the time of the hearing in this matter he had made almost no intrastate shipments of cull potatoes, since the 1954 season for the grading of potatoes in the Delta region had not yet begun.³

According to the record, cull potatoes are those which fail to meet certain standards set by the Agricultural Code of the State of California and may not be used for human consumption. After separation from the marketable potatoes the culls may not be removed from the premises where the grading has been done until a disposal order has been secured from the county agricultural commissioner. The order identifies the location of the lot of culls to be moved, the point of destination, the number of sacks to be transported, the name of the trucker involved, and other pertinent information. An agricultural inspector goes to the point of shipment and makes sure that the actual amount transported agrees with the information shown on the disposal order.

Petitioner asserted that on arrival at the feed lot or other premises of the parties to whom he sells the potatoes the culls are chopped and mixed with hay, molasses, cottonseed or other materials for the purpose of building up the protein content of the mixture, which is subsequently fed to livestock. The chopping of the culls

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According to the witness the Delta potato grading season begins about July 15 and lasts through October. Some small lots, he said, may be forwarded in November and December.

may be done by machine or by hand, as with a shovel. The record shows that sometimes the chopped cull potatoes are fed to the livestock without being mixed with other ingredients.

Petitioner testified that during the 1953 season he purchased cull potatoes at prices ranging from 10 cents to 35 cents per 100 pounds and that he sold them at prices ranging from 25 cents to 50 cents per 100 pounds. The margin between purchase price and sale price was anywhere from 15 cents to 35 cents per 100 pounds. Out of this margin petitioner paid for the transportation from sorting shed to ranch or feed lot, the cost of sacks, the labor for loading the trucks, dispatching and telephone expense and, in some instances, unloading costs and sales commissions.⁴ The remainder constituted petitioner's profit. He asserted that if the carriers were to assess rates no lower than those prescribed as minimum for fresh vegetables his costs would exceed the margin between the purchase and sale prices.⁵ Under such circumstances, petitioner said, he would be compelled to give up the practice of buying and selling cull potatoes.

Petitioner alleged that the transportation characteristics of cull potatoes are substantially different from those of potatoes for human consumption. The latter, he stated, must be handled much more carefully than cull potatoes in order to prevent bruising, and the loads of potatoes for the market, in being made secure must be

⁴ According to the record petitioner in nearly all instances has to hire his own crew for loading the trucks.

⁵ One illustration among those cited by petitioner related to a shipment of cull potatoes which moved from Stockton to Bakersfield during the 1953 season. The purchase price of the culls was 15 cents per 100 pounds and the sale price 42½ cents per 100 pounds, leaving a margin of 27½ cents per 100 pounds. The minimum rate applicable between these points was 44 cents per 100 pounds, minimum weight 24,000 pounds.

tied to the middle, whereas this procedure is unnecessary with culls. Assertedly, these factors result in longer loading time for edible potatoes than for the culls. Petitioner also testified that sacks of edible potatoes may be stacked on carriers' equipment no more than four layers high whereas there is no such limitation with respect to the loading of cull potatoes.⁶

The witness also contrasted the selling prices of cull and edible potatoes, respectively. As mentioned above, the record indicates that in the 1953 season petitioner sold culls at prices ranging from 25 cents to 50 cents per 100 pounds. Edible potatoes during the same season, he said, were sold at prices ranging from \$1.90 to \$3.75 per 100 pounds. He asserted that the prices at which he was able to sell the culls depended upon the availability and prices of other types of cattle feed.

According to petitioner there were very few instances during the 1953 season when he was unable to obtain transportation at the rates he was able to pay, and the same carriers were employed by him for more than one haul.

The secretary-treasurer of the San Joaquin Farm Bureau testified in support of petitioner on behalf of the Bureau and of the California Farm Bureau Federation. This witness stated that those organizations favored the cull potatoes being made available to the livestock men, so long as the operation was economically feasible. He said that increasing the dumping of cull potatoes at the packing sheds would, from the standpoint of the members of the Bureau, be

⁶ According to applicant his shipments of cull potatoes in 1953 moved in full truckloads of from 400 to 475 sacks each. The weight per sack varied from 95 to 100 pounds.

undesirable. It would be satisfactory to the Bureau, he stated, if the Commission were to establish lower minimum rates on cull potatoes than those now applicable generally to fresh vegetables. Additional testimony to the same effect was given by an employee of Zuckerman Mandeville, Inc., a company engaged in the growing of potatoes in the Stockton area. This witness was also acting secretary of the Delta Potato Growers' Association.

The Truck Owners Association of California protested the granting of the petition. Its transportation engineer testified to the effect that the Association opposes any addition to the list of commodities which are exempt from the minimum rates. The Association believes that all for-hire carriage subject to the Commission's jurisdiction should be covered by the minimum rate orders. The witness said that if, considering the usual factors, including costs, lower reasonable minimum rates were established on cull potatoes the Association would not necessarily object. He asserted that the exemption sought herein would, through the force of carrier competition drive rates down to noncompensatory levels, with destructive effects on the industry. Also, the witness alleged that the granting of the exemption might lead to enforcement problems.

Protestant produced two carrier witnesses. One of these had transported shipments of cull potatoes for petitioner in 1953 and the other had been tendered a shipment by petitioner but had turned it down because the revenue therefrom, at the rate petitioner was willing to pay, would have been insufficient. Both witnesses stated that they thought the establishment of reasonable minimum rates for cull potatoes would be preferable to total exemption.

The first issue raised for determination in this phase of Case No. 5438 is whether the transportation of cull potatoes, not fit for human consumption, from fields of growth and packing sheds to livestock ranches and feed lots, where the cull potatoes are chopped, or chopped and mixed with other ingredients, for livestock feeding purposes, is exempt from the provisions of Highway Carriers' Tariff No. 8, under the terms of the "Exception" set forth in Item No. 40 series of that tariff. The question resolves itself into whether the points of destination of such cull potatoes are processing plants as that term is used in the exception in question. The tariff does not contain a definition of the term "processing plant". It is our conclusion that the mere fact that cull potatoes are chopped, or chopped and mixed with other ingredients, at a livestock ranch or feed lot does not constitute such livestock ranch or feed lot as a "processing plant", as that term is used in the "Exception" in Item No. 40 of Highway Carriers' Tariff No. 8.

The second issue raised for determination is whether or not the transportation of cull potatoes, not fit for human consumption, should be exempted from the provisions of Highway Carriers' Tariff No. 8. Petitioner makes his case principally on the fact that the margin between the purchase and sale prices of the cull potatoes is so small that the assessment of the established minimum rates for the transportation of the potatoes will result in petitioner's operations being conducted at a loss. As a consequence, petitioner alleges, he will be forced to give up the buying and selling of cull potatoes, the potato growers will be forced to dump larger quantities of culls, and livestock feeders will be deprived of a valuable source of cattle feed.

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Petitioner produced no carrier witnesses. No evidence was adduced relative to the costs of performing the transportation here in issue. He failed to show that reasonably efficient highway carriers would be able to operate profitably at rates on cull potatoes lower than those prescribed as minimum. However, the showing made is sufficient to support the conclusion that the transportation characteristics of cull potatoes are different from, and to some extent more favorable than those of edible potatoes. The record is insufficient, however, for a determination of just, reasonable and nondiscriminatory rates on cull potatoes. The Commission's Transportation Division staff, therefore, will be directed to make a study of the transportation of the commodity in question. The exemption sought herein will be temporarily authorized, pending the outcome of the staff study. To protect the integrity of the transportation of edible potatoes, the exemption will be subject to the condition that each shipping document covering the movement of cull potatoes, not fit for human consumption, shall show thereon the number and date of the disposal order issued in connection with such shipment under the provisions of the Agricultural Code of the State of California.

Upon careful consideration of all the evidence we are of the opinion and hereby find that, pending further order of the Commission, Highway Carriers' Tariff No. 8 should be so amended as to provide that the minimum rates, rules, and regulations set forth therein shall not apply to the transportation of cull potatoes, not fit for human consumption.

Revised

O R D E R

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

IT IS HEREBY ORDERED that Highway Carriers' Tariff No. 8 (Appendix "C" to Decision No. 33977 as amended) be and it is hereby further amended by incorporating therein, to become effective October 5, 1954, Eighth Revised Page No. 8 cancels Seventh Revised Page No. 8.

In all other respects Decision No. 33977, as amended, shall remain in full force and effect.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14th day of September, 1954.

John E. Fixler
 President

James J. Cresswell

Lawrence Latta

Gene Higgins

 Commissioners

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
*40-F Cancels 40-E	<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 style="padding-left: 40px;">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> <p>#(d) Cull potatoes, not fit for human consumption (See Note 2).</p> <p>NOTE 2.—This exemption shall apply only when the shipping documents covering the shipments of cull potatoes, not fit for human consumption, show reference, by number and date, to the disposal orders issued in connection with such shipments under the provisions of the Agricultural Code of the State of California.</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 # Addition	Decision No. 50539
EFFECTIVE OCTOBER 5, 1951	
<p style="text-align: center;">Issued by the Public Utilities Commission of the State of California, San Francisco, California.</p> <p>Correction No. 154</p>	