

ORIGINALDecision No. 59289

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 L. V. Abbott (Ace City Delivery) and)
 225 other applicants, to publish)
 classification exception ratings on)
 various commodities.)

Application No. 40351
 (As Amended)

O P I N I O N

By this application, as amended, some 226 common carriers of property seek authority to publish and file in their tariffs exception ratings on numerous commodities higher than those presently in force and effect.

Public hearings were held in the application and a proposed report was issued by Examiner J. E. Thompson on April 17, 1959. Exceptions were filed by Carnation Company, Continental Can Co., Inc., Crispie Potato Chip Company, Fibreboard Paper Products Corp., B. F. McDonald Company and Sears Roebuck and Co. Reply to exceptions was filed by applicants July 6, 1959, at which time the matter was taken under submission.

As stated in the proposed report, the instant application, as amended, stems from the deliberations of the California Trucking Associations, Inc. following decisions by the Commission canceling cube foot rules in common carrier tariffs, and of exception ratings authorized Southern California Freight Lines. The examiner recommended that the exception ratings sought herein be granted in full in some instances, be granted in part in others, and be denied in other instances.

A few of the protestants took exception to each and every finding and conclusion proposed by the examiner to the effect that applicants have shown any of the increased ratings to be justified. Others took exception only to recommended findings and conclusions concerning certain of the ratings being sought.

The arguments and contentions of protestants regarding the showing made generally by applicants is discussed in the proposed report. The recital by the examiner of the evidence presented by the parties is a fair statement of the facts. While the showing made by applicants with respect to some of their proposals is inadequate, it is sufficient in other instances to show that some of the increased ratings are justified. Said exceptions to all recommended findings that increases are justified are denied.

A contention, not mentioned in the proposed report, was made by one of the protestants that exception ratings which are higher than classification ratings, in the absence of special or unusual conditions, are prima facie unreasonable. It is stated that exception ratings do not provide a proper solution to the "light and bulky problem" and, that if the present rates or ratings of the articles are too low, the ratings in the classification itself should be changed.

The Commission, in the establishment of minimum rates, adopted and approved the ratings in the Western Classification to govern said rates. As a practical matter, common carriers in most instances adopted the minimum rate structure in their tariffs for two reasons; (1) in order to be competitive with other carriers, and (2) in order to avoid charging rates lower in volume or effect than the minimum rates in violation of the Commission's order. The Western Classification, therefore, became the classification governing the common carrier rates on intrastate traffic. The ratings in

the Western Classification are determined by officials and representatives of the major western railroads. Applicants have no voice in determining ratings in the Western Classification. They may not effect any changes of ratings in the Classification either individually or collectively. If, individually or collectively, they desire to maintain some ratings different from those established by other carriers, as a practical matter, the only way it can be accomplished is through the publication of exception ratings.

Some protestants contend that the publication of exception ratings by applicants is merely a prelude to the establishment of such ratings as minimum reasonable ratings for all carriers. It was stated that in Geo. H. Dumas, Agent (J. P. Hackler, successor), Decision No. 58265 dated April 14, 1959, the Commission held that uniformity of classification is desirable. Protestants are apprehensive if the sought exception ratings are granted herein and the railroads are granted the same authority in Application No. 40562 of Pacific Southcoast Freight Bureau, now pending, that, under the "uniformity principle" allegedly held in the Dumas decision, the ratings will become the minimum ratings for all carriers.

Applicants are common carriers. They are required to assess rates no greater than maximum reasonable rates. There is no provision in the Public Utilities Code which prohibits common carriers from maintaining rates greater than minimum reasonable rates. A rating is but a part of a rate. If a carrier desires, with respect to all points which it serves, to increase its rates on a particular commodity without increasing the rates of other commodities, the practical method of accomplishing the result is to increase the rating of the commodity. It is generally recognized that there is a zone of

reasonableness of rates. Except when the Commission finds that the public interest requires the prescription of uniform rates to be observed by all common carriers, a carrier has a right to determine its rates, or ratings, so long as those rates are reasonable, are not lower than the rates of its competitors, are not unjustly discriminatory or unduly preferential, or in any way violate any other provisions of the Public Utilities Code. The Commission has not prescribed the ratings in the Western Classification as uniform ratings to be observed by all common carriers. The evidence of record herein will not support a finding that the public interest requires that the rates or ratings of all common carriers be uniform. In the absence of such a finding, the Commission may not prohibit the applicants from charging rates higher than competing carriers just as it may not prohibit common carriers from meeting the rates of competing forms of land transportation.

Contentions were made that the proposed ratings are unjustly discriminatory in that for shipments of certain weight the charges to or from points outside the State would be lower than the charges applicable on such shipments between two points within the State for a like distance. The proposed report relates the differences in the rate structures maintained generally by interstate carriers and by intrastate carriers. The type of discrimination prohibited by law is that which involves a single carrier, or a group of carriers operating under joint rates or through routes, serving all of the points involved in the alleged discrimination. Few, if any, of the applicants serve, either individually or under joint rates or through routes with other carriers, the points where the alleged discrimination occurs. In any event, authorization to increase its rates does not absolve a carrier from the statutory prohibitions against unjust discrimination or undue prejudice.

Protestants also contend that because the applicants did not offer evidence of the transportation characteristics of the articles other than density and value they did not sustain the burden of presenting an adequate showing. There are some twenty eight recognized elements of classification. To require applicants to present evidence with respect to each element, such as whether or not tin cans are perishable or explosive, would serve no useful purpose. Applicants have the burden of presenting evidence to justify their proposals. Where they do not present evidence respecting certain elements or transportation characteristics of articles, for the purpose of deciding the application, the Commission will consider that those elements or transportation characteristics are highly favorable on the presumption that applicants would have presented evidence or would have directed attention to any unfavorable transportation characteristics of the article involved.

We shall now proceed to the exceptions to the recommended findings of fact respecting individual commodities.

Crispie Potato Chip takes exception to the recommended finding that the proposed ratings on potato chips are reasonable to the extent that they would be applicable on potato chips in hermetically sealed metal cans, in cases. The record shows that the data offered by applicants did not cover potato chips in hermetically sealed cans. The exception is well taken and will be granted.

B. F. McDonald takes exception to the following recommended finding,

"Shells or the outside protection parts of the hat are often shipped separately nested, forty shells per carton, with a density of 2.87 pounds per cubic foot."

The record shows that the density of shells, separated from their linings, thirty shells, nested solid, per carton is 7.44 pounds

per cubic foot; and when shipped forty shells per carton, nested solid, is 9.92 pounds per cubic foot. A review of the record discloses that applicants in their presentation did not provide separate data for hats, flat, folded flat or nested solid, and hats, not nested or folded flat. Applicants proposal does not involve an increase in the rating of hats, not flat, folded flat or nested solid, less carload. The present carload ratings of the above articles is the same as that for millinery goods, N.O.I.B.N. Applicants have not made a showing regarding hats, flat, folded flat or nested solid. We find that the proposed ratings have not been shown to be justified.

Carnation Company and Continental Can Company take exception to the recommended findings and conclusions regarding metal containers (tin cans). The statistical data offered by applicants covered only tin cans, not nested, in less-than-carload shipments. As was stated in the proposed report, ordinarily carload shipments of tin cans move by railroad or by highway permit carrier so that few of the applicants have been tendered tin cans in volume or carload shipments. With respect to the proposed less-than-carload ratings on tin cans, nested, applicants made no showing and therefore have not justified their proposal.

In the case of tin cans, not nested, less-than-carload, the record supports the examiner's recommended denial of authority to cancel the so-called "liberalized packing rule" in connection with the application of the ratings on metal containers. With the application of the liberalized packing rule, the ratings proposed by applicants are the same as those presently in effect except in connection with cans, barrels and drums, new or used, exceeding 15 gallons capacity. Upon consideration, we are of the opinion and find that the following increased ratings on metal containers, cans, barrels and drums, new or used, not nested, less-than-carload have been shown

to be justified:

Liquid Capacity Exceeding 15 gallons.
Sides made wholly of 16 gauge
or thicker sheet: - 1st Class

Sides in thinnest part not thinner
than 19 nor thicker than 17 gauge:-1½ Class

In connection with the carload ratings, we find that the evidence does not fully support the ratings recommended by the examiner. While the evidence shows that the present ratings are below maximum reasonable ratings for the transportation by applicant of metal containers, it is not sufficient to justify the recommended increases. Tin cans have a wide range of densities, depending upon size and whether or not lids are included in the shipment. From the evidence as a whole in this application it appears that the density of carload shipments of tin cans will seldom exceed ten pounds per cubic foot. It is highly improbable that the equipment of applicants can be laden with 30,000 pounds of tin cans. Keeping in mind that tin cans have a very low value and are important to the agricultural economy of this State, and further, that applicants have not presented evidence of the transportation characteristics other than density of these articles, we find that a carload rating of 4th Class, minimum weight 20,000 pounds is not greater than a maximum reasonable rating for the transportation by applicants of metal containers, and that the increases resulting from the establishment by applicant of such rating are justified.

Sears Roebuck and Co. takes exception to the recommended findings concerning several articles. It is contended that the recommended ratings in some instances are fictitious, for example, the recommended ratings for brooms are 1st Class, less carload, 3rd Class, carload minimum weight 18,000 pounds. Under the rate scales established December 8, 1958, by Decision No. 37545, the charges at

the 3rd Class rate subject to a minimum weight of 20,000 pounds are lower in most instances than the charges resulting from 18,000 pounds at the 3rd Class rate. This is not at all unusual and results from the rate structure which contains rate scales for Any Quantity and for minimum weight of 2,000 pounds, 4,000 pounds, 10,000 pounds and 20,000 pounds. In every instance the lower rate at a greater minimum weight breaks back into the immediately preceding rate scale. The breakback point is not constant; it varies with the rates for each distance and changes whenever there is a change in the rates. The same thing holds regarding the breakback of the carload rates into the less carload rates.⁽¹⁾

(1) The following table compares the breakback points of the 3rd Class rates, minimum weight 20,000 pounds for several distances under rates prescribed December 8, 1958, by Decision No. 57545 and under rates effective November 13, 1959, by Decision No. 59090. It also shows the lowest weight to which the carload rates of 3rd Class, minimum weight 18,000 pounds have application on shipments rated 1st Class, less carload.

Distance	Lower Limit of Range of Application of 3rd Class Rate, Minimum Weight 20,000 pounds		Breakback of 3rd Class Carload, Minimum Weight 18,000 pounds to 1st Class Less than Carload Shipments	
	Dec. 57545	Dec. 59090	Dec. 57545	Dec. 59090
Construc- tive Miles				
10	10,589 lbs.	10,858 lbs.	4,865 lbs.*	5,067 lbs.*
300	17,143 lbs.	17,174 lbs.	13,806 lbs.*	13,740 lbs.*
600	18,129 lbs.	18,143 lbs.	14,463 lbs.*	14,400 lbs.*

*3rd Class Rate on Minimum Weight 20,000 pounds.

In the proposed report the examiner stated,

"For the purpose of determining the maximum reasonable ratings for service performed by applicants herein, we shall consider the amount of freight that can be loaded into carrier's equipment between 2,000 and 2,400 cubic feet capacity and the revenue of a truckload that a highway carrier could expect on 34,000 pounds at the fifth class rate. From that initial consideration the other transportation characteristics will be weighed."

Sears states that many of the applicants are now using 40-foot "High-Cube" semitrailers with a capacity of 2,875 cubic feet, which is only 821 cubic feet less than a standard rail boxcar. It contends that the minimum weights and ratings should reflect the capacity of this equipment. The railroads operate many boxcars larger than the standard boxcar. Under Rule 34 of the Western Classification, greater minimum weights are provided when the shipper orders cars of greater than standard size for the transportation of almost all of the articles involved herein. Applicants are not subject to Rule 34, nor since the cancellation by the Commission of the "cube-foot rules" have they maintained any rule in connection with light and bulky freight. The exception is denied.

Sears also points out that there are several instances where the recommended minimum weight at the carload rate produces higher charges than those accruing from 34,000 pounds at the Fifth Class Rate. The illustrations given were for distances of over 45 miles but not over 50 miles. In all but one instance, 34,000 pounds at the Fifth Class Rate provides over \$20 more revenue than the recommended ratings for transportation between Los Angeles and San Francisco (equivalent to rate for 325-350 constructive miles). As pointed out hereinabove^{2/} and also in the proposed report, there is a wide variance in the relationship of rates for the various minimum

(2) See Footnote 1, supra.

weights among the mileage brackets. Overall, there is no inconsistency between the examiner's statement and his recommended carload ratings. The exception is denied.

Sears takes exception to the recommended findings and conclusions regarding Filters, Air, as described in Item 38230 of the Western Classification. Applicants presented evidence showing the average density of the articles to be 1.5 pounds per cubic foot. Sears computed the densities of air filters from dimensions and weights shown in its catalogue. The catalogue shows the shipping weight of six furnace filters, each with dimensions in inches of 16 x 25 x 1, is twelve pounds. The shipping weight shown for six furnace filters, each with dimensions in inches of 20 x 25 x 1, is twelve pounds. The catalogue shows both sizes to be the same product. The former is 80 per cent of the size of the latter, yet the shipping weights are purported to be the same. The shipping weights shown in the catalogue are for use by the customers to compute approximate shipping charges. Upon consideration of the facts, the density computations offered by Sears cannot be given great weight. The exception is denied.

Sears took exception to the recommended findings concerning Games or Toys, as described in Item 44890 of the Western Classification, and declares that the examiner's conclusion is ultra vires. The description proposed by applicants is "Games or Toys, Plastic, NOIBN." The examiner, by a process of reasoning set forth in the proposed report, concluded that the proposal should be construed as intended to apply to "Games or Toys, NOIBN, other than flexible synthetic plastic and other than pneumatic." It is incumbent upon the applicants to set forth their proposals and to explain any

apparent conflict in the proposals. In this respect the exception taken has merit. Upon an examination of the record, however, it is clear that the showing made by applicants was confined to plastic games or toys, other than flexible synthetic plastic and other than pneumatic. While explaining Exhibit No. 1, applicants' witness stated that the 187 observations made for data on density and the 15 inquiries made for data respecting value covered principally models and hobby kits. Articles included in the observation were other than flexible and other than pneumatic. We find that the applicants have made a sufficient showing to justify the recommended rating on games or toys, plastic, other than flexible synthetic plastic and other than pneumatic. In all other respects an adequate showing has not been made.

Sears also took exception to the recommended findings and conclusions concerning the ratings on dolls and on lamps. We have considered the evidence and find that the record supports the recommended findings and conclusions respecting those articles.

Except as provided hereinabove, the findings of fact and conclusions of law recommended in the proposed report are adopted and approved as the findings and conclusions of the Commission in this proceeding.

O R D E R

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

IT IS ORDERED:

1. That applicants, and each of them, are authorized to establish classification ratings and minimum weights resulting in increases on the commodities designated in Appendix A attached hereto, and by this reference made a part hereof, no greater in volume or effect than the classification ratings and minimum weights set forth for

said commodities in said Appendix A.

2. That applicants, in establishing the classification ratings and minimum weights authorized hereinabove, are authorized to depart from the provisions of Article XII, Section 21, of the Constitution of the State of California, and Section 460 of the Public Utilities Code, to the extent necessary to continue the long- and short-haul departures now maintained under outstanding authorizations; and that such outstanding authorizations are modified only to the extent necessary to establish the classification ratings and minimum weights authorized herein.

3. That the authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

4. That in all other respects Application No. 40351, as amended, is denied.

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

Dated at San Francisco, California, this 24th day of November, 1959.

Ernest W. Fogarty
 President

Walter E. ...

Walter ...

E. ... Fox

Theodore ...
 Commissioners

APPENDIX A
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Classification Ratings and Carload Minimum Weights authorized L. V. Abbott, et al. in Application No. 40351.

The schedule is in two parts. Part I lists the items sought which are granted in full. The descriptions, the ratings and the minimum weights authorized are as proposed in Exhibit B of Application No. 40351. Part II sets forth the items sought which are granted in part.

Page numbers indicate the page of Exhibit B where the proposed items are set forth and the WC Item Number refers to the first such number shown in Exhibit B opposite the description of the articles involved.

PART I

The following lists the proposed items in Exhibit B to Application No. 40351 for which authority is granted to establish ratings, minimum weights and description as proposed.

Exhibit B, Reference

<u>Page</u> <u>No.</u>	<u>WC</u> <u>Item No.</u>	<u>Key Word Description</u>
1	4730	Aircraft honeycomb cases
1	4760	Airplane blisters
1	4940	Airplane seats
1	7920	Swimming pools
1	8160	Automobile bumpers
1	8700	Auto fenders
1	8840	Auto luggage carriers
2	9750	Crackers
2	9750	Pretzels
2	10540	Baskets or hangers - canvas
3	11490	Boats
3 & 4	14550	Fireboard boxes and cans
4	14532	Wooden boxes
4	15744	Mop heads
4	15750	Mops
5	16130	Culverts
5	17090	Canopies
5	18120	Ventilator tops
5	18130	Ventilators
6	19280	Burial cases
6	20810	Shipping carriers
6	21161	Reels, shipping
6	21520	Cellulose wadding
6	29370	Conduits, flexible rubber

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<u>Page No.</u>	<u>WC Item No.</u>	<u>Key Word Description</u>
6	29470	Stovepipe elbows
7	77790	Plastic pipe or tubing
9	30940	Cork, granulated
9	30960	Cork, pipe or tank covering
9	31200	Cotton lintens
9	32200	Manzanita plants
10	40020	Forms, puffed
10	40600	Popped corn
10	41490	Frames, picture
11	44390	Cot frames
11	44430	Chair frames
11	44790	Dolls
11	45130	Toy furniture, bamboo
12	46390	Lamp chimneys
12	46530	Lamp globes or shades
12	48300	Hair
13	55600	Airplane passenger stairways
13	55770	Lamp shades
13	55900	Lamps, electric, gas or oil
13	55930	Lamps, fluorescent
13	56750	Life preservers
13	65630	Sewing machine cabinets
14	74740	Paintings or pictures
14	75580	Rice paper
14	78790	Pocketbooks or purses
14	84440	Tire tubes, inflated
15	85620	Garbage cans
15	86370	Road traffic signals
15	77670	Signs, plastic
15	86930	Soap paper
15	87570	Adding machine stands
15	88070	Steel wool and soap
16	89020	Hot water tanks
16	89100	Tanks, iron or steel
16	91070	Paint applicators
16	92290	Trunks or traveling bags
16	92790	Golf club bag carts
16	92990	Nose trucks
16	94830	Vermiculite
17	19400	Grave vaults
18	75670	Shelf paper
18	77450	Pillows or cushions and cushion forms
19	80570	Racks
19	84280	Foam rubber
19	86430	Neon signs
19	86550	Signs, glass globe

APPENDIX A
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The following lists items shown in Exhibit B for which authority is granted to establish ratings no greater than those specified hereunder for the articles described herein. Underscored portions indicate where the authority granted differs from the authority sought.

Exhibit B, Reference

<u>Page No.</u>	<u>WC Item No.</u>	<u>Description of Article</u>	<u>LCL</u>	<u>Min. Wt.</u>	<u>CL</u>
1	9240	AUTOMOBILE PARTS or ACCESSORIES. Windshields or windows, curved or other than flat, in packages. <u>Not nested.</u>	<u>D1</u>	<u>10,000</u>	<u>1</u>
3	13120	BOILERS, FURNACES, RADIATORS, STOVES, RELATED ARTICLES or PARTS NAMED: Stoves or ranges, sheet iron or steel, charcoal or wood burning, portable or outdoor barbecue or patio kitchen stoves, without bowl-shaped braziers, with or without spit turning motors and other accessories, attachments or parts, <u>other than KD, bodies nested, or tops and bases separated, bases in tops, in packages</u>	<u>1½</u>	<u>16,000</u>	<u>2</u>
4	15660	BROOMS, BRUSHES OR MOPS, or PARTS NAMED: Brooms, NOIBN, handles attached, in packages	<u>1</u>	<u>18,000</u>	<u>3</u>
8	20660	CONTAINERS, SHEET IRON OR STEEL, or CARRIERS, SHIPPING, SHEET IRON or STEEL, SET UP (WITH or WITHOUT THEIR EQUIPMENT OF BAILS, HANDLES, COVERS, BUNGS or NOZZLES) subject to Western Classification Item 30561: Barrels, drums or kegs, NOIBN, shipping, new or old (used); boxes, NOIBN; cans or boxes, cracker, including those made partly of glass; cans, oil or tank wagon; cans, shop (shop kegs or shop barrels);			

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	<u>CL</u>	<u>LCL</u>
Exceeding 15 gallons, Liquid Capacity		
Sides, 16 gauge or thicker sheet, <u>Not Nested</u>		1
Sides, in thinnest part not thinner than 19 gauge nor thicker than 17 gauge sheet, <u>Not Nested</u>		1½
<u>All Sizes, Nested or Not Nested, with or without ends, Minimum Weight 20,000 pounds</u>	<u>4</u>	

<u>Pg. No.</u>	<u>WC Item No.</u>	<u>Description of Article</u>	<u>LCL</u>	<u>Min. Wt.</u>	<u>CL</u>
10	38230	FILTERS, air: Fibreboard; mineral wool, fibreboard and wire mesh or perforated metal combined; or wood fibre, cotton cloth and wire combined; in packages	<u>D1</u>	11,000	<u>1</u>
10	40650	POTATO CHIPS, <u>other than in hermetically sealed metal cans in cases</u>	D1	10,000	1
11	44890	GAMES or TOYS, subject to WC Item 44711: Games or toys, NOIBN, plastic, <u>other than flexible synthetic plastic; other than pneumatic</u> , in packages	1½	20,000	2

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<u>Page No.</u>	<u>WC Item No.</u>	<u>Description of Article</u>	<u>LCL</u>	<u>Min. Wt.</u>	<u>CL</u>
12	53410	INSULATING MATERIAL: Mineral wool (rock, slag or glass wool), plain or saturated, with or without binder, <u>batts</u> or blankets with or without <u>paper</u> backing or wrapping, including necessary paper for installation; or other than batts or blankets, <u>wrapped or in packages</u>	<u>1</u>	<u>18,000</u>	<u>3</u>
13	55590	LADDERS: E.S. 1155: Step ladders, metal wooden or wood and metal combined, folded in packages	(Maximum rating as (set forth in Western Classification.		
14	76230	PAPER ARTICLES: Cores or tubes, paper or pulpboard or compressed pulp with or without end reinforcement, without bottoms or tops, NOIBN, single thickness of wall less other 8% of inside diameter, not nested, in packages; also CL, loose	<u>D1</u>	10,000	<u>1</u>
15	88230	STRAWS, drinking, in boxes or cartons	<u>1½</u>	12,000	<u>2</u>
18	55910	LAMPS, electric, incandescent, including photoflash, in boxes or cartons	<u>1½</u>	12,000	<u>1</u>
19	84650	SCAFFOLDS, including builders' scaffolds: Aluminum or aluminum and wood combined; steel, or steel and wood combined, other than flat, folded flat or KD flat; loose or in packages	<u>D1</u>	<u>12,000</u>	<u>3</u>
19	92720	VEHICLES, OTHER THAN MOTOR: Carriages, gocarts, strollers, or sulkies, baby or doll, or vehicles, children's NOIBN, KD, KD flat, folded flat, collapsed or folded, with wheels attached or detached, in boxes, cartons or crates (axles may protrude)	<u>1</u>	<u>15,000</u>	<u>3</u>