

**ORIGINAL**

Decision No. 60034

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, and regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432  
Order Setting Hearing  
dated June 4, 1958;  
and  
Petition No. 148

OPINION AND ORDER DENYING PETITION TO SET ASIDE SUBMISSION

At issue herein is a request for the setting aside of submission of, and for further hearings on, the above matters. Involved in said matters are revisions which members of the Commission's staff and others have proposed be made in the rates, rules and regulations in Minimum Rate Tariff No. 2 that apply to the transportation of canned goods and related articles, and dried fruit. Hearings on the proposals were held before Examiner C. S. Abernathy at San Francisco on August 24 and 25, October 19, 20 and 21, November 19, 20, 23 and 24, and December 16 and 17, 1959.

At the hearing on December 16, 1959, counsel for the Evaporated Milk Association (an association whose membership includes the Pet Milk Company, the Borden Company, Foremost Dairies, Inc., Carnation Companies and various other producers of evaporated milk throughout the nation) moved for continuance of the hearings

to March 31, 1960, to permit the development and presentation of evidence pertaining specifically to the cost of transporting canned evaporated milk. This motion was denied. Subsequently, the matters were taken under submission for decision.

By petition filed January 22, 1960, the Evaporated Milk Association again requested an opportunity to submit evidence relative to the costs of transporting canned evaporated milk. To that end the Association, together with Carnation Company, asks that the foregoing submission be set aside and the matters be reopened for the taking of additional evidence. The petition avers that canned evaporated milk moves in substantial volume (that approximately 5 million cases were produced and marketed within California during 1958); that the record is devoid of evidence regarding the costs of this transportation; that such cost data as were submitted relative to the costs of transporting canned goods generally between the Los Angeles and San Francisco Territories show costs of 54.6 and 44.7 cents per 100 pounds under hand and power loading conditions, respectively; that preliminary studies which have since been made of the costs of transporting canned evaporated milk from Gustine to the Los Angeles Territory show costs of 33.6 cents per 100 pounds;<sup>1</sup> that the establishment of rates for the transportation of canned evaporated milk on the costs of record will result in

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<sup>1</sup> The Gustine area is a principal center for the production of canned evaporated milk.

rates that are unduly prejudicial to petitioners and unlawful;<sup>2</sup> that petitioners are ready to proceed with the preparation and presentation of relevant and material cost evidence pertaining to the transportation of canned evaporated milk, and that without such cost evidence there is nothing on which the Commission can base an order for reasonable minimum rates for evaporated milk.

In seeking to have submission of the foregoing matters set aside, petitioners obviously are proposing an action that is more far-reaching in scope than their interest in the matters justifies. Although the transportation of canned evaporated milk may involve, as is stated, the movement of a substantial quantity of freight, said transportation is only a segment of the total volume of canned goods that moves. The reasons which petitioners advance in support of their proposals are reasons which apply primarily to the movement of their products, rather than to the transportation of canned goods generally. Such reasons do not justify the reopening of these matters in all of the multiple aspects pertaining to canned goods.

It is evident that what petitioners are seeking essentially is the establishment of minimum rate provisions for the transportation of canned evaporated milk which are apart from those that are otherwise proposed for canned goods. In a sense, what petitioners seek goes beyond the purposes of these phases of Case No. 5432, since their proposals involve consideration of whether a differentiation may properly be made, and should be made, between rates for canned evaporated milk on the one hand, and rates for other canned goods on the other hand.

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<sup>2</sup> Under present tariff rules, the rates which would apply for the transportation of canned goods from the San Francisco territory to the Los Angeles territory would also apply from Gustine to the Los Angeles territory.

In the circumstances it is concluded that petitioners' request for the setting aside of submission of these matters should be denied. Should petitioners wish to prosecute their proposals further, a preferable action, it appears, would be that initiated by appropriate petition. Therefore,

Good cause appearing,

IT IS HEREBY ORDERED that the Petition to Set Aside Submission which was filed in this proceeding on January 22, 1960, by the Evaporated Milk Association and by Carnation Company be, and it hereby is, denied.

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

Dated at San Francisco, California, this 3<sup>rd</sup> day of May, 1960

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Theodore J. Turner  
Commissioners