

ORIGINAL

63751

Decision No. \_\_\_\_\_

## 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 car- )  
 riers 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 October 24, 1961)

Richard Cunha, for Clark Trucking Service, Inc.;  
J. P. Hartman, for Hartman Bros.; Harold Shifflet,  
 for Shifflet Bros.; G. H. Hamel, for G. H. Hamel  
 and Son; Robert Hooker and Roy E. Lay, for  
 themselves; respondents.  
Vaughan, Paul & Lyons, by John G. Lyons, for Pacific  
 Vegetable Oil Corporation and Ranchers Cotton Oil;  
Richard E. Lloyd, for Pacific Vegetable Oil  
 Corporation; Wm. M. Larimore, for Ranchers Cotton  
 Oil; Leo M. Norris, for Anderson, Clayton & Co.;  
L. H. Stewart, for J. G. Boswell Co. and  
 California Cotton Oil Corp.; Tom Kanady, for  
 J. G. Boswell Co.; Lyman L. Carlock, for Cargill,  
 Inc.; Ralph Hubbard, for California Farm Bureau  
 Federation; J. C. Kaspar, A. D. Poe, and  
J. Quintrall, for California Trucking  
 Associations, Inc.; James H. McJunkin, for  
 Sacramento-Yolo Port District, interested  
 parties.  
M. J. Gagnon, for the Commission's staff.

## O P I N I O N

Public hearing was held at San Francisco before Examiner  
 J. E. Thompson on January 10 and 11, 1962, on which latter date the  
 matter was submitted.

On August 14, 1961, there was distributed to interested  
 parties a report prepared by the Commission's Transportation  
 Division suggesting that Item No. 41 of Minimum Rate Tariff No. 2,  
 relating to exemptions of field seeds and safflower seed, may not

indicate clearly the Commission's intentions as stated in the decisions which established the exemption of those commodities from minimum rates in Minimum Rate Tariff No. 2. On October 24, 1961, the Commission issued an order setting hearing for the purpose of receiving evidence relating to the said report and to the questions therein raised concerning the extent to which field seeds and safflower seed currently are, or should be, exempted from the provisions of Minimum Rate Tariff No. 2.

The staff's report was received in evidence at the hearing. An associate transportation rate expert of the Commission's staff and a traffic consultant experienced in the construction of tariffs gave their opinion concerning the construction and interpretation that should be given to Item 41. A number of respondents testified regarding the manner in which safflower seed is transported and concerning the going rates for such transportation.

The issues herein arose from the application of rates to safflower ovules when they are transported to a destination for manufacturing or processing and are not seeds which are to be sold or used for sowing. One question is whether, under such conditions, safflower ovules are field seeds and therefore exempt from the minimum rates. A second question is whether the Commission intended by its Decision No. 44413 dated June 20, 1950, in Case No. 4808 to exempt safflower ovules when transported for manufacturing or processing. A third question is whether, regardless of our findings on the previous questions, safflower ovules and other articles listed in Item 41 when transported for manufacturing or processing should be exempt from the minimum rates. Depending upon our findings in connection with the above, the Commission's order contemplates the possibility of another determination of "whether further investigation by the staff or other

parties may be required." We will consider the issues in sequence.

Are the articles listed in Item 41, when not intended to be sown, within the meaning of the term "field seed"?

Webster<sup>1/</sup> does not define the term "field seed". All of the parties at the hearing were asked by the presiding officer whether the term "field seed" has usage or any special connotation in agriculture, transportation or industry. Those present at the hearing included a representative of the farming interests, highway carriers, traffic and transportation experts, buyers of safflower and cotton seed, and manufacturers of oils derived from safflower, cotton seed, and other products of agriculture. No person present was aware of any usage of that term other than the fact that it appears in Item 41. It is clear, therefore, that the term "field seed" has no special meaning other than that which is conveyed by the words comprising the term.

From the definitions given for the word "seed", it would appear that a seed is an object which is intended to be sown. The word "field" conveys the meaning of an area of untimbered or clear enclosed land and the definitions provided by Webster so indicate. Perhaps the meaning relevant to the issue here is found in the definition of the term "field crop" which according to Webster is:

A crop (as hay, grain or cotton) grown for agricultural purposes covering a large area but excluding fruits, vegetables and ornamental plants.

It seems reasonably clear, that the term "field seeds" as used in Item 41 means seeds which are to be sown or used in the planting of field crops. It is to be noted that other provisions

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<sup>1/</sup> Webster's Third New International Dictionary, 1961 Edition, G & C Merriam Co.

of Minimum Rate Tariff No. 2 corroborate said construction. Popcorn is listed in Item 41 as a field seed, an article exempt from the minimum rates prescribed in the tariff, yet Item 652 (List 1) of the same tariff provides that popcorn, not popped, in bulk in bags, is a grain and is subject to the same rates as are barley, oats, rye and wheat. Item 360 of the tariff provides exception ratings, and therefore minimum rates, on popcorn, not popped.

While the above appears to be the proper construction to be given Item 41, it is not the only interpretation that has been given by persons reasonably well informed. Several highway carriers testified that they had applied rates based upon the minimum rates applicable to the transportation of grain on truckload shipments of safflower seed.<sup>2/</sup> They stated that there are a number of carriers charging rates far lower than the ones they have been charging. There appeared to be no question in the minds of the shippers appearing in the proceeding that shipments of safflower seed to manufacturers are exempt from the minimum rates. The associate transportation rate expert testified that there has been a lack of uniform interpretation and understanding of the tariff items. The traffic consultant stated that in his opinion the words are uncertain.

It is readily apparent from the record that there is no term, such as cereal or grain, which will distinguish safflower seeds that are to be planted from those which are to be processed for manufacture; in this respect it is similar to cotton seed in that there is no term or word which distinguishes the ovule which is selected for planting and that which is suitable only for other

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<sup>2/</sup> The only rates contained in Minimum Rate Tariff No. 2 which might be applicable to such movements are the rates for articles rated 4th Class L.C.L., Class C minimum weight 30,000 pounds.

uses. While one can recognize a difference between corn and seed corn, popcorn and popcorn seed, soy beans and soy bean seed, the same is not true concerning safflower seed. We find that the term "field seeds, viz. ..." as set forth in Item 41 of Minimum Rate Tariff No. 2 is ambiguous.

What was the intention of the Commission?

On August 28, 1937, the Commission instituted Case No. 4246, an investigation for the purposes of establishing minimum rates on any and all commodities. On September 1, 1937, a notice addressed to "All Interested Parties" set forth that hearing in that investigation was set for September 23, 1937, and that while the scope of the proceeding was broad enough to include all commodities, the Commission did not desire evidence at that time relating to the transportation of agricultural products (unmanufactured) including livestock. In its Decision No. 31606, dated December 27, 1938, in that proceeding the Commission stated:

"Those commodities as to which evidence was excluded should, of course, be exempted from the application of this order.

"Fruit pits, brewers rice, rice, rice screenings, unmanufactured and unprocessed dried fruit and other unmanufactured products of agriculture which can be named specifically from the information available, (29) will be exempted from the application of the orders herein for the reason that the establishment of rates for those commodities is being considered by the Commission in a separate investigation proceeding (Case No. 4293).

"(29): No suggested commodity list was submitted with the request for exemption by name of all unmanufactured products of agriculture, hence it is impossible to determine definitely what commodities were sought to be excluded by the proponent of this request."

Thus, the order exempted field seed, cotton seed, cotton, grain and other named agricultural products from the rates specified therein. The Commission had previously established minimum rates in separate orders for the transportation of a number of agricultural products, including, but not limited to, grain, hay and pears. Therefore, it is reasonably apparent that if the Commission had had knowledge at the time of any movement of the unmanufactured products of the cultivation of safflower, it would have specifically exempted it from the provisions of Minimum Rate Tariff No. 2.

On February 14, 1938, the Commission issued its Decision No. 30640 in Case No. 4088, Part F, and Case No. 4118, establishing minimum rates for the transportation of grain and related articles as listed in Pacific Freight Tariff Bureau's Tariff No. 240-B. The commodities listed cover a wide range, including, among others, barley, wheat, cowpeas, sorghum seed, sunflower seed, sweet clover seed and vetch seed. By Decision No. 32609, dated December 5, 1939, in Cases Nos. 4246 and 4293, the Commission incorporated into Minimum Rate Tariff No. 2 many of the minimum rates theretofore established by separate orders. The grain rates were among those so transferred without any change into the tariff. This created a situation where the tariff exempted field seeds but also provided rates on the seeds specified in the grain listings.

On January 16, 1940, the Commission issued Decision No. 32743 in which it undertook to clarify the situation by setting forth with particularity what type of field seeds were to be exempt. This was done by compiling the names of all seeds listed as agricultural seeds in the Federal Seed Act, U. S. Statutes 1939, Chapter 615, approved August 9, 1939 (now U.S. Code Title 7,

Section 1561 (7)A); eliminating those for which minimum rates had theretofore been established, such as cowpeas, vetch seed, etc.; and adding some, such as fenugreek, which were not listed in the Federal Seed Act but were suggested by parties at the hearing. Safflower was not listed in the federal statute nor was it suggested by any party that it be included in the list of exempted articles. It must be kept in mind, however, that those decisions preceded any known cultivation of safflower in California. Subsequent to 1940 safflower has become a very important crop in this State. The Commission, by Decision No. 32743, cannot be said to have established minimum rates for the transportation of safflower seed in that it attempted only to clarify the tariff so as not to exempt from the provisions thereof commodities on which minimum rates theretofore had been established.

On June 1, 1950, Oil Seed Products Co. petitioned the Commission to exempt safflower seed from the minimum rates. By Decision No. 44413, dated June 20, 1950, the Commission included safflower seed in the list of articles described as field seeds. That action by the Commission cannot be construed as establishing minimum rates for the transportation of safflower seed when delivered for manufacturing or processing. ✓

Should safflower seed and other field seeds be exempt?

There is nothing in this record concerning the conditions under which field seeds, other than safflower seeds, are transported.

The evidence shows that safflower seed ordinarily is transported from the place of harvest by motor vehicles to plants that are engaged in the manufacturing of vegetable oils. That movement has become a substantial one. The carriers engaged in such transportation usually are those which are also engaged in the transportation of grain and rice in bulk. The vehicles used are those regularly used in transporting the latter commodities. During the harvest season when the demand for transportation is high, the carriers assess rates based upon the minimum rates established for the transportation of grain. During the times of the year when the movement is not as great, carriers ordinarily charge lower rates. Several respondents testified that stabilization of rates is necessary. They stated that the grain rates are fair and reasonable for the transportation of safflower seed.

Shippers stated that the competitive conditions are such that the establishment of minimum rates would result in safflower being unable to compete with other commodities used in the manufacture of vegetable oils. It was testified also that agricultural products grown in Arizona and other neighboring states can be brought into California at prices competitive with California products for use in making vegetable oils.

The evidence herein does not reveal any special reason why minimum rates should not be established for the transportation of safflower seed. The competitive conditions described by the shippers prevail in connection with many agricultural commodities on which minimum rates have been established. As indicated above,



the reason why minimum rates have not been established for the transportation of that commodity is that evidence concerning the transportation of unmanufactured and unprocessed agricultural commodities was excluded from the original proceedings from which Minimum Rate Tariff No. 2 was promulgated, and minimum rates for the transportation of unmanufactured agricultural commodities have been prescribed on separate records concerning specifically named commodities, of which safflower seed was not one.

The scope of this proceeding does not require a finding of whether minimum rates should be established and we do not consider this record to be sufficiently comprehensive to warrant making such a determination at this time. We find only that the evidence herein fails to show any good cause why the Commission should not establish minimum rates for such transportation if and when it receives sufficient evidence upon which just, reasonable and nondiscriminatory minimum rates can be determined.

What Action Should be Taken?

A motion was made by California Trucking Associations, Inc., that the Commission set aside the submission of this proceeding, broaden the scope of the order setting hearing so as to include the receiving of evidence from which reasonable minimum rates can be determined, and direct the Commission's staff to prepare studies to be introduced at further hearings herein. The motion was opposed by the shippers.

An order directing the staff to proceed to develop field data and analyses of the costs, transportation conditions and competitive situations regarding the transportation of safflower seed would result in delaying or setting aside other work already pending. Under those circumstances such order will not be made. The staff will, however, provide assistance, to the extent that it is able to do so, to any party and is instructed to develop data concerning the transportation of safflower seed when it is able to do so.

No good cause would be served by keeping this proceeding open. All of the issues set forth in the Order Setting Hearing dated October 24, 1961, have been determined. If and when any party is prepared to present evidence on the matter of establishing minimum rates for the transportation of safflower seed or other commodities, it may initiate proceedings by an appropriate pleading.

We find that Item 41 of Minimum Rate Tariff No. 2 should be amended so as to be consistent with the findings herein in the following respects:

1. Safflower seed should be listed separately and not included in the listing presently designated as field seeds.
2. The term "seeds, field" should be removed and the exemption presently so designated should be changed to "seeds, to be sown or planted."
3. A reference should be made to the minimum rates established for popcorn, other than popcorn seed, in note 6 to said Item 41.

We further find that, except for the ovules of safflower and popcorn, the ovules of the other articles listed under the present heading of "Field Seed" in said Item 41 are seldom, if ever, used other than for seed purposes so that further clarification is unnecessary.

O R D E R

The Commission, on October 24, 1961, having ordered hearing in this proceeding, said hearing having been held, and all of the issues set forth in said order having been determined,

IT IS ORDERED that:

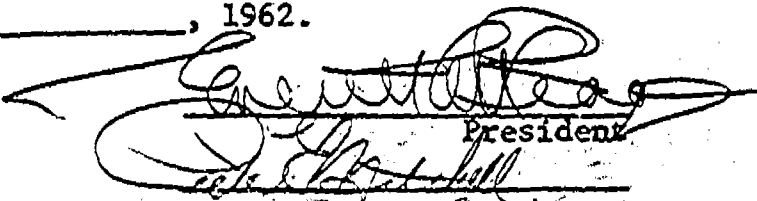

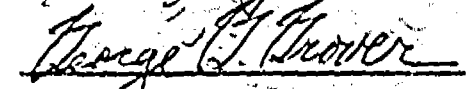

1. Minimum Rate Tariff No. 2 (Appendix D of Decision No. 31606, as amended) is further amended by incorporating therein to become effective July 14, 1962, Thirty-second Revised Page 15, which revised page is attached hereto and by this reference made a part hereof.

2. To the extent that the foregoing order requires changes in the tariff publications of common carriers, such publications may be made effective not earlier than the tenth day after the effective date of this order, to become effective on not less than ten days' notice to the Commission and to the public, and shall be made effective not later than July 14, 1962.

3. In all other respects said Decision No. 31606, as amended, shall remain in full force and effect and proceedings initiated by the Order Setting Hearing dated October 24, 1961, are discontinued.

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

Dated at San Francisco, California, this 28th day of MAY, 1962.

  
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President  
  
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\_\_\_\_\_  
  
\_\_\_\_\_  
Commissioners

Cancels

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)		
	<p style="text-align: center;">APPLICATION OF TARIFF - COMMODITIES (Concluded)</p> <p style="text-align: center;">(Items Nos. 40 and 41)</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <p>Sea Shells, crushed, ground, powdered or disintegrated (Subject to Note 5),</p> <p>Seed, cotton,</p> <p>Seed, safflower,</p> <p>*Seeds to be sown or planted, subject to Note 6,</p> <p>Shell Marl, crushed, ground, or powdered,</p> <p>Shells, walnut,</p> <p>Shipments weighing 100 pounds or less when delivered from retail stores or retail warehouses where the property has been sold at retail by a retail merchant, or when returned to the original retail store shipper via the carrier which handled the outbound movement (Subject to Note 3),</p> <p>Shipments weighing 10 pounds or less when transported by carriers which operate no vehicles exceeding a licensed weight of 4,000 pounds (Subject to Note 12),</p> <p>Sulphur,</p> </td> <td style="vertical-align: top; width: 50%;"> <p>United States mail transported for the Post Office Department under contract,</p> <p>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 Minimum Rate Tariff No. 4-A, and used property as described therein of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services,</p> <p>Vegetables, fresh or green (not cold pack nor frozen),</p> <p>Vegetables, dried, viz.:</p> <p>Beans (except Mesquite),</p> <p>Lentils,</p> <p>Onions,</p> <p>Peas (except Cow Peas),</p> <p>Pepper Pods,</p> <p>Voting Booths, Ballot Boxes, Election Tents and Election Supplies, when transported from or to polling places.</p> </td> </tr> </table> <p style="margin-top: 20px;">*42</p> <p>NOTE 1.-Includes only used empty carriers which are returning from an outbound paying load of traffic for which rates are not provided in this tariff, or which are being forwarded for a return paying load of traffic for which rates are not provided in this tariff (Subject to Rule No. 180 of the Exception Sheet).</p> <p>NOTE 2.-Exemption applies only when commodities flagged subject to this note are shipped in milk shipping cans, in bottles in cases or crates, or in bulk in tanks.</p> <p>NOTE 3.-Exemption applies only when the distance between point of origin and destination does not exceed 35 miles, computed in accordance with the provisions of Item No. 100.</p> <p>NOTE 4.-Exemption applies only as to dried fruit in the natural state and which has not been cleaned, washed, stemmed or otherwise prepared or partially prepared for human consumption.</p> <p>NOTE 5.-Exemption does not apply to sea shells as described in Item No. 653.</p>	<p>Sea Shells, crushed, ground, powdered or disintegrated (Subject to Note 5),</p> <p>Seed, cotton,</p> <p>Seed, safflower,</p> <p>*Seeds to be sown or planted, subject to Note 6,</p> <p>Shell Marl, crushed, ground, or powdered,</p> <p>Shells, walnut,</p> <p>Shipments weighing 100 pounds or less when delivered from retail stores or retail warehouses where the property has been sold at retail by a retail merchant, or when returned to the original retail store shipper via the carrier which handled the outbound movement (Subject to Note 3),</p> <p>Shipments weighing 10 pounds or less when transported by carriers which operate no vehicles exceeding a licensed weight of 4,000 pounds (Subject to Note 12),</p> <p>Sulphur,</p>	<p>United States mail transported for the Post Office Department under contract,</p> <p>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 Minimum Rate Tariff No. 4-A, and used property as described therein of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services,</p> <p>Vegetables, fresh or green (not cold pack nor frozen),</p> <p>Vegetables, dried, viz.:</p> <p>Beans (except Mesquite),</p> <p>Lentils,</p> <p>Onions,</p> <p>Peas (except Cow Peas),</p> <p>Pepper Pods,</p> <p>Voting Booths, Ballot Boxes, Election Tents and Election Supplies, when transported from or to polling places.</p>
<p>Sea Shells, crushed, ground, powdered or disintegrated (Subject to Note 5),</p> <p>Seed, cotton,</p> <p>Seed, safflower,</p> <p>*Seeds to be sown or planted, subject to Note 6,</p> <p>Shell Marl, crushed, ground, or powdered,</p> <p>Shells, walnut,</p> <p>Shipments weighing 100 pounds or less when delivered from retail stores or retail warehouses where the property has been sold at retail by a retail merchant, or when returned to the original retail store shipper via the carrier which handled the outbound movement (Subject to Note 3),</p> <p>Shipments weighing 10 pounds or less when transported by carriers which operate no vehicles exceeding a licensed weight of 4,000 pounds (Subject to Note 12),</p> <p>Sulphur,</p>	<p>United States mail transported for the Post Office Department under contract,</p> <p>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 Minimum Rate Tariff No. 4-A, and used property as described therein of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services,</p> <p>Vegetables, fresh or green (not cold pack nor frozen),</p> <p>Vegetables, dried, viz.:</p> <p>Beans (except Mesquite),</p> <p>Lentils,</p> <p>Onions,</p> <p>Peas (except Cow Peas),</p> <p>Pepper Pods,</p> <p>Voting Booths, Ballot Boxes, Election Tents and Election Supplies, when transported from or to polling places.</p>		

\*NOTE 6.-Exemption applies only to seeds to be sown or planted, viz.:

Adzuki,	Fenugreek,	Popcorn#(1),
Alfalfa,	Fescue grass,	Proso,
Bahia grass,	Foxtail, meadow,	Redtop,
Bean, field, horse,	Guar,	Reed canary grass,
lima, mat or mung,	Guinea grass,	Rescue grass,
Beet, field or sugar,	Harding grass,	Rhodes grass,
Bentgrass,	Kudzu,	Ryegrass,
Bermuda grass,	Lespedeza,	**
Bluegrass,	Lupine,	Sainfein,
Bluestem,	Medic, black,	Sand dropseed,
Brone, bunch or	Molasses grass,	Sesbania,
smooth,	Mustard (except	Soybean,
Carpet grass,	wild mustard),	Sudan grass,
Chick pea (garbanzo),	Napier grass,	Sweet vernalgrass,
Clover (except sweet	Oatgrass, tall,	Timothy,
clover),	Orchard grass,	Velvet bean,
Creeping bent,	Pea, Austrian win-	Velvet bent,
Dallis grass,	ter, Canadian	Velvet grass,
Dog's-tail, crested,	field, Tangier or	Wheatgrass, crested
Doliches,	wedge,	or slender.

NOTE 8.-Exemption will not apply to transportation for which rates are provided in Items Nos. 315 and 605.

NOTE 11.-Exemption applies only to transportation between points within a radius of 25 miles of the intersection of 1st and Main Streets, Los Angeles, said mileage to be computed in accordance with the provisions of Item No. 100.

NOTE 12.-Exemption applies only to transportation between points located within the Los Angeles Basin Territory as described in Item No. 270.

NOTE 13.-Exemption expires with March 4, 1963.

#(1) See Items 360 and 652 for rates on popcorn other than popcorn seed.

* Change	}	Decision No. <b>63751</b>
** Safflower eliminated, listed separately		
# Addition		

EFFECTIVE JULY 14, 1962

Issued by the Public Utilities Commission of the State of California,  
San Francisco, California.  
Correction No. 1229