

ORIGINAL

Decision No. 64002

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 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

In the Matter of the Investigation into)
the rates, rules, regulations, charges,)
allowances and practices of all common)
carriers, highway carriers and city)
carriers relating to the transportation)
of fresh or green fruits and vegetables)
and related items (commodities for)
which rates are provided in Minimum Rate)
Tariff No. 8).

Case No. 5438

SUPPLEMENTAL OPINION AND ORDER

On June 15, 1962, there was sent to interested parties for study and comment a report prepared by the Commission's Transportation Division Rate Branch staff. The report proposed tariff amendments applicable to minimum rates for the statewide transportation of nuts, in the shell, and field shelled nuts. The parties were informed by transmittal letter that, in the absence of objection or request for public hearing, consideration may be given to the issuance of an ex parte order revising the tariffs in accordance with the staff recommendations.

Written comments have been received from California Almond Growers Exchange, Diamond Walnut Growers, Inc., California Farm Bureau Federation, California Trucking Associations, Inc., Sierra Distributing, Ltd., a carrier, and William C. McNeill, a grower.

As shown in the staff report, Item No. 360 of Minimum Rate Tariff No. 2 names exception ratings of fourth class, minimum weight 20,000 pounds and fifth class, minimum weight 30,000 pounds for Nuts, edible, shelled, plain, salted, or sweetened. An exception rating of fourth class, less carload, is provided for Nuts, shelled (nut meats), dry, including salted or sweetened nut meats in Item No. 473 of Exception Sheet No. 1-S. Item No. 70960 of the Western Classification names a less-carload rating of third class and a fifth class rating, minimum weight 36,000 pounds for Nut meats, spoiled or wormy, unfit for human consumption, in bags, barrels or boxes.

Under the exemption provisions of Item No. 40 of Minimum Rate Tariff No. 2, the rates contained therein do not apply to the transportation of "NUTS, edible, in the shell." The transportation of nuts, edible, in the shell, has historically been subject to the aforementioned exemption provisions of Minimum Rate Tariff No. 2. In other words, the Commission has never established minimum rates applicable to edible nuts in the shell.

Until recently, processing of almonds at or in the vicinity of the point of growth has been generally restricted to hulling. Thereafter, the unshelled hulled almonds were transported to a processing plant for shelling, cleaning, grading and packaging for ultimate preparation for market. Under recent technological improvements in the processing of almonds, the almonds, in addition to being hulled at or near the point of growth, are frequently rough field shelled. The rough field shelled almonds, with or without removal of broken shells, dirt, residue, or foreign material, are not sufficiently processed to be transported directly to market for sale. They must first be transported to a processing plant for final processing and preparation for marketing. The fact that the almonds are rough

shelled in or near the field, however, removes them technically from the exemption provisions of Minimum Rate Tariff No. 2. The field shelling of nuts has thus made the initial movement to the processing plant currently subject to the minimum class rates.

The staff reports that the fact that the changed method of preliminarily processing the almonds in the field has removed the rate exemption formerly applicable to the initial movement of almonds from the point of growth has caused considerable concern among producers, processors and carriers. Many of the parties have expressed the view that the agricultural exemption in question should not be removed merely because of this improvement in agricultural technique.

The tariff amendments recommended in the staff exhibit would establish minimum rates for the transportation of nuts, in the shell or field shelled, at the level applicable to fresh fruits and vegetables as set forth in Minimum Rate Tariff No. 8; exempt from the application of minimum rates initial movements of nuts, in the shell or field shelled; and retain the class rates in Minimum Rate Tariff No. 2 for shelled nuts (other than field shelled).

No request for public hearing has been received. In its written response to the staff report, California Trucking Associations, Inc., states that it is opposed to continuation or broadening of any exemptions from the minimum rate orders, and therefore is opposed to the staff proposal as a matter of policy. However, based on its understanding that the entire subject of Minimum Rate Tariff No. 8 will be subject to formal review by the Commission in the early future and that the proposed action on nuts is designed to meet the exigency of the imminent harvest, California Trucking Associations, Inc., states that it has no objection to an interim ex parte decision by the Commission to meet the current harvest needs pending a complete review of the subject in the general investigation.

The written response from Diamond Walnut Growers, Inc., a grower-owned cooperative marketing association, sets forth certain interpretations of the suggested tariff revisions as they would apply to the movement of in-shell walnuts, and proposes that certain rates based on minimum weights of 36,000 and 40,000 pounds be made applicable to the movement of nuts in the shell. The response of this organization states that, if its interpretations are correct and if consideration is given to establishing rates on the higher minimum weights, it is willing to join with the California Almond Growers Exchange in requesting that the proposed change be made at the earliest possible date in order to meet the harvest deadline.

All of the other responding parties support the staff recommendations without qualification, and urge their early adoption by the Commission. California Farm Bureau Federation states that the inclusion of the staff proposal in the tariff will solve the problems that are now confronting the growers of almonds and will eliminate the extreme hardships that would be placed on the growers if the change is not made effective prior to the 1962 season. California Almond Growers Exchange states that the adoption of the staff's proposal would alleviate the confusion and hardship now existing. The other responses similarly urge that an ex parte order be issued on the basis of the conclusions and recommendations as outlined in the staff report. All of the responses recognize the necessity for prompt disposition in preparation for the 1962 almond harvest which will commence in August.

C. 5432, 5438 - dd**

The staff's report and the written replies thereto are received in evidence as exhibits in Case No. 5438 and received in evidence in Case No. 5432 by reference.¹

The interpretations and suggestions of Diamond Walnut Growers, Inc., are matters requiring further consideration. The interpretations set forth in its letter may be essentially correct, although precise determinations would depend upon some facts not supplied. The suggested establishment of rates based upon higher minimum weights would require notice to interested parties and the development of necessary factual evidence.

Further formal review by the Commission of the provisions of Minimum Rate Tariff No. 8 will be held as soon as feasible. Staff studies are in progress. Pending further review it is concluded that some modification of the tariffs as they apply to nuts are required at the earliest possible date in order to meet the current harvest deadline.

Upon consideration of the evidence in these proceedings, the Commission finds that the modifications in the minimum rate tariffs as proposed in staff Ex Parte Exhibit No. 2 are reasonable, and that the resulting minimum rates and charges will be just, reasonable and nondiscriminatory minimum rates and charges for the transportation of nuts, in the shell or field shelled. Minimum Rate Tariffs Nos. 2 and 8 will be revised accordingly. In order to avoid duplication in tariff distribution, Minimum Rate Tariff No. 2 will be amended by a separate order. This is a matter in which a public hearing is not necessary.

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The staff report is Ex Parte Exhibit No. 2 in Case No. 5438; the replies thereto, collectively, are Ex Parte Exhibit No. 3 in Case No. 5438.

Good cause appearing,

IT IS ORDERED that:

1. Minimum Rate Tariff No. 8 (Appendix "C" to Decision No. 33977, as amended) is hereby further amended by incorporating therein, to become effective August 25, 1962, Eighteenth Revised Page 8, which revised page is attached hereto and by this reference made a part hereof.

2. Tariff publications required to be made by common carriers as a result of the order herein may be made effective not earlier than the tenth day after the effective date of this order, on not less than ten days' notice to the Commission and to the public, and shall be made effective not later than August 25, 1962, and that the tariff publications which are authorized but not required to be made by common carriers as a result of the order herein may be made effective not earlier than the tenth day after the effective date of this order and may be made effective on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff page incorporated in this order.

3. Common carriers are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long-and-short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long-and-short-haul departures and to this order.

In all other respects said 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 24th day of July, 1962.

George G. Grover
President
Carl E. Ruppelli
[Signature]
[Signature]
Commissioners

Commissioner Frederick B. Holboff, being necessarily absent, did not participate in the disposition of this proceeding.

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
	<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> <ul style="list-style-type: none"> Fruits, fresh or green (not cold pack nor frozen); * Nuts, in the shell; * Nuts, field shelled, subject to Note 2(g); Vegetables, fresh or green (not cold pack nor frozen), including mushrooms, fresh; Containers, empty, second-hand, returning from an out-bound paying load, of commodities for which rates are provided herein or forwarded for a return paying load, of commodities for which rates are provided in this tariff, subject to Note 1. <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>ø(a) Fresh or green fruits, * nuts (in the shell or field shelled), fresh or green vegetables, or mushrooms, as described herein, when the point of destination of the shipment is a cannery, accumulation station, precooling plant, or winery; nor to the empty containers used or shipped out for use in connection with such transportation, subject to Note 2.</p> <p>ø40 (aa) Fresh or green fruits, fresh or green vegetables, or mushrooms, as described herein, moving to a cold storage plant to be held for interim storage for a subsequent movement to a cannery, subject to Notes 2 and 4.</p> <p>ø(b) Fresh or green fruits, * nuts (in the shell or field shelled), fresh or green vegetables or mushrooms, as described herein, when transported from the field or point of growth to a packing plant, cold storage plant, or a packing shed; nor to empty containers used or shipped out for use in connection with such transportation, subject to Notes 2 and 3.</p> <p>(c) Citrus fruits when the point of destination of the shipment is within the Los Angeles Drayage Area, as described in Minimum Rate Tariff No. 5; nor to the empty containers used or shipped out for use in connection with such transportation.</p> <p>(d) Sugar beets when the point of destination of the shipment is a beet sugar factory or a railroad loading dump.</p> <p>(e) Property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services.</p> <p>NOTE 2.--For the purpose of this item, the following definitions will apply:</p> <p>ø(a) Packing Shed or Packing Plant:--Facilities maintained for assembling, sorting, grading, * shelling, * hulling, or packing the commodity for shipment.</p> <p>(b) Precooling Plant:--Facilities maintained for the purpose of precooling commodities for shipment under refrigeration.</p>

(c) Cold Storage Plant:-Facilities maintained for the storage of commodities under refrigeration.

(d) Cannery:-Facilities maintained for the processing of commodities at which the commodities are canned, preserved, dried, frozen, pickled, brined, or otherwise processed into manufactured products.

(e) Winery:-Facilities maintained for the purpose of producing vinous liquors, including wine, champagne and brandy.

(f) Accumulation Station:-Yards or open areas maintained for the receiving of unprocessed commodities from the field, and accumulation and consolidation of such commodities for shipment to a cannery, winery, cold storage plant or precooling plant.

*(g) Field Shelled:-Rough shelled, with or without removal of broken shells, dirt, residue, or foreign material, and not cleaned nor further processed.

NOTE 3.-Except for the transportation of citrus fruits in field boxes or in bulk, carrots, avocados, or * nuts (in the shell or field shelled), exemption does not apply when the distance between point of origin and point of destination exceeds 50 constructive miles computed in accordance with the provisions of Item No. 110.

NOTE 4.-Exemption applies only when shipper certifies on the shipping document covering the transportation that the ultimate destination of the shipment is a cannery.

SHIPMENTS TO BE RATED SEPARATELY

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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, may be combined under the provisions of Items Nos. 170 and 180.

Change)
* Addition) Decision No. 64002

EFFECTIVE AUGUST 25, 1962

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 279