

ORIGINAL

65231

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 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
 Petition for Modification No.
 281
 (Filed November 21, 1962
 Amended December 18, 1962)

Hugh F. McReynolds, for Campbell Soup Company,
 petitioner.
R. D. Toll, J. X. Quintrall and A. D. Poe, for
 California Trucking Association,
 protestant.
John F. Specht, for the Commission staff.

O P I N I O N

This petition was heard and submitted before Examiner
 Thompson at San Francisco on February 14, 1963.^{1/}

Campbell Soup Company requests the Commission to include
 "soup ingredients (soup mix) consisting of dry vegetables and
 other ingredients, in cans, in packages", in the list of articles
 in Item No. 345 of Minimum Rate Tariff No. 2. California Trucking
 Association opposes the granting of this request.

^{1/} This petition was consolidated for hearing with Petition No.
 283 of Campbell Soup Company to accommodate the parties and
 witnesses. The petitions will be decided separately.

Item No. 345 provides exception ratings on certain food-stuffs for human consumption. The exception ratings are:

Less Carload	90% of 4
Minimum Weight 30,000 lbs.	5
Minimum Weight 36,000 lbs.	B
Minimum Weight 42,000 lbs.	C
Minimum Weight 45,000 lbs.	D (1)

(1) Not applicable to shipments which are subject to charges for temperature control service.

The present ratings on soup mix are:

Less Carload	4
Minimum Weight 36,000 lbs.	5

The evidence consists of the testimony of the traffic manager of Campbell Soup Company. Protestant and the staff participated in the proceeding but did not offer direct evidence.

Petitioner makes a wide variety of foodstuff products. One of its newer products is a soup mix marketed nationally under the brand name "Red Kettle" soup mix which is a mix of dry vegetables and other ingredients in cans in packages. The individual cans of soup mix weigh from 1-3/8 ounces to 2-3/8 ounces per can and are packed two cans to a package with 24 packages to a case. The values per pound of the soup mix are about double the values per pound of Campbell's condensed soups. The weight densities of the soup mixes are about half of those of the condensed soups. The weight densities of the petitioner's soup mixes range from 18 pounds to 25 pounds per cubic foot. The values per pound range from 51 cents to 84 cents; the unweighted average value per pound of the nine varieties of soup mix made by petitioner is 72 cents.

Red Kettle soup mix has been marketed for approximately one year. About 75 tons were shipped within California during the period July to October 1962. Approximately 31,000 tons of canned

goods were shipped by petitioner within California during the same period. Soup mixes are usually included in truckload shipments with canned goods; the component lots of soup mixes weigh up to 4,000 pounds.

Red Kettle soup mix contains the ingredients of soup in a dehydrated form. It is similar to dry soup mixes marketed under the brand names of "Lipton" and "Knorr" except that "Red Kettle" is packaged in a hermetically sealed can whereas the former are packaged in metal foil. The traffic manager stated that the Red Kettle soup mix is marketed to be competitive with Lipton, Knorr and other dry soup mixes. He said that he was unable to say whether it is competing with Campbell's condensed soups. Petitioner's proposal covers only dry soup mixes in cans.

Petitioner pointed out that dry soup mixes move by railroad at the carload commodity rates on canned goods subject to a minimum weight of 30,000 pounds within California and that motor carriers operating in interstate commerce or within other states have included dry soup mixes with articles taking commodity rates on foodstuffs or canned goods.

The traffic manager stated that a grocer had furnished him with the weights, dimensions and values of cases of powdered milk. He said that the data indicate that powdered milk has a weight density of from 6 pounds per cubic foot to 18 pounds per cubic foot, and that the values per pound are between 28 cents and 41 cents. Powdered milk is a foodstuff taking the exception ratings in Item No. 345.

Protestant urged the Commission to consider this petition in the light of certain standards and criteria announced by the Commission in Decision No. 61256 (Re Minimum Rate Tariff No. 2,

1960, 58 Cal. P.U.C. 353) and Decision No. 62135 (Case 5432, Pet. 213 of Durkee Famous Foods, 1961, unreported). The staff also suggested that the Commission apply those standards to the issue herein.

Decision No. 61256 was issued in a proceeding in which the rates, rules and regulations then in Minimum Rate Tariff No. 2 applicable to the transportation of "canned goods and other articles" were before the Commission for consideration. The Commission determined that with each addition of an "other article" to the list of commodities taking the canned goods ratings the primary identity of the group as canned goods becomes less distinct, and that if such additions continued unchecked the basic characteristics of the group would be submerged or substantially altered. The findings and order therein provided that the articles theretofore listed as "canned goods and other articles" should be regrouped. Those which were foodstuffs for human consumption and which were entirely packaged in metal cans or similar containers would be listed as "canned goods" and the ratings thereon would not be changed. Foodstuffs for human consumption theretofore listed as canned goods which were not in metal cans or similar containers, but which had similar transportation characteristics as canned goods, were listed as "Foodstuffs for human consumption" and given the same ratings as canned goods. Foodstuffs for human consumption, such as macaroni and cheese in combined packages, which had somewhat lighter densities than articles generally described as "canned goods" were included in a grouping of "groceries and grocers' supplies" which grouping was subject to higher ratings than canned goods. Some articles, such as coconut, were not included in any list and were either accorded specific

exception ratings which were higher than the ratings on canned goods or were made subject to ratings in the Western Classification.^{2/} Foodstuffs other than for human consumption, such as canned dog food, were included in other groupings.

Item No. 320 of Minimum Rate Tariff No. 2 is the list of articles described as canned goods. Item No. 345 contains the list of "Foodstuffs for human consumption". We will examine the list of articles for which carload ratings are prescribed in Item No. 345. Meats or fish, cooked, pickled or preserved, with or without cereal or other ingredients appear on the list. The same articles are listed in Item No. 320; the only difference in descriptions is that Item No. 320 specifies the articles must be in inner containers of earthenware, glass or metal cans, whereas in Item No. 345 the articles are to be in bulk or in inner containers other than those mentioned above. Meats or fish in bulk or in packages have similar transportation characteristics as meat or fish in cans.^{3/}

Milk (not malted), buttermilk (not casein), dry milk solids, powdered or flaked, or whey, condensed or powdered, also appear in Item No. 345. At the time minimum rates were first established on canned goods (Decision No. 30410 dated December 13, 1937 in Case No. 4088 (Part W)), the list of articles described as canned goods included "milk (not malted) dry or powdered". In Decision No. 32964 dated April 2, 1940 in Case No. 4246, the Commission clarified the application of the canned goods ratings

^{2/} By Petition No. 213 in Case No. 5432, Durkee Famous Foods requested that the ratings on canned goods be made once again applicable to coconut. That petition was denied by Decision No. 62135 dated June 13, 1961.

^{3/} The Commission made said finding in Decision No. 33559 dated October 1, 1940 in Case No. 4246.

by prescribing certain types of containers. In the case of powdered milk the ratings were made applicable to the articles in earthenware, glass or metal, in fibreboard containers or in bulk in packages in boxes or in multiwall paper bags. The decision also changed the description of the articles to dry milk solids in order to conform to the term used by the dairy industry and used in the Western Classification. By Decision No. 55368 dated August 7, 1957, in Case No. 5432 (Pet. 84), the Commission included whey in the canned goods listing after finding that, other than having a lower value, dried or condensed whey has the same transportation characteristics as its milk counterparts and that it competes directly with dried or condensed milk as an ingredient in various food products, such as bakery goods, cheese, ice cream, soups, candy, soft drinks, meat products and others.^{4/}

Sandwich spreads, including cheese spreads, and pizza pie mix with not less than 50 percent of the gross weight of the combined package in metal cans are listed in Item No. 345 and were placed in the canned goods listings by Decision No. 55368 mentioned above. The decision recites that cheese spreads are sold in glass and in fibre containers with densities ranging from 37 to 56 pounds per cubic foot and values per pound ranging from 23 to 48 cents. The pizza pie mix has part of its ingredients in a metal can and part in paper or foil in a combined package. The product has a density of 34 pounds per cubic foot and a value of 30 cents per pound. In Decision No. 61256 the Commission said that cheese spreads in fibreboard packages have similar transportation characteristics to cheese spreads in glass and that they, as well as

^{4/} The evidence therein showed that whey and dry milk solids both have densities of 39.2 pounds per cubic foot and that the value of whey was 10 cents per pound, whereas that of dry milk solids was 13 cents per pound.

pizza pie mix, have substantially similar transportation characteristics as canned goods generally.

The remaining listing in Item No. 345 includes spaghetti and cheese with sauce in combined packages with not less than 55 percent of the gross weight in metal cans. We need not refer to prior decisions in this matter because the record herein shows that petitioner's spaghetti dinner, which is included under the aforementioned listing, has a density of 40 pounds per cubic foot. The article was originally listed in the canned goods listing because its transportation characteristics are similar to those of canned goods generally and because spaghetti dinners compete directly with prepared spaghetti in cans which was then subject to the ratings on canned goods.

In Decision No. 61256 the Commission stated, in effect, that only those articles which are packaged in earthenware, glass or metal inner containers and which have densities and other transportation characteristics similar to those of canned goods generally should be included in the listing of canned goods in Item 320; and, where articles are similar to articles listed as canned goods and have the same or similar transportation characteristics as the latter but are not packaged as required in Item No. 320, they should be listed in Item No. 345 under the heading of "Foodstuffs for human consumption" and should be subject to the same ratings as canned goods.

With the above criteria and standards in mind, what are the circumstances concerning Red Kettle soup mix? First of all, it is not similar to, nor was it developed to compete directly with, any of the articles listed in Item No. 320, but it is similar to, and competes directly with, articles that are not subject to

either the present canned goods ratings or the proposed rating on Red Kettle soup mix. The competitive soup mixes are packaged in foil or paper. As pointed out by petitioner's traffic manager the principal reason for placing its soup mix in a can is to prolong its shelf life.

The values and densities of soup mix are not similar to those of canned goods generally. Petitioner compared its product with powdered milk in the retail grocery market. As pointed out in Decision No. 55368, mentioned above, the principal market for dry milk solids and whey is not the retail grocery trade and the preponderant movement thereof is in multiwall paper bags weighing 100 pounds or in other large containers.

In the proceedings culminating in Decision No. 61256, Kraft Foods pointed out that the density of its Kraft Dinners is greater than certain packs of dry milk solids. We said there, "the comparisons which Kraft Foods made of the densities of its dinners with the densities of the dry milk solids were directed principally to the lighter packs of the milk solids. Such comparisons do not provide a suitable basis for comparative evaluation of the rates for the dinners with the rates which are provided for the milk solids as a group." The same language is applicable herein with respect to petitioner's comparisons of Red Kettle soup mix with powdered milk.

The proposed ratings on soup mix have not been shown to be reasonable and the petition should be denied.

O R D E R

IT IS ORDERED that Petition No. 281 of Campbell Soup Company is denied.

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

Dated at San Francisco, California, this 16th day of APRIL, 1963.

George H. Grover
President
James E. Mitchell
Walter J. ...
Frederick B. Holoboff
William W. Bennett
Commissioners