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ORIGINAL

Decision No. 68582

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. 342)

Clifford J. Van Duker, for Corn Nuts, Inc.,
petitioner.
J. C. Kaspar, H. F. Kollmyer and A. D. Poe,
for California Trucking Association,
interested party.
J. C. Matson, for the Commission staff.

O P I N I O N

This matter was heard September 22, 1964 before Examiner Thompson at San Francisco and was submitted on the receipt of late-filed Exhibit No. 1 on September 25, 1964.

Corn Nuts, Inc., produces and markets for human consumption roasted corn kernels under the trade style of "Corn Nuts." It seeks the establishment of an any quantity rating of fourth class for said commodity. Corn nuts are presently subject to a rating of second class applicable to "Prepared Foods, NOI"^{1/} specified in Item No. 73200 in National Motor Freight Classification A-7 (NMFC A-7 Cal). California Trucking Association (CTA) opposes the petition herein and refers the Commission to its Decision No. 67610 in Case No. 5432, Petition 322 (Technibilt Corporation).

^{1/} NOI means not otherwise indexed.

For many years previous to December 29, 1963 "Roasted Corn" was subject to a rating of fourth class per Item No. 21810 of the Western Classification (W.C. 78). By Decision No. 66268 dated November 5, 1963 (California Trucking Assn. 61 Cal. P.U.C. 655) the Commission amended Minimum Rate Tariff No. 2 by making NMFC A-7 the governing classification to supersede W.C. 78. NMFC A-7 does not index "Roasted Corn" by name so that the applicable rating therein is set forth in Item No. 73000 for articles described as "Prepared Foods, NOI." The change in the governing classification, therefore, resulted in an increase in the minimum rates for the transportation of corn nuts. The petition states:

"In Decision 66268 the Commission found that carrier representatives were willing to make corrections where unintended increases were brought about by substitution of NMFC A-7 for CFC 23. There was no apparent intention on the part of the carriers in this case to raise rating on Corn Nuts and no evidence was placed in the record which would justify such an increase or any increase in California Intrastate rating.

"Wherefore, Petitioner requests that the Commission find that increase classification was not justified on intrastate traffic and take such action as the Commission deems necessary to restore 4th Class rating previously existing."

In Technibilt Corporation (Unreported, Decision No. 67610 dated July 28, 1964) involving a similar contention and argument the Commission held that an attack upon Decision No. 66268, which is and was at that time final, came too late and stated that as a matter of procedure the petitioner should first address a requested change in classification to the National Classification Board. If the argument in the petition were the sole grounds for the requested relief, the ruling in Technibilt Corporation would require a denial.

of this petition. There are circumstances in this matter, however, that differ from those in Technibilt which make such ruling inapplicable here. The circumstances are:

1. Petitioner communicated with the National Classification Board on January 24, 1964 and February 21, 1964, requesting a review of the rating applicable to Corn Nuts. By letters dated February 10, 1964 and February 27, 1964 from the Board, petitioner was informed that the Board believed that a second class rating is fair and reasonable for corn nuts.

2. The requests addressed by petitioner to the Board were not in accordance with the standard procedures established by the Board; however, it is readily apparent that the Board would not have arrived at the conclusion, namely the establishment of a fourth class rating, desired by petitioner, were such requests made in the proper form and docketed.

3. Petitioner's real grievance is not with any rating or ratings contained in NFMC A-7, but with ratings established by the Commission in Item No. 480 of its Exception Ratings Tariff No. 1.

The presentation made by petitioner at the hearing concerns the issue of whether a fourth class rating is a minimum reasonable rating for corn nuts when compared with the minimum ratings established by the Commission for articles having similar transportation characteristics and which are subject to the same transportation and marketing conditions. In the light of the circumstances stated above we will consider that issue.

Corn nuts are roasted corn kernels. The process used by the petitioner in the production of this article is to blanch kernels of white hominy corn and roast them in oil. They are not

"popped" or greatly expanded. The product is packaged in cellophane bags and with or without display cards is placed into shipping cases for marketing. The product is distributed by candy and tobacco wholesalers as well as potato chip companies. It is retailed in cellophane bags of three sizes: five cents, ten cents, and twenty-nine cents. The bags are usually displayed on racks or cards at stores, candy counters and other places where peanuts and other edible nuts, as well as candy, are sold in bags at prices of five cents, ten cents, and twenty-nine cents.

There are two major packs used by petitioner in shipping the product. One pack contains 16 cartons, each containing 24 five-cent bags of corn nuts. This pack weighs 30 pounds and is 1-2/3 cubic feet in dimension which results in a weight density of 18 pounds per cubic foot. The other major pack, called by petitioner its vending pack, contains 120 five-cent bags of corn nuts. It weighs ten pounds and is 0.4259 cubic foot in dimension resulting in a weight density of 22.9 pounds per cubic foot. The value of corn nuts is between 36 and 40 cents per pound. The carton of 24 five-cent bags is sold to the wholesaler for 75 cents and to the retailer for 85 cents. Corn nuts are marketed by petitioner on a delivered basis and it absorbs the freight cost for transportation from its plant at Oakland to the distributor. Almost all of its shipments are in less-than-truckload quantities.

Peanuts and other edible nuts, such as cashews, in cellophane bags are sold at stores and other places for five cents, ten cents, and other small amounts. Candy in bags is similarly sold. In the same manner as corn nuts, the aforementioned articles are often displayed on racks or cards. Corn nuts are often, if

not usually, displayed by the retailer alongside the aforementioned articles. The value and weight density of corn nuts are similar to those of edible nuts and candy in cellophane bags.

With respect to the application of minimum rates, a fourth class less-than-truckload rating is named in Item No. 480 of Exception Ratings Tariff No. 1 for, among other articles, candy or confectionery, chocolate, chocolate candy and confectionery including milk chocolate, chewing gum, nutmeats, including salted or sweetened nutmeats.

It should be noted that the aforementioned exception rating supersedes the following LTL ratings provided for in NMFC A-7:

Ratings in NMFC A-7

<u>Item No.</u>	<u>Article</u>	<u>LTL Rating</u>
141760 Sub 1	Nuts, edible (nutmeats)	1
141780 Sub 2	Raw Peanuts shelled	3
39970	Candy, including chocolate candy	2
40040	Chewing gum	2

We find that the minimum LTL rating established by the Commission for edible nuts, shelled (nutmeats), dry, including salted or sweetened nutmeats, is the just, reasonable and nondiscriminatory minimum rating for corn nuts.

"Corn Nuts" is a trade name. A description of the product is required which will distinguish it from breakfast cereal type products made from corn. A reasonable description is "roasted corn kernels, whole, not popped, dry, salted or not salted."

In view of the fact that the Commission has established a fourth class exception rating in Item No. 480 of Exception Ratings Tariff No. 1 on nuts, shelled (nutmeats), dry, including salted

or sweetened nutmeats, we conclude that Item No. 480 of Exception Ratings Tariff No. 1 should be amended to include therein, under articles taking an LTL fourth class exception rating, "roasted corn kernels, whole, not popped, dry, salted or not salted."

O R D E R

IT IS ORDERED that:

1. Exception Ratings Tariff No. 1 (Appendix A of Decision No. 66195, as amended) is further amended by incorporating therein, to become effective March 13, 1965, the revised pages attached hereto and by this reference made a part hereof, which pages are numbered as follows:

Fifth Revised Page 3
Second Revised Page 20.

2. Tariff publications authorized 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 pages incorporated in this order.

3. Common carriers, in establishing and maintaining the rates authorized hereinabove, 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.

4. In all other respects said Decision No. 66195 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 9th day of FEBRUARY, 1965.

Fredrick B. Hallock
President
George J. Hoover
William B. Dennis

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

INDEX OF COMMODITIES			
COMMODITIES	Item Number	COMMODITIES	Item Number
Bagging	100	Games and Toys	595
Bags	100	Gelatine	597
Bakery Goods	120	Gypsum	600
Ballasts, Fluorescent Lamp	130		
Baskets, berry and fruit	140		
Batteries, dry cell	150	Hops	620
Beverage Preparations	160	Household Goods	640,660
*Boxes, bottles or cans, pulpboard, paper or pulpboard	170		
Briquettes, wood	180	Ice (water)	680
Building Materials	840	Ice Cream	690
Canned Foodstuffs	220,221,240	Insecticides	700
Canned Goods	220,221,240	*Kernels, corn, roasted	480
Carriers, new	260	Ladders, Step	900
Carriers, old (used)	280	*Lime, air slaked	720
Carriers, used packages	300,320,321, 340	Magazines	740
Catalogues	740	Material, Roofing, Building or Paving	840
Cellulose film	390	Paints	760
Cereal and Cereal Products	360,361,380, 381	Paper or Paper Articles	170,180
Circulars	740	Partitions, not corrugated	785
Clothing, staple work	400	Paving Materials	840
Coffee, extract of	420	Periodicals	740
Compounds, buffing or polishing	200	Plastics, Synthetic	800, 810
Compounds, cleaning, scouring or washing	440	Preserved Foodstuffs	220,221,240
Compounds, paint, lacquer or varnish reducing, removing or thinning	760	Products, Cereal	360,361,380, 381
Compounds, tree and weed killing	460	Ranges, iron or steel	920
Confectionery	480	Returned Shipments	820
		Roofing Materials	840
Egg case or carrier fillers or flats	500	Sal-Soda	860
Explosives	520	Salt, common (Sodium Chloride)	880
		Sheets, synthetic plastic	810
Fertilizers	540,560,580	Shipments, returned	820
Fillers, egg case or carrier	500	Step Ladders	900
Film, cellulose	390	Stoves, iron or steel	920
Flats, egg case or carrier	500	Sugar	940
Floor Coverings	585,590		
Flowers, fresh, cut	592	Titanium Dioxide	950
Foodstuffs, canned or preserved	220,221,240	Varnishes	760
Fungicides	700	Wood Briquettes	180
		Wood, fuel	960

* Addition, Decision No. **68582**

EFFECTIVE MARCH 13, 1965

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.

Correction No. 20

Second Revised Page 20

Cancels

First Revised 20

EXCEPTION RATINGS TARIFF NO. 1

SECTION NO. 2 - RATINGS WHICH ARE EXCEPTIONS TO THE GC (Continued)		Item No.
ARTICLES	Rating	
	LTL	TL
Cellulose film, not printed (transparent sheets of not nitrated cellulose film such as commonly used for wrapping purposes) or cellulose film combined or coated with plastic other than cellulose, in rolls exceeding 8½ inches in diameter, or in sheets not further processed than cut to size, in boxes or crates, or in wrapped bundles or rolls.	4	390
Clothing, staple work, viz.: Dungarees, coveralls, overalls, breeches, pants, shirts or jackets (see Note 1) made of any one or any combination of the following fabrics made wholly of cotton: Denim Drills Flannels Corduroys Moleskins Jeans Chambrays Coverts Duck Whipcords Twill Cottonades Poplins NOTE 1.-Includes work jackets with blanket lining made of cotton and not to exceed 50 percent of wool shoddy.	3	400
Coffee, extract of (Condensed or Instant Coffee), dry -----	4	420
Compounds, cleaning, scouring or washing, not otherwise indexed by name in the GC -----	4	440
Compounds, Tree and Weed Killing, not otherwise indexed by name in the GC, in packages, minimum truckload weight 30,000 lbs. -----	4	E 460
Confectionery, viz.: Butter, cocoa, Candy or Confectionery, noibn (see Notes 1 and 2), Candy Fondant (Candy Filler), Confectionery Paste or Powder, noibn, or Icing Paste (see Note 3), Chocolate, Chocolate Candy and Confectionery, including Milk Chocolate, Coating, candy other than chocolate, Coating, chocolate, Coating, ice cream, Cocoa, Cough Candy Drops or Tablets, noibn, in barrels or boxes, Gum, chewing, Nuts, shelled (nut meats), dry, including salted or sweetened nut meats, Powder, icing, *Roasted Corn Kernels, whole, not popped, dry, salted or not salted.	4	480

NOTE 1.-Candy may contain not to exceed 10 per-
cent of yeast.

NOTE 2.-Rating also applies on Candy in toys made
wholly of glass or earthenware, except as the
closing device.

NOTE 3.-Rating applies on Candy Fondant (Candy
Filler), Confectionery Paste or Powder, such
as Glucose Paste or Powder or Marshmallow
Cream or Paste or Powder Preparations and
Icing Paste, but do not include Marshmallow
Candy or other finished Candy or Confectionery,
or Dessert Preparations.

Egg Case or Egg Carrier Fillers or Flats: Fibreboard, paper, pulpboard or strawboard, flat, folded flat, knocked down, or nested, in boxes, bundles, or in egg cases completely filled, in straight or mixed truckloads. Minimum weight 24,000 lbs.		5	500
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/ Change) * Addition) o Reduction)	Decision No. 68582
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Correction No. 21