

ORIGINALDecision No. 69591

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
for the purpose of considering and
determining revisions in or reissues
of Exception Ratings Tariff No. 1.

) Case No. 7858
) Petition for Modification
) No. 3
) (Filed May 11, 1965)

In the Matter of the Investigation into
the rates, rules and 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
) Petition for Modification
) No. 382
) (Filed May 11, 1965)

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 property in Los Angeles and Orange
Counties (transportation for which rates
are provided in Minimum Rate Tariff No. 5).

) Case No. 5435
) Petition for Modification
) No. 64
) (Filed May 11, 1965)

J. C. Kaspar, A. D. Poe and H. F. Kollmyer, for
California Trucking Association, petitioner.
Eugene A. Read, for the California Manufacturers
Association, protestant.
Larry Borden, for Safeway Stores, Inc., interested
party.
Joseph C. Matson, for the Commission staff.

O P I N I O N

Exception Ratings Tariff No. 1 contains classification
ratings and rules which are exceptions to the otherwise governing
classification applicable to Minimum Rate Tariff No. 2 (General

Commodities - Statewide) and Minimum Rate Tariff No. 5 (Los Angeles Drayage).^{1/} The California Trucking Association (CTA) requests that the fourth class exception rating on bakery goods, as described in Item No. 120 of Exception Ratings Tariff No. 1, be amended so as to exclude such commodities when accorded temperature control service.

A public hearing in this matter was held on July 12, 1965 before Examiner Gagnon at San Francisco at which time the matter was submitted. The California Manufacturers Association and Safeway Stores, Inc. are opposed to the CTA petitions.

Items Nos. 21180 and 21190 of the governing classification provide less-truckload ratings for Bakery Goods, N.O.I. of third class, other than frozen, and second class, frozen, respectively. The fourth class exception rating involved herein is set forth below:

<u>Articles</u>	<u>Rating less-truckload</u>
Bakery Goods as described below in boxes or barrels, or in pulpboard cartons in crates, or in fibre or tin cans (with or without glass fronts) in crates, or in wheeled carriers (wood, fibreboard and iron or steel combined) locked or sealed, or in fibreboard boxes; Biscuits Cakes Matzos Toast Bread Crackers Pretzels	4

The foregoing exception rating is one of a number of such ratings transferred from Pacific Southcoast Freight Bureau

^{1/} The term "governing classification" when used herein means National Motor Freight Classification A-8 (Cal.) as governed by National Motor Freight Classification A-8.

Exception Sheet No. 1-S, Cal. P.U.C. No. 193 to the Commission's
Exception Ratings Tariff No. 1.^{2/}

Petitioner states that certain bakery goods, primarily bread and cakes, are now prepared and marketed as frozen food items and tendered for shipment under temperature control service.^{3/} It is the contention of petitioner that neither the historical application of the fourth class exception rating nor the reproduction thereof in the Commission's Exception Ratings Tariff No. 1 contemplated temperature control service. While a less-truckload rating of fourth class may be a reasonable and proper rating for bakery goods generally, petitioner claims that such rating is unreasonable when applied to shipments of frozen bakery goods accorded temperature control service.

The California Trucking Association, in justification of its proposal, relies upon the Commission's findings in Decision

2/ Reproduction of Exception Sheet No. 1-S, except material extraneous to California minimum rates, into the Commission's Exception Ratings Tariff No. 1 simplified the use of exception ratings in connection with minimum rates and is a required preliminary step in the current transition from the Western Classification to the National Motor Freight Classification A-8 (Decision No. 66543, Case No. 5432, et al., dated December 27, 1963).

3/ Item No. 185 of Minimum Rate Tariff No. 2 defines:

- (a) Chilled Temperature Control Service as "the service of providing protection against heat and maintaining the commodity at a temperature higher than 32 degrees Fahrenheit," and
- (b) Frozen Temperature Control Service as "the service of providing protection against heat and maintaining the commodity at a temperature of 32 degrees Fahrenheit or lower."

No. 61177 (58 Cal. P.U.C. 321, 323) wherein the Commission, in establishing revised rates in Minimum Rate Tariff No. 2 for transportation under temperature-controlled conditions, found, among other things, that the costs of temperature control have not been considered in the determination of the classification ratings for frozen commodities. Particular attention is directed to that part of the aforementioned decisions wherein reference is made to the testimony of the chairman of the Western Classification Committee and publishing agent of the Western Classification, pertinent portions of which are as follows:

"The chairman ...declared categorically that the cost of providing refrigeration has never been treated as an element in the determination of classification ratings for frozen commodities... He said that the fact that various frozen commodities are subjected to higher ratings than like commodities unfrozen is attributable to the greater risks of loss and damage which the carriers necessarily incur in the transportation of the frozen commodities."

In further support for the assessment of the present second class rating named in the governing classification, in lieu of the fourth class exception rating, petitioner cites Decision No. 65639 (61 Cal. P.U.C. 162, 163) where the Commission stated, in part, as follows:

"We have stated many times that to establish an exception rating it must be shown that the transportation characteristics or conditions in California intrastate traffic of the item in question are different than elsewhere, or that the characteristics are similar to many other articles presently enjoying the sought rating."

The petitioner also presented in evidence a comparison of less-truckload classification ratings applicable to various frozen and nonfrozen commodities. The comparisons indicate that, for the commodities listed, the class ratings established for frozen

commodities are higher than like commodities not frozen. A like comparison of retail shelf prices of frozen versus nonfrozen cakes and breads was also offered in evidence by the CTA. This latter comparison indicates that the frozen bakery goods are generally sold at higher retail prices than nonfrozen bakery goods. The comparatively higher retail prices for frozen bakery goods are assertedly due to the fact that such commodities are considered luxury items.

Finally, petitioner's witness testified that he conducted a field study to determine the transportation characteristics of frozen bakery goods. Assertedly, his study indicated that, due to the perishable nature of frozen bakery goods, special handling was required in the loading and unloading process.

The California Manufacturers Association (CMA), while not unalterably opposed to the sought relief, contends that the petitioner has failed to support its proposal with sufficient factual information. Therefore, CMA requests that the sought relief be denied. The representative of Safeway Stores, Inc. objected to the fact that petitioner's field study was restricted to observation of a single type of loading operation, which Safeway deems not indicative of the operating experiences of carriers generally, especially insofar as shipments of frozen bakery goods for the account of Safeway are concerned. Safeway further contends, as does CMA, that a mere comparison of retail prices is inconclusive as to any realistic difference in the transportation characteristics of a given bakery goods item when in a frozen versus a nonfrozen state. Accordingly, Safeway Stores, Inc. joins in the request of the California Manufacturers Association that the subject petition be denied.

Discussion, Findings and Conclusions

The proposal of the California Trucking Association represents one of a number of preliminary steps designed to facilitate its participation in and to smoothly effect the current transition from the Western Classification to the National Motor Freight Classification A-8 which is to be the governing classification for minimum class rates. The CTA proposal also reflects an effort to shore-up what is assertedly believed to be a depressed area in the existing minimum class rate structure, which the CTA declares has a deteriorating effect upon the carriers' operating revenues.

The evidence submitted in support of petitioner's proposal is, to say the least, extremely sketchy or superficial. Unsupported expressions of opinion were offered in evidence as categorical statements of fact which are not entirely correct. For example, petitioner states that the application of the fourth class exception rating to shipments of frozen bakery goods was beyond the scope of its historical intent and that it was not contemplated that such products would be transported under temperature control service at the time the exception rating was reproduced in Exception Ratings Tariff No. 1. This contention is premised upon the opinion that until recent date bakery goods were not marketed in the frozen state. However, if we were to pursue this line of reasoning to its ultimate conclusion, the classification, exception sheets and class rate tariffs would have to be further restricted so as to apply only to those named commodities for which temperature control service is specifically provided. Historically, such restrictive rate-making procedures have not been followed nor is such action currently observed or

recommended, since it would preclude the availability of temperature control service to many commodities as they are introduced into the frozen food market. In addition, a single existing class rating may be entirely reasonable and proper for a given commodity whether frozen or not frozen. In this connection it might be well to note the historical provisions of Rule 130 of Pacific Southcoast Freight Bureau Exception Sheet No. 1-S which states, in part, as follows:

P.S.F.B. Exception Sheet No. 1-S - Rule 130

(Exception to Rule 31, Section 3 of the Uniform Freight Classification or Western Classification)

"The less than carload or any quantity ratings set forth in UFC or WC and this ES will apply on freight requiring protection against heat or cold and carried under refrigeration..."

The petitioner further contends that the bakery goods named in Item No. 120 of Exception Ratings Tariff No. 1, now marketed as a frozen commodity, possess substantially different transportation characteristics than like commodities not frozen and, therefore, should be made subject to the second class rating for frozen bakery goods named in the governing classification. In justification of this position, petitioner relies upon the findings in Decision No. 61177 and the testimony of the chairman of the Western Classification Committee referred to therein. Such reliance we find to be quite proper insofar as it relates to the Commission's prior finding relative to the costs of temperature control service. However, petitioner's dependence upon the testimony of the chairman exceeds the scope of that portion of such evidence concerning instances where higher ratings are provided for frozen commodities than for like commodities not frozen.

The California intrastate transportation characteristics or conditions of bakery goods, as described in Item No. 120 of Exception Ratings Tariff No. 1, when accorded temperature control service, may not be sufficiently different as to justify the continued application of the present fourth class exception rating in lieu of the otherwise applicable less-truckload rating named in the governing classification. The record in this instance, however, will not support such a finding. We conclude, therefore, that the subject petitions should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 3, in Case No. 7858; Petition for Modification No. 382, in Case No. 5432; and Petition for Modification No. 64, in Case No. 5435, are hereby denied.

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

Dated at San Francisco, California, this 24th day of August, 1965.

Fredrick B. Halbach
President
Arthur E. [unclear]
Augustson

William L. Bruner
Commissioners

I concur in the result.
George L. Grover