

Decision No. 70848**ORIGINAL**

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. 6, as amended)

A. D. Poe, H. F. Kollmyer, and C. D. Gilbert,
for California Trucking Association,
petitioner.
Larry Borden, Clifford P. Brace, Richard B.
Cortland, Bernard F. Fordan, Keith Harwood,
Robert E. Hoppman, William W. Kriens,
Lowell E. Tjaden, Michael J. Ubell, for
various shippers; Eugene A. Read and
John T. Reed, for California Manufacturers
Association; protestants.
C. J. Boddington, for ONC Motor Freight System,
respondent.
J. C. Matson, for the Commission staff.

O P I N I O N

Exception Ratings Tariff No. 1 (ERT No. 1) contains classification ratings and rules which are exceptions to the provisions of National Motor Freight Classification A-8 (Cal)^{1/} (as governed by National Motor Classification A-8). The provisions of ERT No. 1 apply in connection with transportation performed under Minimum Rate Tariffs Nos. 2 (General Commodities-Statewide) and 5 (Los Angeles Drayage Area). By this petition, as amended, California Trucking Association seeks the cancellation of Item No. 120 of the exception ratings tariff. Said item provides a less-than-truckload rating of fourth class on certain bakery goods, namely, biscuits, bread, cakes, crackers, matzos, pretzels and toast.

1/ Hereinafter sometimes designated as "Classification".

Public hearing was held before Examiner Bishop at San Francisco on September 21 and November 3, 1965 and January 12, 1966, and at Los Angeles on November 10, 1965 and January 6, 1966.^{2/}

Evidence was presented by petitioner, by three shippers or receivers of bakery goods, by California Manufacturers Association (CMA) and by the Rate Branch staff of the Commission's Transportation Division. The shippers and CMA are opposing the granting of the amended petition. Additionally, other shipper representatives participated in the development of the record.

A member of petitioner's Department of Transportation Economics testified concerning the history of the rating sought to be canceled and described the investigation he had made into the movement, transportation characteristics and values of the various types of bakery goods. He explained a series of exhibits designed to show the propriety of the sought relief.

The record shows that the subject bakery goods rating, which has been maintained in ERT No. 1 ever since that tariff was established, effective December 28, 1963, duplicates the fourth class rating and commodity description published in Item No. 80 of Pacific Southcoast Freight Bureau Exception Sheet 1-S, a rail publication. The rating was first established by the rail lines in a prior issue of Exception Sheet 1-series, effective

^{2/} The original petition, filed on August 2, 1965, sought only the elimination of biscuits, crackers, matzos, pretzels and toast from Item No. 120. On September 14, 1965, petitioner filed an amendment to the petition in which it seeks to cancel said item in its entirety, thus proposing also the cancellation of the fourth class exception rating on bread and cakes. In order to accord interested parties proper notice of the broadened proposal, no evidence was received at the initial hearing on September 21, 1965.

July 1, 1933. Prior to the establishment of ERT No. 1 the class rates in Minimum Rate Tariffs Nos. 2 and 5, as well as those in certain other minimum rate tariffs, were subject to the fourth class rating as published in said Exception Sheet 1-series. This circumstance prevailed in connection with Minimum Rate Tariff No. 2, for example, as early as August 7, 1939, when that tariff went into effect.

Petitioner alleges that the fourth class rating is unreasonable for the bakery goods, since they are of low density. Petitioner considers the ratings published in the Classification, which will apply if the petition herein is granted, to be proper and reasonable. Those ratings generally are second and third class for bakery goods, not otherwise indexed, frozen and not frozen, respectively.^{3/} Petitioner's witness pointed out that by Decision No. 59289 of November 24, 1959, in Application No. 40351, 225 common carriers were authorized to publish exception ratings in their tariffs which were higher than the currently applicable ratings under the Commission's minimum rate orders. That adjustment included an increase, for those carriers, in the rating on crackers and pretzels from fourth class to second class.^{4/}

Petitioner's witness had developed gross weights and volumes per case of representative shipments of each of the

^{3/} Item No. 320 of Minimum Rate Tariff No. 2 provides a less-than-truckload rating of 90 percent of fourth class, on "Bread, Rolls or Cake (other than fruitcake) in hermetically sealed metal cans". This rating will continue to apply to said articles in the event of cancellation of Item No. 120 of ERT No. 1.

^{4/} Like increases were authorized for 153 additional common carriers by Decision No. 60780, dated September 27, 1960, in Application No. 42204, as amended.

commodities involved. From these data he calculated the densities of the packages in pounds per cubic foot. In obtaining these data for shipments of "cakes" for example, he secured the weights and took the measurements of cases of 16 different products. Individual densities for each of these articles were calculated, and from these he obtained an arithmetical average density for all the cake shipments. Again, with respect to crackers individual densities were calculated for 25 different types of crackers, including variations in size of sales packages.

The weights and measurements were taken either on the docks of carriers or of consignors or consignees. In his investigation, the witness observed only one shipment each of bread, other than frozen, and matzos. Bread, he found, is generally transported in truckload quantities, in racks, either in proprietary equipment or by contract carriers. Matzos are generally a seasonal commodity, the witness stated, and the shipments, originating at eastern points, are distributed in California by proprietary carriage.

The witness also obtained from shippers wholesale price data for some examples of each of the subject commodities. From these data he calculated values in cents per pound. He pointed out, however, that petitioner relies on comparison of densities as justification for the sought cancellation of the fourth class exception rating. All of the values he developed are less than one dollar per pound. The witness indicated, as a general freight classification principle, that where the value of a commodity is less than one dollar per pound, value does not usually enter into the determination of the proper rating for such article.

The average densities developed by the witness range from 5.5 pounds per cubic foot for pretzels, to 16.3 pounds per cubic foot for frozen cakes. The average values range from 25 cents per pound for pretzels to 65 cents per pound for toast.^{5/}

Petitioner's witness found that there is a substantial California movement by for-hire carriers of only certain of the commodities listed in Item No. 120. His investigation disclosed also that the movement of bakery goods under temperature control is confined to shipments of bread and cakes.

Petitioner compared the density and value figures which it had developed with two other sets of data. The first of these is a table in which are shown the range of densities and the range of values of those commodities for which the Commission has specifically approved a fourth class less-than-truckload exception rating, and as to which commodities said rating is now in effect. The second set of data is contained in a table in which are shown densities and values of a list of 19 commodities which are subject to a third class less-than-truckload rating, as provided in National Motor Freight Classification A-8 (Cal).

The densities and values shown in the first table were taken from the decisions relating to the various articles, or from the record in the formal proceedings. Eleven commodity descriptions are involved, covering a wide range of products. The densities range from 15.9 to 72.7 pounds per cubic foot, and in most instances they are well above even the highest density developed by petitioner in its bakery goods study. The values

^{5/} In Appendix "A" hereof are set forth densities and values as developed by petitioner's witness for each of the commodities listed in Item No. 120.

in the fourth class comparison group range from 9 cents to 182 cents per pound.

The densities and values shown in the table of third class commodities were taken from petitioner's files. Over the years it has accumulated information as to the densities and values of numerous commodities as the result of periodic field checks made by its personnel. The average densities for the 19 third class articles shown in petitioner's exhibit range from 5.4 pounds to 25.1 pounds per cubic foot. Value data were obtained for 12 of the commodities, ranging from 46 cents to 233 cents per pound.

Petitioner contends that the relatively light and bulky nature of bakery goods, viewed in the light of the density data set forth in the two comparison tables, justifies the establishment of a less-than-truckload rating of no lower than third class for the subject commodities, and the cancellation of the fourth class exception rating.

A rate analyst for Safeway Stores, protestant, testified concerning the effect the cancellation of the rating here in issue would have on the practices of that company. Bakery goods coming from local plants to Safeway stores are handled in proprietary operations. However, Safeway has acquired a chain of general merchandise stores known as Super S Stores, which will handle also a limited amount of bakery goods. It is anticipated that these goods will be shipped by highway common carrier from a plant in Van Nuys. Shipments will be made to the various Super S Stores once a week in less-than-truckload quantities totalling about 35,000 pounds. According to the witness, the existence of the

fourth class exception rating was a determining factor in this plan. He stated that consolidation of the shipments into a single truckload shipment, with split deliveries, would be impracticable. In the event of cancellation of the exception rating, he indicated that his company would be compelled to perform the contemplated deliveries in its own equipment.

The manager of rate research for protestant Continental Baking Company, with headquarters in New York, testified on behalf of that company. Continental, he said, has six baking plants in California. Movement of bread from the plants to retail stores is in the company's own trucks. Some shipments of bakery goods are made by for-hire carriers. This arrangement, he said, is a subject of constant study and revision. One such movement is between San Francisco and Los Angeles. Each week 11,200 pounds of English muffins are shipped northbound and 10,500 pounds of cookies move southbound. Other lesser movements were also mentioned.

This witness pointed out that bakery goods, because of their perishable nature, must generally be delivered daily, and cannot be shipped in large quantities for stocking; that they are a low-profit item and as such are more sensitive to freight rate increases than are high-profit hard goods. If the fourth class rating is canceled, he said, Continental will increase its proprietary carriage in California to accommodate the shipments presently transported by for-hire carriers. His analysis, he asserted, indicated that proprietary hauling can be done at less cost than would be experienced by for-hire carrier movement under the increased ratings. This witness had not studied the

California rate structure to determine whether the rates that would result under the proposed ratings would be unjustly high or in any other respect unreasonable.

The divisional manager of personnel and industrial relations of American Bakeries Company, protestant, testified that the bulk of his company's shipments from its plants to receivers are transported in proprietary equipment. American does have some movement, however, via for-hire carriers. Some of these movements he described but as to several he was not informed as to whether they were in less-than-truckload quantities. He stated that those shipments on which American pays the freight could be diverted to proprietary carriage. He was concerned about a regular movement of bakery goods in less-than-truckload quantities from a plant in Los Angeles to several small distributors in Kern and Inyo Counties. The consignees pay the freight on these shipments. The witness asserted that the proposed cancellation would work a hardship on those customers. He had endeavored to secure their attendance as witnesses, but had been unsuccessful because they are one-man operators and could not be absent from their routes.

An assistant transportation rate expert from the Commission's staff testified concerning two exhibits, one of which showed the classification ratings which would apply if the exception rating is canceled,^{6/} the other being a statement of traffic moving under the exception rating here in issue in

^{6/} A somewhat similar exhibit was presented by the traffic manager of California Manufacturers Association, in which the commodity descriptions and ratings for bakery goods, as set forth in the National Motor Freight Classification were reproduced.

connection with the rates provided in MRT No. 2. The data were extracted by the witness from a general traffic flow study in which a one-day sample was taken in 1964 of transportation performed by 148 general commodity highway carriers. According to the exhibit, 197 such shipments of bakery goods were shipped during the sample period, reflecting a total weight of 79,856 pounds and revenue of \$1,845. It developed, however, that these totals included also bakery goods shipments which were subject to the minimum charges set forth in MRT No. 2, and possibly other shipments which were subject to other types of less-than-truckload rates.

The representative of Harwood-Tjaden Corporation, protestant, appearing at the earlier hearing in Los Angeles, stated that he would testify at the adjourned hearing there regarding the interest of his company in the instant proceeding. He did not appear at the later hearing but made a brief argument on the date of his appearance, in which he questioned the adequacy of the sample of carriers from which petitioner obtained its density and other data, and urged that the applicable ratings on bakery goods be not increased, in order to avoid the upward spiraling of costs.

The representative of California Manufacturers Association argued, *inter alia*, that the fourth class rating is of long standing, and therefore has a presumption of reasonableness; that if individual carriers believe that their bakery goods revenues are inadequate they may, if permitted carriers, charge higher rates, or, if certificated carriers, seek authority to increase their published rates, as many carriers, hereinbefore mentioned,

have done; and that if the exception rating is to be canceled, it should not be done unless and until the rail exception sheet is canceled.^{7/}

As hereinbefore stated, the fourth class exception rating has been in effect in California since 1933. While the record does not disclose the reasons for its establishment, it should be obvious, in the light of common knowledge of conditions which existed at that time, that the rating was published by the rail lines to meet the competition of unregulated highway carriers. The reproduction in Exception Ratings Tariff No. 1, effective December 28, 1963 of ratings and other provisions in the rail exception sheet which, prior to that date, had governed the class rates in Minimum Rate Tariff No. 2, was accomplished without analysis of the individual ratings to determine whether each was reasonable under current transportation and other economic conditions.^{8/} That such conditions have changed in recent years is evidenced by the fact, previously mentioned, that in 1959 and 1960, 378 highway common carriers were authorized to increase their published exception ratings on crackers and pretzels from fourth to second class. In view of these circumstances, a scrutiny of Item No. 120 of ERT No. 1 to determine the reasonableness, or unreasonableness, of the fourth class rating for each of the involved commodities is appropriate.

^{7/} By Decision No. 70771, dated May 24, 1966, in Application No. 48012, the rail lines were authorized to cancel the provisions of Pacific Southcoast Freight Bureau Exception Sheet 1-S, insofar as they related to California Intrastate traffic moving under class rates.

^{8/} ERT No. 1 was established by Decision No. 66195, dated October 22, 1963. The decision also, in effect, canceled application of certain exception ratings in connection with MRT No. 2, which ratings applied on commodities as to which little or no movement currently had been found.

It is true that in recent years, the factor of density, or weight per volume unit, has been the dominating element in determining whether a classification rating is reasonable. Only when there is a record of unfavorable claim experience, which is not the case here, coupled with the movement of articles of relatively high value, does the element of value carry substantial weight. A comparison of the densities of bakery goods shown in Appendix "A" with the range of densities of articles on which the Commission has found a fourth class exception rating to be reasonable, shows that generally the magnitude of the densities of the bakery goods falls far below that of the compared densities. The densities of the bakery goods compare most favorably with the range of densities of the representative group of articles taking third class, as shown in petitioner's study. In view of the greater care necessary and the hazards inherent in the movement of frozen bakery goods the proposed classification rating of second class appears reasonable for those articles.

Protestants offered no evidence contradicting the showing of petitioner as to the insufficiency of the exception rating. Primarily their presentation was confined to allegations that the resulting classification ratings would be too high and would, or might, force protestants into proprietary carriage of the commodities in question. It appears that in some instances protestants may be able to effect savings in transportation costs by consolidation into truckload shipments, with instructions to make split deliveries.

We find that:

1. The fourth class, less-than-truckload exception rating on bakery goods, provided in Item No. 120 of Exception Ratings Tariff No. 1 is and will be for the future unreasonable, insufficient and not justified and said fourth class rating should be canceled.

2. The less-than-truckload ratings provided in National Motor Freight Classification A-8 (Cal), as governed by National Motor Freight Classification A-8, for bakery goods as described in the aforesaid Item No. 120 of Exception Ratings Tariff No. 1 are and will be just, reasonable, sufficient and nondiscriminatory minimum ratings for the transportation of said commodities under the provisions of Minimum Rate Tariffs Nos. 2 and 5.

3. The increases resulting from the cancellation of said exception rating are justified.

We conclude that the petition herein, as amended, should be granted.

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 July 16, 1966, Eleventh Revised Page 3 and Sixth Revised Page 9, which revised pages are 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 July 16, 1966.

3. Common carriers, in establishing and maintaining the ratings 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 ratings 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, 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 14th day of JUNE, 1966.

Frederick B. Halbach
President
John E. Mitchell
George L. Hoover
Augustus
William A. Bewick
Commissioners

APPENDIX "A"

<u>Commodity</u>	<u>Density</u> (In pounds per cubic foot)			<u>Average Value</u> (In cents per pound)
	<u>Low</u>	<u>High</u>	<u>Average</u>	
Cakes, Frozen	10.6	21.4	16.3	58
Cakes, Other Than Frozen	5.6	13.9	9.8	39
Breads, Frozen	5.6	13.1	9.6	60
Breads, Other Than Frozen	8.8	12.9	10.9	28
Crackers	7.8	17.1	12.0	55
Toasts	7.5	13.4	10.7	65
Matzos	6.9	6.9	6.9	27
Pretzels	5.1	6.3	5.5	25
#Cookies	10.4	20.0	14.3	39

Cookies are not specifically listed in Item No. 120 of Exception Ratings Tariff No. 1. According to petitioner's witness, some carriers assess the fourth class rating on shipments of cookies, while others do not. Cookies conceivably might be rated as biscuits or crackers, he testified, but petitioner considers the third class rating provided in the aforesaid Classification for Bakery Goods, Not Otherwise Indexed, as being applicable.

INDEX OF COMMODITIES			
COMMODITIES	Item Number	COMMODITIES	Item Number
Bagging	100	Games and Toys	595
Bags	100	Gelatine	597
Ballasts, Fluorescent Lamp	130	Gypsum	600
Baskets, berry and fruit	140	Hops	620
Batteries, dry cell	150	Household Goods	650
Beverage Preparations	160	Ice (water)	680
Boxes, Bottles or Cans,		Ice Cream	690
fibreboard, paper or		Insecticides	700
pulpboard	170		
Briquettes, wood	180		
Building Materials	840		
Canned Foodstuffs	220, 221, 240		
Canned Goods	220, 221, 240	Kernels, corn, roasted	480
Carriers, new	260		
Carriers, old (used)	280	Ladders, Step	900
Carriers, used packages	300, 320, 321,	Lime, air slaked	720
	340		
Catalogues	740	Magazines	740
Cellulose film	390	Material, Roofing,	
Cereal and Cereal	360, 361, 380,	Building or Paving	840
Products	381	Milk, Malted	750
Circulars	740		
Clothing, staple work	400		
Cocoa or Cocoa Paste	480		
Coffee, extract of	420		
Compound, malt, milk and		Paints	760
cocoa	750	Paper or Paper Articles	170, 180
Compound, milk and cocoa	750	Partitions, not corrugated	785
		Paving materials	840
		Periodicals	740
		Plastics, Synthetic	800
		Preserved Foodstuffs	220, 221, 240
		Products, Cereal	360, 361, 380,
			381
Compounds, paint, lacquer			
or varnish reducing,		Ranges, iron or steel	920
removing or thinning	760	Returned Shipments	820
Compounds, tree and		Roofing Materials	840
weed killing	460		
Confectionery	480		
Egg case or carrier		Sal-Soda	860
fillers or flats	500	Salt, common (Sodium	
Explosives	520	Chloride)	880
		Shipments, returned	820
Fertilizers	540, 560, 580	Step Ladders	900
Fillers, egg case or		Stoves, iron or steel	920
carrier	500	Sugar	940
Film, cellulose	390		
Flats, egg case or		Tea, extract of	420
carrier	500	Titanium Dioxide	950
Floor Coverings	585, 590		
Flowers, fresh, cut	592		
Food, milk, other than			
liquid, other than		Varnishes	760
malted milk	750		
Foodstuffs, canned or			
preserved	220, 221, 240	Wood Briquettes	180
Fungicides	700	Wood, fuel	960

** Bakery Goods eliminated, Decision No. 70848

EFFECTIVE JULY 16, 1966

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

Correction No. 38

SECTION NO. 2 - RATINGS WHICH ARE EXCEPTIONS TO THE GC			Item No.
ARTICLES	Rating		
	LTL	TL	
Bags and Bagging, as described below, in bales or bundles, viz.: Burlap or Jute, Burlap or Jute, lined with cotton cloth or paper, Burlap, lined with cotton cloth or paper, Cotton, Gunny, Woven Paper Fabric. Bags, made of combination jute-and-cotton fabric. Truckload minimum weight 30,000 lbs.	4	5	100
◊Item canceled. Governing Classification, rating applies.			120
Ballasts, fluorescent lamp, not enclosed in lamp channels or chassis, in boxes	3		130
Baskets, berry and fruit, nested, or KD, folded flat, loose or in packages, truckload minimum weight 20,000 lbs. NOTE 1.-Rating also applies on fibreboard, pulpboard or strawboard liners, fillers or partitions and wooden fillers or partitions for packing or basket covers, for baskets named. NOTE 2.-Rating also applies on paper liners, fillers or partitions and packing pads for the baskets named.		C	140
Batteries, dry cell, electric	4		150
Beverage Preparations, NOIBN in the GC, dry	4		160
Boxes, bottles, or cans, fibreboard, paper or pulpboard, NOIBN, with or without tops or bottoms made of the same or other materials, SU, not nested, in packages, or on platforms or skids: Outside measurements exceeding one inch in depth and exceeding 15 united inches, length, width and depth added. Truckload minimum weight 12,000 lbs.	1½	3	170

<p>Outside measurements exceeding one inch in depth but not exceeding 15 united inches in depth, length and width added. Truckload minimum weight 12,000 lbs.</p>	1	3	
<p>Briquettes, wood (pressed wood fireplace logs), in bundles or sacks, truckload minimum weight 40,000 lbs.</p>	4	D	180
<p> ∅ Change) ◇ Increase) Decision No. 70848 </p>			
<p>EFFECTIVE JULY 16, 1966</p>			
<p>Issued by the Public Utilities Commission of the State of California, San Francisco, California. Correction No. 39</p>			