

Decision No. 75316

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the petition for suspension and request for investigation by Ocean Salt Company, Inc. of a proposed new commodity description in Item 3415-C being contained in Supplement 6 to Freight Tariff 250-B of Pacific South Coast Freight Bureau, Agent, published for the account of Southern Pacific Company, scheduled to become effective December 26, 1968, establishing rates for the transportation of salt from Newark, California to Los Angeles, California.

(I&S) Case No. 8878  
Petitions for Reconsideration  
or Modification  
Filed January 14, 1969  
and January 15, 1969

INTERIM OPINION AND ORDER

This proceeding involves reduced rates on crude salt from Newark to Los Angeles. The proposed rates were scheduled to become effective December 26, 1968, and were suspended by order of the Commission (Decision No. 75146 (Order of Investigation and Suspension) dated December 20, 1968).<sup>1</sup>

Leslie Foods, Inc. and Pacific Southcoast Freight Bureau seek reconsideration of Decision No. 75146 and withdrawal of the Order of Investigation and Suspension or, in the alternative, modification of said order so as to permit the suspended tariff item to become effective pending investigation, or, in the alternative, an order permitting amendment of the item in question, pending investigation, to allow the currently effective box-car rate of 29 cents per 100 pounds to apply for the movement of crude salt in open equipment.

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<sup>1</sup> Item 3415-C of Supplement 6 to Freight Tariff 250-B of Pacific Southcoast Freight Bureau, Agent, published for the account of Southern Pacific Company.

Prior to 1963, Leslie states, it did not experience any competition in the Los Angeles market from crude salt produced in Mexico and shipped by water to Los Angeles. Under these circumstances it was able to ship stack run crude salt from Newark to Los Angeles with a moisture content in excess of 3% and sell it at a reasonable profit. From 1963 on, Mexican crude salt has been shipped to Los Angeles by water in constantly increasing volume. Continuously since Mexican crude salt entered the Los Angeles market, Leslie alleges that it has suffered an accelerating decrease in its crude salt sales in that market. To demonstrate its loss of market petitioner submitted the following data:

LESLIE FOODS, INC.  
SALES OF CRUDE SALT IN THE LOS ANGELES MARKET  
FOR THE INDICATED YEARS  
IN TONS

	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968*</u>
	77,942	78,644	48,898	43,064	37,964
Annual Increase or Decrease		+702	-29,746	-5,834	-5,100

5 Year Decrease = 39,978 Tons, or 51% Loss

Based on average annual growth at 4% per year\*\* loss would be 53,217 tons, or 68%, in 1968 (91,181 - 37,964 = 53,217 Tons).

\* Sales for December, 1968 estimated at 10% of first 11 months total.

\*\* National Salt Institute national average salt increase.

According to petitioner, Mexican crude salt has a moisture content of .62% or less, as contrasted with the 3.2% moisture content of Leslie's stack run crude salt. Petitioner alleges that its loss of market to the Mexican product was due to the higher moisture content of its salt in comparison with the Mexican product. Leslie concluded that to preserve its market position in Los Angeles it was required to sell, at a competitive price, crude salt of the same moisture content as the Mexican product.

Petitioner avers that the cost of producing Mexican crude salt with the indicated moisture content is lower than that of Leslie's. Mexican crude salt sells at \$11.00 a ton f.o.b. port of entry Los Angeles, while Leslie's product sells for \$12.50 a ton f.o.b. purchaser's place of business. These prices, petitioner avers, create approximately the same landed cost to a Los Angeles purchaser.

Item 3415-B, currently in effect, of Tariff 250-B of the Pacific Southcoast Freight Bureau, Agent, provides a rate of 29 cents per 100 lbs. for the transportation of single car movements of crude salt, dried or undried, in box cars from Newark to Los Angeles, and a rate of 23½ cents per 100 lbs. on multiple car movements aggregating 600,000 pounds for the transportation of undried crude salt in open rail equipment from Newark to Los Angeles. The restriction in Item 3415-B against movement of dried crude salt at the 23½-cent rate and the limitation of the 29-cent rate to box cars, petitioner states, were made at a time when it was not subject to significant competition from the Mexican product and was able primarily to market stack run crude salt in Los Angeles. These restrictions, petitioner asserts, have become increasingly significant to it because the Mexican salt being of a lower moisture content is more desirable and because of this Leslie, to remain competitive in Los Angeles, has been required to sell dry crude salt at the same price as the competitive Mexican product.

In an effort to increase its ability to market its product in Los Angeles in the face of such competition, Leslie requested the railroad handling its traffic to make the publication necessary to permit the then effective 23½-cent rate which was applicable to transportation of undried crude salt only, to apply to transportation of dried crude salt. For the same reason it also requested that publication be made to extend the existing 29-cent box-car rate on dried crude salt so as to cover movement of the dry salt in open equipment. It is averred that the only effect of the extension of the 29-cent box-car rate to the movement of dried crude salt in open equipment will be to permit Leslie to save the added loading and unloading cost of \$1.83 per ton presently incident to its use of this rate.

Petitioner alleges that the Commission's action in suspending Item 3415-C pending investigation has deprived Leslie of a 19% rate reduction by preventing extension of the 23½-cent undried crude salt rate to the transportation of dried crude salt. It is also alleged that the suspension has prevented Leslie from effecting the cost saving incident to the use of open equipment instead of box cars for movement of dried crude salt under the presently applicable dried crude salt box-car rate of 29 cents. The suspension, petitioner alleges, plainly impedes the ability of Leslie reasonably to continue to compete in the Los Angeles market, thwarts the efforts of the railroad to preserve its Newark to Los Angeles crude salt traffic, and does not promote the interest of the California salt producers, the transporting railroad or the economy of the State of California.

Petitioner, Pacific Southcoast Freight Bureau, through its Tariff Publishing Officer, W. C. Gentle, joins in the petition for reconsideration or modification filed herein by Leslie Foods, Inc. It asserts that protestant, Ocean Salt Company, Inc. (Ocean), failed to allege or establish that the rates at issue are unlawful as required by the Commission's General Order No. 113-A, and further, that the Commission's Order of Suspension failed to establish or show wherein the said rates are in any way unlawful; nor did protestant allege or establish that the rates at issue are not compensatory.

Ocean in its reply states that the Petitions for Reconsideration contain the same vice which was pointed out in the original Petition for Investigation and Suspension, namely, an attempt to confuse and destroy the three basic and historic distinctions between grades of salt. Ocean asserts that due to the characteristics, which they described in detail in the initial petition, a differential in freight rates is required between the crude grade on the one hand, and the kiln dried and vacuum salt on the other hand. Ocean points out that oral hearings are set for this matter on March 6, 1969,<sup>2</sup> and requests that during this short interval the Order of Suspension should remain in effect, permitting retention of the status quo until such time as the Commission can have the benefit of the hearing in this matter.

The Commission is of the opinion and finds that the suspension of the item involved should be lifted and the investigation should be continued to determine the lawfulness of the rates involved.

<sup>2</sup>

A hearing in this matter is scheduled to be heard before Examiner Thompson for Thursday, March 6, 1969, at 10:00 a.m. in the Commission Courtroom, State Building, 350 McAllister Street, San Francisco, California.

IT IS ORDERED that:

1. The suspension of Item 3415-C of Supplement 6 to Pacific Southcoast Freight Bureau, Agent, Freight Tariff 250-B, by Decision No. 75146, dated December 20, 1968, in (I&S) Case No. 8878, is hereby lifted and the investigation is hereby continued to determine the lawfulness of the rates involved.

2. Tariff publications authorized to be made as a result of the order herein may be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and to the public.

3. The authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

This order shall become effective on the date hereof.

Dated at San Francisco, California, this 11<sup>th</sup> day of February, 1969.

William J. Lyons, Jr.  
President

Frederic P. Morrissey  
(V. F. Morrissey)

Harold M. Moore  
Commissioners

I dissent  
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