

ORIGINAL

Decision No. 75966

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 Minimum Rate Tariff No. 14-A.	}	Case No. 7857 Petition for Modification No. 20 (Filed November 4, 1968)
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D. Livengood, doing business as West Coast Salt and Milling Company, petitioner.
Thomas E. Carlton, for Morton Salt Company; Jim Steele, for Leslie Salt Company; Donald R. Swortwood, for Western Salt Company and Long Beach Salt Company; J. C. Kaspar, A. D. Poe and H. F. Kollmyer, for California Trucking Association; protestants.
Frank A. Riehle, Jr., for Pacific Salt and Chemical Company; Howard E. Meyers, for Freight Advisory Service; interested parties.
Eugene Q. Carmody, for the Commission staff.

O P I N I O N

Minimum Rate Tariff No. 14-A (MRT 14-A) names statewide minimum rates and rules for the transportation, in bulk, of agricultural products. By Petition for Modification No. 20 in Case No. 7857 D. Livengood, doing business as West Coast Salt and Milling Company, seeks, in effect, reconsideration and investigation of an informal ruling made by the Commission's Transportation Division staff concerning the proper application of the commodity description contained in said tariff on mineral mixtures under the general heading of animal or poultry feed.

Public hearing of the petition was held before Examiner Bishop at Bakersfield on January 16, 1969. Evidence was introduced by petitioner and by representatives of four salt companies. The director of the Division of Transportation Economics of California Trucking Association and a supervising transportation rate expert

from the Commission's staff assisted in the development of the record.

Item No. 520 of MRT 14-A contains, in List No. 3,^{1/} a list of a wide variety of commodities, under the heading of "Feed, Animal or Poultry", on which, among others, the distance rates in the tariff apply. In the list is the entry, "Mineral Mixtures (See Note 2)".

Note 2 reads as follows:

"Includes Mineral Mixtures containing Calcium Carbonate, Copperas, Epsom Salts, Crude Salt (feed grade), Sulphate of Soda, Glauber's Salts, Sulphur of Potassium Iodide, with or without not in excess of 10 percent by weight of other unnamed ingredients."

The informal ruling hereinabove mentioned is Informal Ruling No. 194, dated March 14, 1968.^{2/} That ruling reads as follows:

"Question has been asked if compounds or mineral mixtures referred to in Item No. 520 of Minimum Rate Tariff No. 14-A would include crude feed grade salt as it comes from the water or a mine, containing 99.5% of sodium chloride with the remaining .5% consisting of calcium carbonate, sodium carbonate and sodium sulfate.

"Note 2 of Item No. 520 of Minimum Rate Tariff No. 14-A indicates that the mineral mixtures described in the above item include those 'containing...Crude Salt (Feed Grade)...with or

1/ Prior to April 27, 1969 the articles listed under "Feed, Animal or Poultry" were set forth in List No. 4, in Item No. 520.

2/ The informal rulings of the Commission's Transportation Division are set forth in the Commission's Rulings Manual. The informal rulings are all subject to the following notice:

"The rulings which follow are informal rulings of the Transportation Division of the Public Utilities Commission of the State of California. They are made in response to questions propounded by the public, indicating what are deemed by the Division to be the correct applications and interpretations of the particular minimum rate tariffs involved. These rulings are tentative and provisional and are made in the absence of formal decisions upon the subjects by the Commission."

without not in excess of 10% by weight of other unnamed ingredients.'

"Inasmuch as the above-described crude feed grade salt contains not in excess of 10% of various ingredients other than sodium chloride, it is ratable under Minimum Rate Tariff No. 14-A under Animal or Poultry Feed, viz.: Mineral Mixtures."

Petitioner protests the ruling as being incorrect, in violation of the minimum rate tariff and discriminatory. He asserted that salt, with traces of other chemicals, is not a mixture. In this connection he cited a definition of "mixture" which was set forth in a letter from the Commission to one of the salt companies, as follows:

"Mixture means something resulting from the putting together of parts or ingredients other than as nature has put them together."

The evidence shows that when salt is either mined, as at Trona and Saltdale, or recovered from seawater by evaporation, as in San Francisco and San Diego Bays, it contains small portions of other chemicals, besides the sodium chloride. In either situation the salt and other substances are "as nature has put them together". These other substances, in the case of sun-evaporated salt, a representative of Pacific Salt and Chemical Company (Pacific) testified, are impurities, among which are calcium and magnesium salts. He stated that the impurities generally constitute less than one or two percent of the product. They remain with the salt because a commercially feasible method of removal has not been developed. The representative of Western Salt Company testified that feed grade salt runs 99.3 to 99.5 percent sodium chloride, the remainder being made up of other constituents. In the opinion of petitioner no mixture consisting of 99.5 percent salt could possibly be considered as a mineral mixture feed supplement.

Another definition of "mixture" was read into the record by the representative of Pacific, as follows:

"A kind or sample of matter containing two or more substances that are not chemically united, and can therefore be separated by taking advantage of differences in their physical properties, such as solubility in a solvent, difference in boiling point or freezing point...etc." 3/

To establish that salt is a mineral the representative of Morton Salt Company read the following entry from a State of California publication:

"Geologic occurrence, halite; the natural sodium chloride is among the most soluble of common minerals". 4/

The record does not reveal the source of the definition of "mixture", as quoted earlier from a letter of the Commission to one of the salt companies. However, that definition appears to be unduly narrow in excluding those ingredients of a combination which are "as nature put them together". The definition of "mixture" quoted above from the Condensed Chemical Dictionary comports with what should be a matter of common knowledge as to the distinction between substances which are chemically combined with those which are merely physically associated, though in a high degree of propinquity. Thus, the sodium and chlorine are chemically combined to form salt, while the salt (sodium chloride) and the other compounds mentioned in Note 2 of Item No. 520, above, are merely physically associated, constituting a mixture. The fact that one or more of the individual

3/ The source of this definition is "Condensed Chemical Dictionary", 7th Edition, copyright 1966, by Reinhold Publishing Corporation, New York, N.Y.

4/ From a publication entitled "Salt in California", Bulletin 175, published in 1957 by State of California Department of Natural Resources, Division of Mines, San Francisco.

compounds in the mixture constitutes a very small percentage of the total weight or volume of a given quantity of same does not make the aggregation of substances any less a mixture.

In the light of the definitions of "mineral" and "mixture", above, taken from the publications identified in footnotes 4 and 3, respectively, the conclusion set forth in Informal Ruling No. 194 is logical. It is to be recalled, of course, that the ruling relates specifically to crude feed grade salt as it comes from the water or mine, containing 99.5 percent of sodium chloride, the remaining one-half of one percent consisting of calcium carbonate, sodium carbonate and sodium sulfate.

Note 2 of Item No. 520 of MRT 14-A was amended by the addition of "Crude Salt (feed grade)" effective November 4, 1967, pursuant to Decisions Nos. 73138 and 73139 in Petition for Modification No. 16 in Case No. 7857.^{5/} That petition was filed by California Trucking Association (CTA), the record herein shows, on request of various shippers of salt and after consultation with shippers and carriers. In Petition No. 16 it was pointed out that crude salt (feed grade), among other commodities involved in the petition, is typically transported in a manner comparable to many other commodities for which the lower rates provided by the Commission's tariff provisions governing the transportation of grain and related items are applicable. Decision No. 73138 states that California Farm Bureau Federation and Western Salt Company informed the Commission by letter that they supported said petition; no protests were received. The Commission, by said decision, found the proposal reasonable and published the modification of Note 2 precisely as proposed by CTA.

^{5/} Decision No. 73138 also involved Petition for Modification No. 465 in Case No. 5432.

At the hearing in the instant proceeding representatives of the four salt companies who are protestants herein testified that Decision No. 73138, above, is proper, that their companies are satisfied with the present rates for the transportation of feed grade salt and that Informal Ruling No. 194 is proper. CTA is also a protestant. Its representative, in a closing statement, outlined the developments which led up to the filing of Petition No. 16, above.

While petitioner is objecting to Informal Ruling No. 194 as being incorrect, his testimony shows that his principal concern is with the competitive situation in the marketing of salt in the San Joaquin Valley. He buys his salt from Pacific Salt and Chemical Company located at Trona, San Bernardino County. Salt for petitioner moves by rail in carload quantities from that point to Bakersfield, from which point it is transported by petitioner in his own trucks to his customers at various San Joaquin Valley points. According to petitioner, even feed grade salt should not be included in Note 2 of Item No. 520 and should not move at the same commodity rates as are accorded grain and related feed items.^{6/} On the other hand, witnesses for protesting salt companies testified that the class rates (formerly Class D, now Class 35.3) applicable to ordinary salt are too high for movement of feed grade salt and that the addition of the latter to Note 2 has provided highway carrier rates which enable them to compete in the San Joaquin Valley with salt sold by petitioner.

^{6/} Petitioner argued that transportation of feed grade salt at the grain commodity rates in MRT 14-A is not compensatory to highway carriers. However, he did not present evidence of probative value to substantiate this contention. His shipments by rail from Trona are assessed a reduced commodity rate, subject to a minimum weight of 100,000 pounds.

Scrutiny of the commodity descriptions set forth in Note 2 has brought to light an error of many years' standing, which should be corrected. This relates to the entry which reads "Sulphur of Potassium Iodide". From the standpoint of chemical terminology the quoted expression is meaningless. This is apparent to anyone familiar with the system of chemical compound designation ordinarily employed in science and industry. A review of the history of the present description discloses that the entry in question was published as at present, effective October 30, 1959 in Item No. 652-1/2 of Minimum Rate Tariff No. 2, pursuant to Decision No. 59084.^{7/} That description, said decision shows, was taken, without change, from Item No. 140-Series of Pacific Southwest Freight Bureau Tariff No. 240-J, the rail lines' commodity description tariff for grain and related articles.

Further investigation shows that in the descriptions corresponding to Note 2 of Item No. 520 of MRT 14-A contained in the National Motor Freight Classification, the Uniform Freight Classification (rail) and the Consolidated Freight Classification (rail) the wording in question reads: "Sulphur or Potassium Iodide" (emphasis supplied). This has been the wording in the indicated classification publications for many years past. Thus the quoted expression actually contemplates two commodities; first, sulphur and secondly, potassium iodide. Additionally, the disjunctive "or" properly appears immediately before the last article in the series of substances listed in Note 2. It is obvious that the word "of" in that position in the series is the result of a typographical error which occurred some years past in the rail commodity tariff and should be corrected to read "or".

^{7/} The commodity descriptions and rates on feed, in bulk, were transferred from Minimum Rate Tariff No. 2 to MRT 14-A effective July 25, 1964, pursuant to Decision No. 67583.

We find that:

1. The commodity here in issue is crude feed grade salt as it comes from the water or a mine, containing 99.5 percent sodium chloride, the remainder consisting of calcium carbonate, sodium carbonate and sodium sulfate.

2. The ruling of the Commission's Transportation Division as set forth in Informal Ruling No. 194 is correct.

3. The word "of" in the expression "Sulphur of Potassium Iodide" in Note 2 of Item No. 520 of MRT 14-A is improper and should be corrected to read "or".

We conclude that:

1. Petition for Modification No. 20 in Case No. 7857 should be dismissed.

2. Minimum Rate Tariff No. 14-A should be amended as provided in the order which follows.

O R D E R

IT IS ORDERED that:

1. Petition for Modification No. 20 in Case No. 7857 is dismissed.

2. Minimum Rate Tariff No. 14-A (Appendix A to Decision No. 67397, as amended) is hereby further amended by incorporating therein, to become effective September 6, 1969, Third Revised Page 31-B, attached hereto and by this reference made a part hereof.

3. 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 page incorporated in this order. Tariff publications authorized herein shall be filed not earlier than the effective date of this order.

4. 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.

5. In all other respects Decision No. 67397, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 29th day of JULY, 1969.

William J. Lyons, Jr.
President
David L. Moran
Thomas B. Moniz
(J. J. Moran)
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

MINIMUM RATE TARIFF 14-A

SECTION 5--DISTANCE COMMODITY RATES (Continued)	ITEM
(Numbers within parentheses immediately following commodities shown below refer to such commodities as they are described in the corresponding item numbers of the Governing Classification, except as to packing requirements and form in which the commodity is shipped.)	
<p>LIST 3--FEED, ANIMAL OR POULTRY, subject to Note 1</p> <p>Feed, as described in Items 66700 through 67480 and 67520 through 67882 ("Feed Group") of the Governing Classification, not frozen (Except Shell Marl, crushed, ground or powdered).</p> <p>Alfalfa, chopped and pressed into cubes or pellets, airdry or otherwise dried.</p> <p>Feed, animal or poultry, consisting entirely of Grain or Grain Products named in Lists 1 or 2 above, when not fit for human consumption.</p> <p>Grit, processed from rock or shell.</p> <p>Hulls, cottonseed (54410, 54430).</p> <p>Hulls, sunflower seed (179980).</p> <p>Hulls, NOI, whole or ground.</p> <p>Limestone, crushed or ground, feed grade.</p> <p>Meal, feather.</p> <p>Mineral Mixtures (see Note 2).</p> <p>Nut hulls or shells, NOI (175460).</p> <p>Pomace (194220, 194240, 194540, 194620, 194880, and 194990), subject to Note 3.</p> <p>Pomace, NOI, subject to Note 3.</p> <p>Urea (47220).</p> <p>NOTE 1.--Provisions making reference hereto will not apply on any commodity for which rates are named in Section 3.</p> <p>NOTE 2.--Includes Mineral Mixtures containing Calcium Carbonate, Copperas, Epsom Salts, Crude Salt (feed grade), Sulphate of Soda, Glauber's Salts, Sulphur or Potassium Iodide, with or without not in excess of 10% by weight of other unnamed ingredients.</p> <p>NOTE 3.--Applies only when in physical mixture with other articles in Lists 1, 2 or 4.</p>	<p>4520</p>
<p>Change, Decision No. 75966</p>	
EFFECTIVE	
<p>ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA</p> <p>Correction 84</p>	