

76095

ORIGINAL

Decision No. \_\_\_\_\_

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. 528  
(Filed January 21, 1969)

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all common carriers and highway 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. 537  
(Filed March 12, 1969)

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. 22  
(Filed March 12, 1969)

Wallace K. Downey, for California Portland Cement Company, petitioner in Petition No. 528.

Arlo D. Poe, J. C. Kaspar and H. F. Kollmyer, for California Trucking Association, petitioner in Petitions Nos. 537 and 22.

Murchison, Stebbins & Davis, by Donald Murchison, for Tapo Minerals Corporation; D. H. Marken, for Chas. Pfizer & Company, Inc. and C. Fred Imhoff, for Industrial Asphalt, Inc., interested parties.

Fil Ventura, Jr., for California Commodity Transportation, Inc., respondent.

Charles F. Gerughty, for the Commission staff.

O P I N I O N

Petition No. 528, in Case No. 5432, filed by California Portland Cement Company (California Portland), alleges the following: California Portland has, for many years, engaged in the manufacture and sale of cement and limestone products; California Portland, at its Colton plant, manufactures and sells limestone used as an additive in poultry and animal feeds; minimum rates have been established on said product; Tapo Minerals Corporation manufactures a competitive product, at a mine near Santa Susana, which is shipped under the description of "Shell Marl"; minimum rates have not been established on shell marl; the two products: crushed, ground or powdered limestone, and crushed, ground or powdered shell marl are chemically approximately the same in that they contain a very high percentage of calcium carbonate and each is used as a poultry and animal feed additive.

California Portland also alleges that it has been placed at a great competitive disadvantage in the marketing of its limestone product used as a feed additive because the product it manufactures is subject to minimum rates, while shell marl used as a feed additive is not subject to minimum rates. California Portland requests that such discrimination be removed.

Public hearing on Petition No. 528 was held before Examiner Mallory at Los Angeles on March 3 and 4, 1969 at which evidence was introduced on behalf of California Portland, Tapo Minerals Corporation (Tapo), and California Commodity Transportation, Inc. The evidence presented related to chemical analyses of limestone and shell marl; regulations of the California State Department of Agriculture concerning the marketing, labeling, and

required chemical content for products sold as poultry or animal feed supplements; the background of, and asserted regulatory purpose of the current exemption from minimum rates on fertilizer products, including shell marl and sea shells; and rates assessed for the movement of limestone products and shell marl. At the conclusion of the presentation of the evidence described above, Petition No. 528 was temporarily removed from the calendar so that it could be heard concurrently with a proceeding, to be filed by California Trucking Association (CTA), seeking amendment of Minimum Rate Tariffs Nos. 2 and 14-A, to establish minimum rates on shell marl.

On March 12, 1969, CTA filed Petition No. 537 in Case No. 5432 and Petition No. 22 in Case No. 7857. Said petitions seek the establishment of minimum rates on shell marl by the addition of said commodity to the list of articles subject to the mileage commodity rates on grain, grain products and related articles, set forth in Minimum Rate Tariff No. 2 (MRT 2) and Minimum Rate Tariff No. 14-A (MRT 14-A).

The petitions filed by California Portland and CTA were consolidated for hearing, and further hearing was held and the matters submitted on June 30, 1969. At the consolidated hearing, California Portland, Tapo, Chas. Pfizer & Company, Inc., CTA and the Commission staff representative joined in a stipulation that the alleged discrimination between the competing commodities of limestone and shell marl (when used as a poultry or animal feed supplement) would be removed by the granting of the CTA petitions; and such parties joined in a request that said petitions be granted.<sup>1/</sup> The parties also requested that the tariff amendments be made effective on March 15, 1970 in order that the shipper of shell marl may make orderly adjustments of its marketing and shipping practices

I/ Shell Marl for use as a fertilizer may not be used for animal or poultry feed as it does not meet the standards of the Commercial Feed Regulations of the California Department of Agriculture.

to conform to the tariff provisions to be established pursuant to the order herein.

Findings and Conclusions

1. Crushed, ground or powdered limestone has several usages, one of which is as poultry or animal feed additive, valued principally for its calcium content. When sold and marketed in this form, the commodity is described in MRT 2 and MRT 14-A as "grit, processed from rock or shell", and is subject to commodity rates in said tariffs applicable to grain, grain products, animal or poultry feed, and related articles.

2. Tapo Minerals Corporation maintains a facility near Santa Susana, at which it mines and processes a material consisting of ground oyster shells with impurities of sand and clay, known commercially as Shell Marl. Said material is marketed and sold by Tapo as an animal or poultry feed supplement, valued principally for its calcium carbonate content. Tapo is the only current producer of shell marl in California.

3. The provisions of Minimum Rate Tariff No. 2 specifically exempts from the minimum rates in said tariff the transportation of shell marl and sea shells.

4. At the time the foregoing exemptions were established the parties requesting said exemptions indicated that shell marl and sea shells were used as fertilizer.

5. Subsequently, Minimum Rate Tariff No. 2 has been amended to restrict the application of the exemption on sea shells to apply only when such commodity is used as a fertilizer.

6. Limestone grits and shell marl, when used as an animal or poultry feed additive, compete in the marketplace. The difference in rate treatment accorded these commodities in the Commission's minimum

rate tariffs results in differences in the opportunity to market these commodities competitively, to the disadvantage of limestone grits.

7. California Trucking Association proposes that the current exemption on shell marl be limited to apply only when said commodity is marketed as a fertilizer, and that when said commodity is used as an animal or poultry feed additive it be subject to the same minimum rates as limestone grits.

8. The principal parties to this proceeding have requested that the CTA proposal be granted.

9. The granting of the CTA proposal will remove any differences in the minimum rate treatment accorded to limestone grits and shell marl, and will result in just, reasonable and nondiscriminatory minimum rates.

10. The increases, if any, resulting from the adoption of the CTA proposals are justified.

11. California Portland Cement Company has requested that if the CTA proposal is granted, its Petition No. 528 be dismissed.

The Commission concludes that the petitions filed by CTA should be granted and that the petition filed by California Portland be dismissed. In order to avoid duplication of tariff distribution, Minimum Rate Tariff No. 2 will be amended by the order which follows, and Minimum Rate Tariff No. 14-A will be amended by separate order.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff No. 2 (Appendix D to Decision No. 31606, as amended) is hereby further amended by incorporating therein to become effective March 15, 1970, the revised pages attached hereto, and listed as follows:

Fifty-fifth Revised Page 15  
Thirteenth Revised Page 15-A  
Tenth Revised Page 49-A.

2. Tariff publications required to be made by common carriers as a result of the order herein shall be filed not earlier than February 24, 1970, and shall be made effective March 15, 1970 on not less than ten days' notice to the Commission and to the public.

3. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 31606, as amended, are hereby directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered herein.

4. Common carriers maintaining rates on a level other than the minimum rates for transportation for which rates are prescribed in Minimum Rate Tariff No. 2 are authorized to increase such rates only to the level of Minimum Rate Tariff No. 2 rates authorized herein.

5. Common carriers, in establishing and maintaining rates authorized hereinabove, are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code when necessary to adjust long- and short-haul departures and under outstanding authorizations; such outstanding

*CORRECTION*

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**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

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5. 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.

6. In all other respects, Decision No. 31606, as amended, shall remain in full force and effect.

7. Petition No. 528 is hereby dismissed.

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

Dated at San Francisco, California, this 26th  
day of AUGUST, 1969.

William J. Squares, Jr.  
President  
August 26, 1969  
James P. Morrison  
Robert L. Johnson  
Thomas L. Brown  
Commissioners

SECTION 1--RULES OF GENERAL APPLICATION (Continued)		ITEM
APPLICATION OF TARIFF COMMODITIES (Continued) (Items 40, 41 and 42)		
Rates in this tariff apply for the transportation of all commodities except as follows:		
<p>Hops,</p> <p>Houses which have been disengaged from their foundations, or sections thereof and integral parts or contents when the contents are transported within the houses,</p> <p>Hulls, almond, including shells and other waste from the hulling and shelling of almonds, not processed for use as animal or poultry feed,</p> <p>Ice Cream Mix, unflavored,</p> <p>Insecticides, agricultural,</p> <p>Jewelry transported from or to wholesale houses in packages weighing 10 pounds or less,</p> <p>Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles. *The terms "tank trucks, tank trailers and tank semi-trailers" include any truck, trailer or semi-trailer with carrier or shipper provided collapsible tanks or bags 20 feet or more in length, 2,000 gallons or more in capacity and 20,000 pounds or more weight carrying capacity (Subject to Note 13),</p> <p>Livestock,</p> <p>Logs (wood),</p> <p>Milk, liquid (Subject to Note 2),</p> <p>Mushrooms, fresh (not cold pack nor frozen),</p> <p>Newspapers, newspaper supplements, sections or inserts (not scrap or waste),</p> <p>Nuts, in the shell,</p> <p>Nuts, field shelled (rough shelled, with or without removal of broken shells, dirt, residue, or foreign material, and not cleaned nor further processed),</p> <p>Optical goods transported from or to wholesale houses in packages weighing 10 pounds or less,</p> <p>Pits, fruit,</p> <p>Pot Cheese,</p> <p>Poultry, live,</p> <p>Pozzolan in bulk, when loaded and unloaded pneumatically and when the loads are compacted pneumatically in the loading process and when transported in shipments of 47,500 pounds or more (or when transported in shipments of lesser weights) subject to the rates and miles, including the minimum charge computed on a minimum weight of 47,500 pounds, which are set forth in Minimum Rate Tariff 10 (Subject to Note 16),</p> <p>Property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services,</p> <p>Property shipped to or from producers of motion pictures or television shows when transported subject to the rates, rules and regulations provided by Decision No. 33226, in Cases Nos. 4246 and 4434, as amended,</p> <p>Property transported to a United States Post Office for mailing and United States mail transported from a post office to the addresses thereof (Subject to Note 11),</p> <p>Property which is exempt from regulation by the Interstate Commerce Commission under Sections 203(b)(6) and 203(b)(8) of the Interstate Commerce Act,</p> <p>Sawmill Refuse (hog fuel) composed of sawdust, shavings, bark, veneer, clippings, wood chunks or slabs, and other waste woods, not further processed, and not otherwise usable commercially except as fuel (Subject to Note 13),</p> <p>Sea shells, crushed, ground, powdered or disintegrated (Subject to Note 5),</p> <p>Seeds, as described under that heading in the Governing Classification, when shipped from point of growth to an accumulation station or point of initial processing, or from an accumulation station to point of initial processing: in bulk, or in containers with a capacity exceeding 40 cubic feet, or in packages weighing 50 pounds or more,</p> <p>Shavings, wood, in bulk, or sawdust, wood, in bulk (Subject to Notes 13 and 14),</p> <p>*Shell Marl, crushed, ground, or powdered, *(Subject to Note 5),</p> <p>Shells, walnut,</p> <p>Shipments weighing 100 pounds or less when delivered from retail stores or retail warehouses where the property has been sold at retail by a retail merchant, or when returned to the original retail store shipper via the carrier which handled the outbound movement (Subject to Note 3),</p>		441
(Continued in Item 42)		
* Change ) - Addition ) Decision No. 76095		
EFFECTIVE		
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA		
Correction 2139		

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF-COMMODITIES (Concluded)                      (Items 40, 41 and 42)</p> <p>Shipments weighing 10 pounds or less when transported by carriers which operate no vehicles exceeding a licensed weight of 4,000 pounds (Subject to Note 12).</p> <p>Sulphur.</p> <p>Trailer coaches and campers set up, (including contents and furniture and other personal effects for use outside of trailer coaches) for which rates are provided in Minimum Rate Tariff 18.</p> <p>United States mail transported for the Post Office Department under contract.</p> <p>Used Property, viz.: household goods, personal effects, furniture, musical instruments, radios, and office and store fixtures and equipment, as described in and for which rates are provided in Minimum Rate Tariff 4-B, and used property as described therein of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services.</p> <p>Vegetables, fresh or green, including mushrooms, fresh (not cold pack or frozen).</p> <p>Vegetables, which are placed in a preservative and are destined to a cannery for processing into a preserved or pickled vegetable.</p> <p>Vegetables, dried, viz.: Beans (except Mesquite), Lentils, Onions, Peas (except Cow Peas), Pepper Pods.</p> <p>Voting Booths, Ballot Boxes, Election Tents and Election Supplies, when transported from or to polling places.</p> <p>NOTE 1.--Includes only used empty carriers which are returning from an outbound paying load of traffic for which rates are not provided in this tariff, or which are being forwarded for a return paying load of traffic for which rates are not provided in this tariff (Subject to Item 80 of the Exception Ratings Tariff).</p> <p>NOTE 2.--Exemption applies only when commodities flagged subject to this note are shipped in milk shipping cans, in bottles in cases or crates, or in bulk in tanks.</p> <p>NOTE 3.--Exemption applies only when the distance between point of origin and destination does not exceed 35 miles, computed in accordance with the provisions of Item 100.</p> <p>NOTE 4.--Exemption applies only as to dried fruit in the natural state and which has not been cleaned, washed, stemmed or otherwise prepared or partially prepared for human consumption.</p> <p>NOTE 5.--Exemption applies only when shipper certifies on the shipping document covering the transportation that the shells or Shell Marl are being shipped for use as a fertilizer.</p> <p>NOTE 11.--Exemption applies only to transportation between points within a radius of 25 miles of the intersection of 1st and Main Streets, Los Angeles, said mileage to be computed in accordance with the provisions of Item 100.</p> <p>NOTE 12.--Exemption applies only to transportation between points located within the Los Angeles Basin Territory as described in Item 270.</p> <p>NOTE 13.--Exemption expires with March 4, 1970.</p> <p>NOTE 14.--Exemption applies only to shavings or sawdust to be utilized in the production of particleboard, flakeboard, hardboard, pulpboard or woodpulp.</p> <p>NOTE 15.--The portion of this exemption preceded by * expires with December 31, 1970.</p> <p>**NOTE 16.--Exemption applies only between points within Southern Territory, as described in Item 80 of Minimum Rate Tariff 10, and expires with October 13, 1970.</p>	<p style="text-align: center;">442</p>
<p>                         6 Change                          * Addition                          ** Circle 1 reference eliminated                     </p>	<p>Decision No. <b>76095</b></p>
EFFECTIVE	
<p>Correction 2140</p> <p style="text-align: right;">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,                          SAN FRANCISCO, CALIFORNIA</p>	

SECTION 3--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)	
<p>(Applies in connection with rates making specific reference hereto.)</p> <p>LIST 3--FEED, ANIMAL OR POULTRY</p> <p>Feed, as described in Items 66700 through 67480 and 67520 through 67882 ("Feed Group") of the Governing Classification, not frozen, subject to Note 3.</p> <p>Alfalfa, chopped and pressed into cubes or pellets, air-dry 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, subject to Note 3.</p> <p>Crit, 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 1)</p> <p>Nut hulls or shells, NOI (175460)</p> <p>Pomace (194220, 194240, 194540, 194620, 194880, and 194900), subject to Note 2.</p> <p>Pomace, NOI, subject to Note 2.</p> <p>* (1) Shell Marl, crushed, ground, or powdered.</p> <p>Urea (47220).</p> <p>NOTE 1.--Includes Mineral Mixtures containing Calcium Carbonate, Copperas, Epsoms 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 2.--Applies only when in physical mixture with other articles in Lists 1, 2 or 4.</p> <p>NOTE 3.--Does not include cooked or baked cakes, biscuits or bread.</p> <p>(1) Unless otherwise exempt under the provisions of Items 41 and 42.</p>	6652½
<p>of Change } * Addition }</p> <p>Decision No. 76095</p>	
EFFECTIVE	
<p>Correction 2141</p> <p>ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p>	