

ORIGINAL

Decision No. 76444

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. 62
(Filed September 5, 1969)

And
Related
Matters

Cases Nos. 5432,
5435, 5439 and 5441
Petitions for Modification
Nos. 554, 131, 100 and 173
(Filed September 5, 1969)

INTERIM OPINION AND ORDER

The Diamond National Corporation, Keyes Fibre Company and Packaging Corporation of America seek the publication of specified exception ratings for "pulp egg cartons" in Exception Ratings Tariff No. 1 (ERT 1).

The established exception ratings for pulp egg cartons are Class 70, less-truckload, and truckload Class 35, minimum weight 24,000 pounds, as set forth in Item 1280 of ERT 1. This tariff item is scheduled to expire with December 31, 1969. Thereafter, the class ratings for pulp egg cartons will be Class 125, less-truckload, and Class 100 for truckload lots, subject to a minimum weight of 10,000 pounds, as prescribed in Item 41520 of the governing National Motor Freight Classification A-10 (NMFC A-10).

Petitioners' sought exception ratings for pulp egg cartons are generally the same as currently published in Item 157320 of NMFC A-10 for plastic egg cartons, except for the sought additional rating of Class 55, minimum weight 24,000 pounds. The proposed exception ratings are as follows:

PULP EGG CARTONS

		<u>Class Rating</u>
Less-Truckload, having a density of not less than 6 pounds per cubic foot (See Note)		100
Truckload		
Minimum Weight	16000 pounds	70
Minimum Weight	21000 pounds	60
Minimum Weight	24000 pounds	55
Minimum Weight	30000 pounds	45

NOTE: On articles having a density of less than 6 pounds per cubic foot, shipper may declare the weight of such articles at 6 pounds per cubic foot in order that such articles can be rated under this item.

Petitioners further request that the Commission issue an interim order removing the expiration date of December 31, 1969 in connection with Item 1280 of ERT 1; thereby permitting the retention of the present exception ratings on pulp egg cartons until the effective date of the Commission's order pertaining to petitioners' permanent sought relief.

Under the program established for the gradual changeover to the National Motor Freight Classification, the applicable class ratings named in the former governing Western Classification were restated in NMFC A-10 (Cal). With the subsequent adoption of NMFC A-10 proper, certain of said class ratings were redesignated as exception ratings in ERT 1, including those named in Item 1280 of the exceptions tariff, pending completion of the classification transition program.^{1/} In establishing the temporary exceptions in ERT 1 the Commission made the following Finding 13 in Decision No. 74310:

^{1/} Decision No. 74310, dated June 25, 1968, in Case No. 5432 (Order Setting Hearing of August 31, 1965) et al.; also Decision No. 74449, dated July 23, 1968, in Case No. 7858 (Petition for Modification No. 40) et al.

"13. The exception ratings found to be justified herein should be authorized on a temporary basis; it being understood that those exception ratings authorized herein, pursuant to shipper and carrier requests therefor, shall not be continued in effect beyond December 31, 1969, unless such continuance is fully justified pursuant to the filing of a petition on or before June 1, 1969."

Petition No. 62 et al is assertedly filed in response to the above finding of Decision No. 74310. While said petition was filed subsequent to June 1, 1969, Appendix A thereof indicates that petitioners had notified the Commission as of May 26, 1969, that they were prepared to offer formal evidence in justification of the retention of Item 1280 of ERT 1. Consideration of petitioners' interim and permanent sought relief should be prefaced with a summary of the procedure for effecting changes in class ratings suggested in Decision No. 67610 of July 28, 1964 (63 Cal. PUC 170) as follows:

"In connection with future classification changes, it would be appropriate for shippers and carriers to refer their requests initially to the National Classification Board... The Commission has stated in Decision No. 66268 and in prior proceedings that uniformity of classification provisions applicable in California with those applicable elsewhere is desirable... When, through such classification docket procedures, changes in classification ratings and provisions are made applicable on a national basis, and... conditions surrounding the affected transportation in California are not different from those generally prevailing elsewhere, this Commission has in the past approved such classification changes to govern the minimum rates.

"... Initial referral of requests for classification changes to the National Classification Board will tend to keep the classification uniform, up-to-date and responsive to the needs of all shippers and carriers, and will tend to prevent discrimination from maintenance of different ratings in different areas.

"This method... will not result in a delegation of the Commission's powers and duties concerning the establishment and revision of minimum rates. Any changes in the classification provisions governing the minimum rates must first be approved by this Commission before... made effective in California; moreover, if proponents of classification changes are not satisfied with the action taken by the National Classification Board, their proposals may be presented to the Commission. In any event, prior consideration by the National Classification Board will be a valuable preliminary step."

The temporary relief sought herein is not outside the program established by Decision No. 74310 for the gradual changeover to NMFC A-10 as the governing classification for the various minimum class rate scales. The requested continuance of Item 1280 of ERT 1 beyond the scheduled expiration date of December 31, 1969 is appropriate for an extended one-year period only. In the interim, petitioners should either proceed immediately to hearing for the presentation of evidence in full justification of their sought permanent relief or, alternatively, initiate the appropriate procedures before the National Classification Board in an effort to obtain ultimate disposition of the temporary exception ratings involved herein on a national level.

We find that:

1. The temporary exception ratings set forth in Item 1280 of Exception Ratings Tariff No. 1 should be continued in effect beyond December 31, 1969, pending petitioners' efforts to make final disposition of such ratings.

2. Petitioners' sought continuance of Item 1280 of Exception Ratings Tariff No. 1, should be made subject to an expiration date of December 31, 1970.

3. Petitioners' sought interim relief has been shown to be just and reasonable.

We conclude that petitioners' sought interim relief should be granted to the extent authorized by the order herein.

In the event petitioners determine it is to their best interest to first seek ultimate disposition of the temporary exception ratings involved under procedures for effecting classification changes on a national level, the Commission should be so notified in order that the subject proceeding may be cleared from its open docket.

IT IS ORDERED that:

1. Exception Ratings Tariff No. 1 (Appendix A to Decision No. 66195, as amended) is further amended by incorporating therein, to become effective January 1, 1970, Fourth Revised Page 27-U, attached hereto and by this reference made a part hereof.

2. Tariff publications required or authorized to be made by common carriers as a result of the order herein shall be filed not earlier than the effective date of this order and 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; such tariff publications as are required shall be made effective not later than January 1, 1970; and as to tariff publications which are authorized but not required, the authority herein granted shall expire unless exercised within sixty days after the effective date hereof.

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, Decision No. 66195, as amended, shall remain in full force and effect.

This order shall become effective twenty-four days after the date hereof.

Dated at San Francisco, California, this 18th day of NOVEMBER, 1969.

William Sproule, Jr.
President
Augustine
[Signature]
Yuan L. Sturgeon
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

EXCEPTION RATINGS TARIFF 1

SECTION 2-C--RATINGS WHICH ARE INTERIM EXCEPTIONS TO RATINGS IN THE GOVERNING CLASSIFICATION (APPLIES ONLY IN CONNECTION WITH MINIMUM RATE TARIFFS 1-B, 2, 5, 9-B and 19)								(2) ITEM
(1) ACIDS as described in the following items of the Governing Classification, viz.:								
Item	Rating		Truckload Minimum Weight in pounds	Item	Rating		Truckload Minimum Weight in pounds	(E) 1200
	LTL	TL			LTL	TL		
3060	70			4440				
4120				Sub 1		45	30,000	
Sub 1	100	35	30,000	Sub 2	85	45	36,000	
Sub 2		35	30,000	Sub 3		45	36,000	
Sub 3	55			4540				
4320				Sub 1	100	35	30,000	
Sub 3	70			Sub 2		35	30,000	
				Sub 3	55			
Exception ratings canceled.								1220
Exception ratings canceled.								1240
Exception ratings canceled.								1260
CARRIERS, SHIPPING, GROUP, viz.:			GC Item Number	Rating		Truckload Minimum Weight in pounds	(E) 1280	
				LTL	TL			
Cartons, Egg-----			41520	70	35	24,000		
Exception ratings canceled.								1300

(E) Expires with December 31, 1970.
 (1) For classes dependent upon agreed or released value applicable in connection with items of the G.C. listed herein, which make reference to Item 2082 of the G.C., see Item 60000 of the G.C.

(2) Items 1200, 1220, 1240, 1260 and 1300 reissued from Third Revised Page 27-U.

Change, Decision No. **76444**

EFFECTIVE

Correction 201

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
 SAN FRANCISCO, CALIFORNIA