

ORIGINAL

Decision No. 76490

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 Southcoast 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.

Case No. 8878 (I&S)
(Instituted December 20, 1968)

Knapp, Gill, Eibbert & Stevens, by Warren N. Grossman,
for Ocean Salt Company, petitioner.
Albert T. Suter, for Pacific Southcoast Freight Bureau,
respondent.
Frank Loughran of Loughran, Berol & Hegarty, and
Donald L. Knowles, for Leslie Foods, Inc.,
intervenor.
Thomas E. Carlton, for Morton Salt Company, interested
party.

O P I N I O N

This investigation was heard July 22, 1969, before Examiner Thompson at San Francisco and was submitted on briefs received September 4, 1969. The inquiry concerns the reasonableness of certain carload commodity rates for the transportation of salt from Newark to Los Angeles. The involved rates published in Item 3415-C of Supplement 6 to Freight Tariff No. 250-B of Pacific Southcoast Freight Bureau, Agent, were to become effective on December 26, 1968 but were suspended by order of the Public Utilities Commission dated December 20, 1968 (Decision No. 75146). The suspension was made pursuant to a petition of the Ocean Salt

Company ("Ocean"), an importer of Mexican salt located in Long Beach, California. Thereafter, upon petition of Leslie Foods, Inc. (Leslie) and Pacific Southcoast Freight Bureau, the Commission by order made in Decision No. 75316 dated February 11, 1969 lifted the suspension but continued the investigation. The rates were then made effective upon five (5) days' notice to the public and they have been in effect ever since that time and are presently effective.

The effective publication of Item 3415-C changed the rates applicable to the movement of salt from Newark, California to Los Angeles, California from those formerly provided in the same tariff by Item 3415-B. The following were the only rate changes which resulted from the new publication:

1. An existing rate of 29¢ per 100 lbs. applicable to the transportation of crude salt, dried or undried, in box cars was extended to cover movement of crude salt, dried or undried, in open-top equipment;
2. An existing rate of \$4.70 per ton (23-1/2¢ per 100 lbs.) applicable to the movement of crude salt undried was extended to cover movement of crude salt dried or undried.

The result last mentioned was accomplished by changing the language opposite the small "m" reference appearing in Item 3415-B from "applies only on salt, crude, undried, in bulk in open-top cars which can be transported without damage from exposure to weather" to read "applies only in shipments in bulk, in open-top cars which can be transported without damage from exposure to weather". This change made the rate subject to Item 390-B of the tariff which states that rates provided in Section 3 of the tariff (crude rate section) unless restricted shall apply on "salt, common

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(sodium chloride), crude, dried or undried, screened or not screened, either washed or unwashed but not otherwise processed or refined, and containing no added ingredients...in bulk or in packages."

It is Ocean's position that the carload rates theretofore applicable to undried salt should not be made applicable to dried salt. It contends that the tariff changes are ambiguous, confusing, without basis in industry terminology, and will have the effect of creating confusion among both carriers and shippers, giving rise to varying interpretations and otherwise serving to break down historic industry and transportation classifications relating to the transportation of salt; but aside from that the tariff change will work a reduction in the rate from Newark to Los Angeles which, from Ocean's standpoint, will completely disrupt the market in Los Angeles.

About one-half of California salt production is sold to industrial chemical manufacturers. The bulk of the balance is used for water treatment, refrigeration, livestock feed, food preparation, processing of hides and the manufacture of soap. Table and household uses of salt account for something less than three percent of total production. The principal industrial chemical use of common salt is in the manufacture of chlorine and caustic soda.

In 1962 or 1963, Stauffer Chemical Company constructed a plant at Dominguez to manufacture chlorine and caustic soda. In 1962 respondent filed reduced rates to be applicable to Dominguez and Torrance from San Francisco Bay points, Trona and Saltdale, and points on The Atchison, Topeka & Santa Fe Railway in the area of Amboy and Saltus. On petition of Pacific Salt and Chemical Company the rates were suspended and an investigation (Case No. 7304) was

instituted by the Commission. By Decision No. 63972 therein, the Commission found that the reduced carload rates on salt were not unreasonable, discriminatory nor in any other respect unlawful. It vacated the suspension. In the opinion in said decision it is stated:

'Witnesses for the railroad respondents testified that, except from Trona, there has been little or no movement of undried salt between the points involved; that a new chemical plant which will require large quantities of salt is under construction at Dominguez; and that if the reduced rates are not allowed to become effective the new plant would probably secure its salt from Mexico moving to Los Angeles Harbor by water.'

The carload rate found by the Commission to be reasonable for the transportation of salt from Newark to Dominguez was 28.3 cents per 100 pounds (\$5.66 per ton) minimum weight 100,000 pounds. This rate did not attract the Dominguez traffic.^{1/}

In July 1964, respondent published and made effective a rate of \$4.50 per ton applicable to "Salt, crude, undried, in bulk in open top cars, which can be transported without damage from exposure to weather" from Newark to Los Angeles, minimum carload weight capacity of car used but not less than 140,000 pounds per car used and subject to a minimum tender of 600,000 pounds per shipment from one consignor at one origin to one consignee at one destination on one bill of lading on one calendar day. According to Southern Pacific Company's General Freight Agent, this rate was published in order to meet the competition of foreign salt imported

^{1/} By Decision No. 54603, dated December 4, 1962, in Application No. 44737, Post Transportation Company was authorized to charge and collect less than the minimum rate for the transportation of common salt, in bulk, from Pier A, Long Beach, to the Plant of Stauffer Chemical Company at Dominguez.

through the Port of Long Beach. Said rate apparently was not successful in meeting the competition from imported salt.^{2/}

According to Leslie's assistant to the vice president, Ocean's stack run salt, which is produced at Scammon Lagoon, Baja California, is much drier than Leslie's stack run salt. For the chemical plant's purpose, dry salt is much more desirable than wet salt for many reasons; wet salt is corrosive, wet salt does not flow readily as there is a tendency for the wet crystals to join or combine, and there is more sodium and chlorine per ton in dry salt than in wet salt. Leslie is now attempting to compete with Ocean by offering kiln dried salt in the Los Angeles market. It persuaded respondent to establish the same rate for the transportation of kiln dried salt from Newark to Los Angeles as is applicable to undried stack run salt. Essentially that is what this case is all about.

Petitioner does not challenge the level of the rate or its reasonableness except in one respect; that is whether the commodity description and the application of the rate is so ambiguous, vague or inconsistent as to be unintelligible and therefore unreasonable. That is the only issue that has been put before us and therefore is the only one that will be decided.

Is the inclusion of kiln dried salt in the commodity description "crude salt" an anomaly? If the term "crude" is

^{2/} Leslie's sales of crude salt in the Los Angeles Market decreased from 77,942 tons in 1964 to 43,064 tons in 1967. Official notice is taken of Decision No. 74937, dated November 13, 1968, in Application No. 50561 in which the Commission authorized Post Transportation Company to continue to transport salt from Pier A, Long Beach to Stauffer Chemical at rates less than minimum rates.

accorded only its ordinary meaning^{3/} neither kiln dried salt nor stack run salt could be considered to be crude salt. Stack run salt, which is what petitioner terms undried crude salt, is the product of material harvested from solar evaporation crystallizing ponds, which material undergoes a processing consisting of a number of washes before it becomes stack run salt. The purpose of said washes is to remove impurities, more particularly dirt and magnesium and sulphur-bearing compounds. The washing increases the purity of the harvested product from something less than 98% pure to something more than 99% pure. When the stack-run salt is subjected to the kiln-drying process the product purity is increased to 99.8% pure sodium chloride. When stack run salt is dissolved in fresh water and the resulting brine is recrystallized into salt by the vacuum process the product has a purity or sodium chloride content of 99.95% or more. All parties concede that stack-run salt is considered by the trade to be within the term "crude salt"; therefore, if any sense is to be accorded the term "crude" we must look to usages and customs in the transportation and distribution of salt.

Ocean's vice president and general manager testified that common commercial usage the world over recognizes three basic grades of salt: crude undried bulk salt which is commonly called stack run salt, semi-refined kiln dried salt, and vacuum processed refined salt. He said that kiln dried salt is never referred to as crude salt by the industry. His testimony in that regard is

^{3/} Webster's New International Dictionary, Second Edition, Unabridged; G. & C. Merriam Co., 1948:

"Crude 1. In a natural state; not cooked or prepared by fire or heat; not altered or prepared for use by any process; raw; as in crude flesh; not refined; as in crude sugar."

somewhat corroborated by Bulletin 175 of the Division of Mines, Department of Natural Resources of the State of California (Exhibit 3). The assistant to the vice president in charge of industrial products at Leslie testified that for about 28 years he has used the term "kiln-dried crude salt". The region traffic manager for Morton Salt Company testified that there was some confusion concerning the commodities subject to the rates in Section 3 of Tariff 250-B applicable to crude salt when Item 390 contained the description "Salt, crude (sodium chloride) not Table Salt". Morton was one of the parties that sought a change in the commodity description and participated at hearings before respondent in proceedings designated PSFB Docket 5906 which culminated in the change set forth in Item 390-A provided in Supplement 5 to Tariff 250. He testified that several salt producers attended the hearing, he voiced his opinion as to what was and what was not crude salt as did other salt producers and there were some conflicts. A decision was arrived at and the resulting crude salt description was published in Item 390-A and became effective November 21, 1968. Item 390-A states:^{4/}

"APPLICATION OF RATES ON CRUDE SALT

Rates provided in Section 3 of this tariff will apply on the following, unless restricted in connection with individual rates:

SALT, common (sodium chloride), crude, dried or undried, screened or not screened, either washed or unwashed but not otherwise processed or refined, and containing no added ingredients (see Note 1), in bulk or in packages (See Note 2)

NOTE 1 - Crude salt may contain up to 3 percent of other ingredients added solely for the purpose of preventing moisture absorption or to enhance flowability of products.

NOTE 2 - Rates will not apply on fused or compressed salt. Min. wt. 80,000 lbs., except as otherwise provided in connection with individual rates.

(For Rates see Items 620-650, 3400-3880)
(Pro. 5906)"

^{4/} By Supplement 6 this item was amended to make the rates in Section 1 (as well as Section 3) subject to the provisions of this item.

The construction to be given a particular rate requires an examination of the provisions of the tariff naming such rate. Separate and apart from Item 390-B Tariff 250-B specifically states that the rates in Section 3 apply only to crude salt. A number of rates are flagged with limitations as to their application. Some are flagged "Applies only on Salt, crude, undried, in packages or in bulk" which would seem to imply that some other rates must apply to some type of commodity called Salt, crude, dried. Some rates (Item 3520) are flagged as applicable to "dry crude salt, in bulk, not table salt" which clearly states that for purposes of transportation rates there is a commodity known as dry crude salt.^{5/}

It seems clear that the term "crude salt" used in Tariff No. 250 means crystals of sodium chloride that have been mined or harvested (in the case of solar evaporated salt) in their natural state and have not been processed, altered or refined other than by washing (with no limitation as to the type or number of washes), drying (without limitation as to method of drying), and screening (without limitation as to before or after drying or as to the size of mesh), provided, however, that up to 3 percent of other ingredients may be added solely for the purpose of preventing moisture absorption or to enhance flowability of the product. Crude salt as used in Tariff 250 is a term of art denoting a product that may or may not have been processed or refined by certain particular methods and may or may not have been mixed in a certain proportion with other ingredients. While it may appear that the use of such term does violence to the meaning of the word crude, such is not unusual. Crude rubber, for example, is

^{5/} Other examples of rates in Section 3 applicable to dried crude salt may be found in Items 3565, 3660, 3730, 3800-3840, among others.

latex that has been processed with heat, smoke or acetic acid to change its structure and form. In the petroleum industry the so-called "ten crudes" are products of the processing of petroleum. The application of rates in Section 3 of Tariff 250 to "crude salt" is not ambiguous, uncertain or vague; and the application of rates on crude salt to shipments of kiln dried salt is not an anomaly. Under the provisions of Tariff 250 it is clear that stack run salt which has been rewashed, run through a rotary kiln drier, and screened for size is crude salt for which rates are provided in Section 3 of the tariff.

Petitioner contends that there is another anomaly which makes the carload rate on salt here involved impossible of application. The rate is flagged "Applies only on shipments in bulk, in open top cars, which can be transported without damage from exposure to weather". Shipments of kiln dried salt actually made under said rate in open-top cars have been tarped by Leslie. It was stated by Leslie that the cars were tarped in order to avoid contamination of the salt from dust and dirt. The general freight agent for Southern Pacific Company testified that the tarping is no requirement or concern of the railroad and that it will accept tender of crude salt, dried or undried, in open-top cars whether or not the shipment is covered by the shipper, and it will charge the rate involved herein upon representation being made by the shipper that the salt can be transported in open-top cars without damage from exposure to weather.

The tarping by Leslie is not a requirement of respondent. The tariff of respondent does not prohibit the use of the rate if the shipment is tarped by the shipper. It is well known in

transportation that a shipper may provide greater protection for his shipment than the minimum requirements of the carrier.

Susceptibility to damage is a recognized factor in rate making.

Respondent has established a rate which gives effect to the lack of exposure to liability for damage from weather. When the shipper consigns a shipment of crude salt in open-top cars subject to that rate he represents that the salt can be transported without damage from exposure to weather. Keeping in mind that a person or shipper who by any false statement or representation obtains or attempts to obtain any allowance, rebate or payment of damage may be subject to a fine not exceeding \$1,000 or imprisonment in a county jail not exceeding one year, or both fine and imprisonment, no claim for damage due to exposure to weather is likely to be made in connection with shipments of salt, dried or undried, tarped or not tarped, which are transported at the rate involved herein.^{6/} We do not find the anomaly alleged by petitioner.

The matters directed to our attention by petitioner have been heard and considered. We find that no ambiguity or confusion obtains with respect to the application of the rate here under consideration. Respondent presented evidence of rate comparisons and concerning the sufficiency of the rate here involved. Petitioner made no contentions that the rate may be insufficient or unreasonably low by reason of comparison with other rate levels. Findings regarding such matters are not required. With respect to petitioner's allegation that the rate will be disruptive of the market at Los Angeles, we point out that the Commission regulates only the transportation of salt. It has been shown that the railroads have not been able to attract salt traffic and that the

^{6/} See Sections 459 and 2112 of the Public Utilities Code.

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rate here involved was established for the purpose of meeting the competition of imported salt moving into Los Angeles via vessel and truck.

The investigation should be discontinued.

O R D E R

IT IS ORDERED that the investigation instituted by the Commission pursuant to its Decision No. 75146, dated December 20, 1968, in Case No. 8878 is discontinued.

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

Dated at San Francisco, California, this 2nd day of DECEMBER, 1969.

William J. Fowers, Jr.
President
Arthur L. ...
Richard J. ...
Frank ...
Vernon L. Sturgeon
Commissioners