

ORIGINAL

Decision No. 76626

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  
(Petitions for Modification  
Nos. 54 and 55)  
(Filed May 22 and 26, 1969,  
respectively; Amended  
November 20, 1969)

And Related Matters.

Cases Nos. 5432, 5435, 5439  
and 5441  
(Petitions Nos. 542 and 543;  
123 and 124; 92 and 93, 165  
and 166, respectively)  
(Filed May 22 and 26, 1969;  
Amended November 20, 1969)

OPINION AND ORDER

Kimberly-Clark Corporation is engaged in the manufacture and distribution of facial cleansing tissues, paper napkins and sanitary pads, external type, from its various plant facilities in the United States including Fullerton, California. By Petition for Modification No. 54, et al., Kimberly-Clark Corporation seeks the establishment of exception ratings on (1) Pads, Sanitary, as described in Item 148960, Sub 1 of National Motor Freight Classification A-10 (NMFC A-10); and (2) Paper Articles (Facial Cleansing Tissues and Napkins) as described in Item 153020, Sub 2 of NMFC A-10. The sought exception ratings are intended for application in connection with petitioner's California intrastate shipments transported by highway carriers under the governing provisions of the Commission's various minimum class rate scales.

International Paper Company is engaged in the production of numerous paper articles and is presently building a mill and plant at Oxnard, California, which is scheduled to begin production

in early 1970. The Oxnard facility will manufacture and distribute facial cleansing tissues and paper napkins. By its Petition for Modification No. 55, et al., International Paper Company seeks publication of the same exception ratings on paper articles as proposed by Kimberly-Clark Corporation.

The relief sought herein with respect to external type sanitary pads is the same as that requested by Personal Products Company in Case No. 7858 (Petition for Modification No. 56), et al., which is now being separately considered by the Commission. The information presented in support of the proposed ratings for sanitary pads is, for all practical purposes, the same in both instances. Whatever relief, if any, is granted Personal Products Company with respect to their Petition No. 56, et al., would apply equally here. No further consideration of Kimberly-Clark's proposed exception ratings on external type sanitary pads is, therefore, necessary. Subsequent discussion herein will pertain solely to the proposed exception ratings for paper articles and will apply equally to the sought relief of both Kimberly-Clark and International Paper Company.

At the present time the ratings governing the minimum class rates applicable to the highway transportation within California of facial cleansing tissues and napkins (Item 153020, Sub 2 of NMFC A-10) are those set forth in Item 1640 of the Commission's Exception Ratings Tariff No. 1 (ERT 1). This tariff item is scheduled to expire with December 31, 1969. Thereafter, higher classification ratings provided in Item 153020, Sub 2 of NMFC A-10 will apply to the paper articles involved.

Specifically, the present ratings on said paper products and those which are scheduled to become effective on January 1, 1970, are hereinafter set forth:

TABLE 1

Present Ratings - Expires with December 31, 1969  
(Item 1640 of ERT 1)

<u>Article</u>	<u>Class Ratings</u>		<u>Minimum Weight</u>
	<u>LTL</u>	<u>T/L</u>	
Facial Cleansing Tissues, Napkins (Item 153020, Sub 2, NMFC A-10)	-	35	24,000

Ratings Effective January 1, 1970  
(NMFC A-10, Item 153020, Sub 2)

Facial Cleansing Tissues, Napkins (Item 153020, Sub 2, NMFC A-10)	85	85	Any Quantity
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Petitioners are of the opinion that the above Any Quantity ratings contained in NMFC A-10 could be subject to an interpretation which would make the rating inapplicable to the minimum class rate scales established for minimum weight brackets of 5,000, 10,000 and 20,000 pounds. Petitioners contend that such a tariff interpretation would subject them to the highest less-truckload minimum Any Quantity rates regardless of the weight of shipment. The freight charges resulting under such tariff interpretation are considered to be unjust and unreasonable.

Petitioners have developed an exception rating proposal which assertedly will assure the application of the Class 85 Any Quantity rating, schedule to become effective as of January 1, 1970, to so-called tonnage reduction minimum class rates. The proposed exception rating is set forth below:

TABLE 2

Proposed Exception Rating

<u>Article</u>	<u>Class Rating</u>	
	<u>Less-Truckload</u>	<u>Truckload</u>
Paper Articles, Viz: Facial Cleansing Tissues, Napkins (Item 153020, Sub 2 of NMFC A-10)	85(1)	(2)

- (1) If more than one vehicle or combination of vehicles constituting a single unit of equipment is used for the transportation of a single shipment, each such vehicle or combination of vehicles shall be subject to the minimum weight appertaining to the rate used in the applicable tariff.
- (2) Less-truckload rates are applicable.

The propriety of the proposed exception rating as an alternative for removing an alleged tariff ambiguity, is highly questionable. Secondly, from a review of the various minimum class rate structures involved herein, we do not agree with the tariff interpretation that NMFC A-10 Any Quantity class ratings do not apply to minimum class rate scales published for weight brackets other than the so-called "Any Quantity" weight bracket. Whether such ratings are restricted to Any Quantity Class rates scales published in the intra or interstate tariffs of common carriers is not material to the issue now before us.

As of January 1, 1970, the sought relief, as we understand it, will be available to petitioners. If, however, it is petitioners' intention that the Class 85 Any Quantity rating for the paper articles involved herein be restricted to each shipment transported on a single unit of carrier's equipment, the resulting increase in minimum rates must be shown to be fully justified and reasonable. No such showing has been made by the petitioners.

We find that:

1. The sought ex parte relief will, effective January 1, 1970, be available to petitioners under the existing provisions of the Commission's various minimum class rate structures.

2. Petitioners' rate proposal for reflecting the desired ex parte relief results in increases which have not been shown to be just and reasonable.

3. The exception ratings as proposed by petitioners should not be adopted.

We conclude that Kimberly-Clark Corporation's Petition for Modification No. 54, et al., and International Paper Company's Petition for Modification No. 55, et al., in Cases Nos. 7858, 5432, 5435, 5439 and 5441, respectively, should be denied.

IT IS ORDERED that:

1. Kimberly-Clark Corporation's Petitions for Modification Nos. 54, 542, 123, 92 and 165, in Cases Nos. 7858, 5432, 5435, 5439 and 5441, respectively, is hereby denied.

2. International Paper Company's Petitions for Modification Nos. 55, 543, 124, 93 and 166, in Cases Nos. 7858, 5432, 5435, 5439 and 5441, respectively, is hereby denied.

The effective date of this order shall be December 30, 1969.

Dated at San Francisco, California, this 30<sup>th</sup> day of DECEMBER, 1969.

William J. Quinn  
President

J. B. Johnson  
J. J. [unclear]  
James L. [unclear]  
Commissioners