

Decision No. 76830**ORIGINAL**

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 re-
issues of Exception Ratings Tariff
No. 1.

Case No. 7858
Petition for Modification No. 62
(Filed September 5, 1969; Amended
December 1, 1969)

And Related Matters.

Cases Nos.
5432, 5435, 5439 and 5441
Petitions for Modification
Nos. 554, 131, 100 and 173
(Filed September 5, 1969; Amended
December 1, 1969)

OPINION AND ORDER

By Decision No. 76444 of November 18, 1969, in Case No. 7858 (Petition for Modification No. 62) et al., the temporary exception ratings on pulp egg cartons contained in Item 1280 of Exception Ratings Tariff No. 1 (ERT 1) were continued in effect, subject to an expiration date of December 31, 1970. On December 1, 1969, Diamond National Corporation, Keyes Fibre Company and Packaging Corporation of America (petitioners) substantially amended their original proposal with a request that the sought relief, as amended, be granted ex parte on other than a temporary basis.

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, 1970. 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

C. 7858 (Pet. 62) et al. ds

10,000 pounds, as prescribed in Item 41520 of the governing National Motor Freight Classification A-10 (NMFC A-10).

Petitioners' initial sought exception ratings for pulp egg cartons (Decision No. 76444) were generally the same as currently provided 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. Petitioners' amended exception rating proposal is as follows:

<u>Description</u>	<u>Class Rating</u>
CARTONS, egg shipping case or carrier, or egg carrying, molded pulp or molded pulp with paper or paperboard tops or covers, nested, in boxes or in wrapped packages	
(1) Minimum Truckload Weight 24,000 pounds	60
(1) Minimum weight applies per unit of carrier's equipment.	

The proposed description for the sought exception rating is the same as that contained in Item 41520 of NMFC A-10. The requested Class 60, minimum weight 24,000 pounds, exception rating is related to the Class 60, minimum weight 21,000 pounds, rating for plastic egg cartons named in Item 157320 of NMFC A-10.

Petitioners explain they experience competition from two California manufacturers of plastic egg cartons which currently enjoy the following class ratings named in Item 157320 of NMFC A-10:^{1/}

^{1/} The plant facilities of petitioners' competitors are located at Pico-Rivera and Bakersfield, California.

PLASTIC OR RUBBER ARTICLES OR MATERIALS, EXPANDED
GROUP: Articles consisting of Plastic or
Rubber Articles or Materials, foam, cellular,
expanded or sponge, N.O.I.

<u>Minimum Truckload Weight</u>	<u>Class Ratings</u>
10,000	100
16,000	70
21,000	60
30,000	45

It is noted that while a truckload rating of Class 100, minimum 10,000 pounds, is provided for both pulp egg cartons (Item 41520 of NMFC A-10) and plastic egg cartons (Item 157320 of NMFC A-10), additional truckload ratings are also published for the plastic egg cartons. No ratings lower than Class 100, regardless of weight of shipment, are named for pulp egg cartons in the governing classification. Petitioners maintain that 24,000 pounds of pulp egg cartons constitute a maximum load in the largest available truck equipment in California. The proposed exception rating of Class 60, minimum weight 24,000 pounds, will assertedly enable petitioners to compete with California manufacturers of plastic egg cartons and thereby remove the alleged existing discrimination.

Petitioners contend that there is intense competition in the southern California market between all manufacturers of egg cartons which are generally sold f.o.b. factory. Since the pulp egg carton factories are located in northern California and the plastic egg carton factories are located in southern California, the latter enjoy a geographical competitive advantage in the southern California market which is alleged to be the largest in the State. Petitioners explain that the delivered selling price of

egg cartons in the southern California market is approximately the same per 1000 cartons whether made of pulp or plastic.

All three petitioners manufacture pulp egg cartons which have weight densities ranging from 6.35 pounds per cubic foot to 8.27 pounds per cubic foot. In addition, one petitioner manufactures pulp egg cartons without tops which have an average density of 3.8 pounds per cubic foot. It is understood that shipments of this type of egg carton by for-hire carriers constitute only a small fraction of the total movement. In NMFC A-10 a less-truckload Class 100 rating is provided for plastic egg cartons having a density of 6 pounds per cubic foot but less than 12 pounds per cubic foot; whereas said classification names a Class 100 rating for pulp egg cartons as a single truckload rating subject to a minimum weight of 10,000 pounds. In Appendix B of the petition reference is made to articles, other than egg cartons, having densities in the 6 to 12 pounds per cubic foot range, for which NMFC A-10 and the exception ratings tariff thereto of several major highway common carriers provide truckload ratings that are comparable to or lower than those sought herein. In addition, reference is made also to articles for which stated densities are not provided that are subject to ratings comparable to or lower than those sought herein for the same or lesser minimum truckload weights.

It is petitioners' contention that the application of NMFC A-10 class ratings in connection with movements of pulp egg cartons in areas outside California has been substantially modified through the publication of exception ratings or commodity rates. Examples of said exception ratings and commodity rates are contained in Exhibit 1 of the petition, as amended.

Responsive to the program established by the Commission for the gradual changeover to the National Motor Freight Classification as the governing classification for its various minimum class rate structures, petitioners state they have conducted studies and consulted with the California for-hire carriers who move petitioners' traffic concerning said carriers' revenue requirements. Based upon these shipper-carrier discussions and in consideration of the revenue needs of the carriers involved, the requested exception rating of Class 60, minimum weight 24,000 pounds per unit of carrier's equipment used was developed.

Petitioners state they know of no opposition to the proposed exception rating. The certificate of service shows that copies of the petition, as amended, were served on various shippers and carriers, including the California Trucking Association. The amended petition was also listed on the Commission's Daily Calendar of December 2, 1969. No objections to the granting of the sought ex parte relief, as amended, have been received.

In the circumstances, the Commission finds that:

1. The established exception ratings for pulp egg cartons contained in Item 1280 of Exception Ratings Tariff No. 1, are scheduled to expire with December 31, 1970. Thereafter, the higher ratings set forth in NMFC A-10 will govern the minimum class rate scales applicable to California intrastate shipments of pulp egg cartons by highway carriers.

2. Petitioners request the establishment, on other than a temporary basis of a truckload Class 60 exception rating, subject to a minimum weight of 24,000 pounds per unit of carrier's equipment used, on pulp egg cartons as described in Item 41520 of NMFC A-10. The proposed truckload exception rating, while higher

than the existing temporary exception rating, is lower than the otherwise applicable class rating named in the governing classification.

3. In various areas of the United States, other than California, motor carrier tariffs provide commodity rates and/or exception ratings for shipments of pulp egg cartons which, in effect, produce comparable or lower charges than those otherwise applicable under the provisions of the governing classification.

4. The National Motor Freight Classification A-10 currently provides class ratings, comparable to the exception ratings proposed herein, on several commodities having density and other transportation characteristics similar to those for pulp egg cartons.

5. The classification ratings for pulp egg cartons named in Item 41520 of the National Motor Freight Classification are not generally the governing factor in the determination of rates in areas where there is a substantial movement of the transportation involved herein.

6. The establishment of the proposed exception rating for California intrastate shipments of pulp egg cartons by highway carriers has been demonstrated to be fully justified.

7. The minimum rates resulting from the application of the exception rating recommended herein are, and for the future will be, the just, reasonable and nondiscriminatory minimum rates for the transportation of pulp egg cartons by highway carriers subject to the provisions of Minimum Rate Tariffs Nos. 1-B, 2, 9-B, 19 and Exception Ratings Tariff No. 1, respectively.

8. The present exception ratings named in Item 1280 of Exception Ratings Tariff No. 1 should be canceled concurrently with

the establishment of the requested truckload exception rating on pulp egg cartons.

9. Common carriers, subject to the provisions of Minimum Rate Tariffs Nos. 1-B, 2, 9-B and 19, respectively, should be authorized to adopt the exception rating established herein, in lieu of the existing temporary exception ratings.

We conclude that the exception rating proposed by petitioners, as further clarified herein, should be established in Section 2 of Exception Ratings Tariff No. 1 and Minimum Rate Tariffs Nos. 1-B, 9-B, and 19. The minimum rates resulting under the aforesaid establishment of exceptions to the otherwise governing National Motor Freight Classification A-10 will be just, reasonable and nondiscriminatory minimum rates. A public hearing is not necessary.

In order to avoid duplication of tariff distribution, Exception Ratings Tariff No. 1 will be amended by the order herein and Minimum Rate Tariffs Nos. 1-B, 9-B and 19, respectively, will be amended by separate orders.

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 April 4, 1970, the revised pages attached hereto and made a part hereof by this reference, said pages being specifically identified as:

Twenty-First Revised Page 3
Fourth Revised Page 13
Fifth Revised Page 27-U.

2. Tariff publications required 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 and such tariff publications shall be made effective not later than April 4, 1970; and the tariff publications which are authorized but not required 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 pages incorporated in this order.

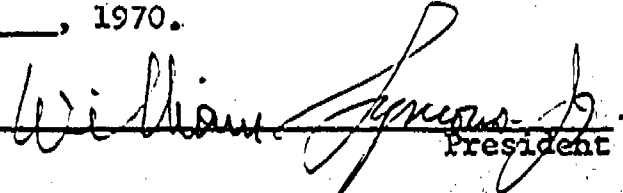
3. Common carriers, in establishing and maintaining the rating authorized hereinabove, are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rating published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

4. Minimum Rate Tariff 5 being no longer involved in petitioners' sought relief, as amended and authorized herein, Petition for Modification No. 131 in Case No. 5435 is hereby dismissed.

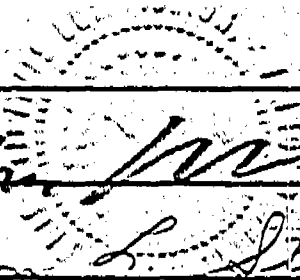
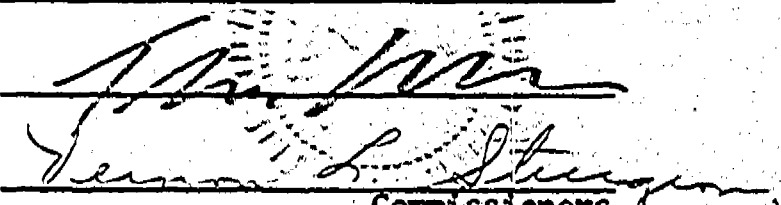
5. In all other respects, Decision No. 66195, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 20th day of FEBRUARY, 1970.



President

Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

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

EXCEPTION RATINGS TARIFF 1

INDEX OF COMMODITIES

COMMODITIES	ITEM	COMMODITIES	ITEM
Acids	1200	Kernels, corn, roasted	480
Articles as described in the Governing Classification	1030-1050	Ladders, Step	900
Briquettes, wood	180	Pads, sanitary	755
Cans, ash, garbage, oiled waste, refuse	1680	Paper or Paper Articles	180,1640
Carriers, old (used)	280	Returned Shipments	820
Carriers, used packages	300,320, 321,340	Rubber Articles	1660
Cartons, eqy. pulp	6270	Salt, common (Sodium Chloride)	880
Chemicals	1320	Shipments, returned	820
Cocoa or Cocoa Paste	480	Stepladders	900
Compounds, tree and weed killing	460	Sugar	940
Confectionery	480	Titanium Dioxide	950
Fertilizers	540,560, 580	Wood Briquettes	180
Flowers, fresh, cut	592	Wood, fuel	960
Furniture	1020		
Furniture and related articles	1000		

Change, Decision No. **76830**

EFFECTIVE

Correction 206

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

SECTION 2--RATINGS WHICH ARE EXCEPTIONS TO THE GC (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.)			
ARTICLES	Rating		
	LTL	TL	
<p>Carriers, Shipping, viz.:</p> <p>Cartons, egg, pulp (41520) Minimum weight 24,000 lbs. (Subject to Note)</p> <p>NOTE.--Minimum weight applies to each unit of carrier's equipment used in the transportation of a single shipment. A unit of equipment includes any motor truck or other self-propelled highway vehicle, trailer, semi-trailer, or any combination of such highway vehicles operated as a single unit.</p>		60	*270
<p>Carriers, old (used), viz.: (Subject to Note 2)</p> <p>Barrels, iron or steel (see Note 1), 19 gauge or thicker, minimum weight 20,000 lbs. 20 to 22 gauge, both inclusive, of not less than 15 gallons capacity, minimum weight 20,000 lbs.</p> <p>Drums, iron or steel (see Note 1), 19 gauge or thicker, minimum weight 20,000 lbs.</p> <p>Pails, iron or steel, 19 gauge to 24 gauge, both inclusive, of not less than 5 gallons capacity, minimum weight 20,000 lbs.</p> <p>NOTE 1.--Does not apply on Barrels and Drums, iron or steel, secondhand, empty, returning or shipped for return paying load, under the provisions of Items 320 and 321.</p> <p>NOTE 2.--If the charge accruing under the rating in the governing classification is lower than the charge accruing under the resulting rating contained herein, the lower charge resulting from the classification will apply.</p>		35.1	(E) 280
<p>Carriers (used packages), viz.:</p> <p>Boxes, Crates, Egg Cases,</p> <p>with or without fillers, secondhand, empty, returning or when shipped for return paying load. Applies only when return movement is over same line, or lines, as outbound movement, subject to Item 80. Minimum weight 20,000 lbs.</p>		35.4	(E) 300
<p>(E) Expires with December 31, 1970.</p> <p>* Addition, Decision No. 76830</p>			
EFFECTIVE			
Correction 207	ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.		

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)								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			
Item canceled. Provisions in Minimum Rate Tariffs, the Governing Classification or Item 270 of this tariff, as the case may be, apply.								01280
<p>(E) Expires with December 31, 1970.</p> <p>(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.</p> <p>◊ Increase, Decision No. 76830</p>								
EFFECTIVE								
Correction 208				ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA				