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Decision No. 78291

ORIGINAL

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).

And Related Matters.

Case No. 5432  
Petition for Modification No. 583  
(Filed April 10, 1970)

Cases Nos.  
5435, 5439, 5441 and 7858  
Petitions for Modification  
Nos. 149, 117, 193 and 72,  
respectively  
(Filed April 10, 1970)

Vaughan, Paul & Lyons, by John G. Lyons, Attorney  
at Law, for petitioner, Union Ice Company.  
J. C. Kaspar, H. F. Kollmyer and A. D. Poe, for  
California Trucking Association, protestant.  
John Lemke, for the Commission staff.

O P I N I O N

The Union Ice Company, a corporation, by these petitions,  
seeks to establish a truckload exception rating of Class 35.4,  
minimum weight 40,000 pounds, on ice, in blocks, effective January 1,  
1971. The present exception rating of Class 35.4, minimum weight  
30,000 pounds, was scheduled to expire with December 31, 1970.

Said petitions were granted without hearing by Decision  
No. 77383, dated June 23, 1970. Upon petition filed by California  
Trucking Association (CTA), rehearing of said decision was granted

by Decision No. 77678, dated September 1, 1970.<sup>1/</sup> Rehearing as ordered by the Commission was held before Examiner Mallory at San Francisco, on December 3, 1970, and the matters were submitted. Evidence in support of the continuation of the exception ratings on truckload shipments of ice was presented by several witnesses testifying on behalf of petitioner. CTA opposed the granting of the relief sought. The Commission staff presented no evidence and took no position in the proceeding.

The evidence presented by petitioner's employees is summarized in the following statements. Petitioner is a manufacturer and seller of wet ice, a seller of dry ice and a distributor of frozen foods, at several locations in California. It manufactures and sells wet ice (water ice) for various uses in 25, 50, 100 and 300 blocks. Most of the ice which petitioner manufactures is transported in vehicles operated by it. Petitioner uses for-hire carriers to transport truckload shipments of ice in 300-pound blocks which is used for icing rail cars and trucks hauling fresh fruits and vegetables; also such ice is used in the making of "cooled" concrete.<sup>2/</sup> Most of the for-hire carrier movements of ice are irregular. Such movements occur when certain of petitioner's plants have insufficient local production to handle their peak sales requirements and petitioner's equipment is not available to perform the necessary transportation service. Petitioner has one destination

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<sup>1/</sup> The requested exception rating was placed in Item 1860 or Exceptions Rating Tariff 1 (ERT 1). Decision No. 77678 also suspended, until further order of the Commission, the tariff provision established by Decision No. 77383.

<sup>2/</sup> The latter use involves the mixing of ice with other ingredients of concrete, to maintain low temperatures while the concrete sets.

to which regular heavy movements of ice are performed by highway carriers. Exhibit 583-1 shows that in the period January 1 through October 31, 1970, 6,252.35 tons (12,504,700 pounds) of ice in blocks of 300 pounds were transported by for-hire carriers from points in the Los Angeles Metropolitan Area to Oxnard.

The principal witness for petitioner indicated that there are two other major ice producers operating at multiple locations in the State. Such companies assertedly indicated to petitioner that they had no interest in joining petitioner in its request herein.

Witnesses for petitioner testified that ice has a very low value, and that transportation costs are a large portion of the total delivered cost of ice. The witnesses testified that other transportation characteristics of ice are favorable; loading and unloading times are in the neighborhood of 15 minutes to 45 minutes; there is no pilferage; and no loss or damage claims have been filed with for-hire carriers in recent years. Said witnesses testified that if the exception rating of Class 35.4 is removed, and the classification rating of Class 35 becomes applicable rates will increase by amounts averaging 45 percent. Said increase would cause petitioner to use its own trucks in lieu of for-hire carriers.

The owners of two trucking companies hauling ice to Oxnard for petitioner testified in support of petitioner's request. They indicated that the transportation of ice to Oxnard constitutes an important segment of their operations and that they would be adversely affected by the loss of such traffic. The truckers also stated that the present rates based on Class 35.4 ratings were compensatory for their movements and that they would expect Class 35.4 rates to be compensatory in the future.

CTA argued that the petitions herein should be denied for the reason that the record herein indicates that, with the exception of the movement to Oxnard, there are no regular movements of ice by for-hire carriers within California. CTA urged that, excepting the Oxnard hauls, for-hire carriers handled ice for petitioner only when its own equipment was not available; thus, placing for-hire carriers on what must be considered to be a standby basis. CTA argued that such standby operations do not warrant a statewide exception rating on ice. CTA also argued that it is customary that requests for exception ratings be supported with detailed comparisons of the transportation characteristics of the commodity involved in the request with other commodities now bearing ratings on the same level as is sought in the request. CTA stated that a showing of this type was not presented by petitioner.

#### Discussion

The exception rating involved herein, together with many other exception ratings, were subjected to an expiration date in Decision No. 74310, dated July 25, 1968, in Cases Nos. 5432 and 7858, in connection with the adoption of National Motor Freight Classification A-10 in place of Classification A-10 (Cal) to govern the various minimum class-rate tariffs. Said decision found that most of the then existing exception ratings should be continued on a temporary basis in order to effect an orderly transition between the two classifications. That decision also found that continuation of any of the temporary exception ratings on a permanent basis was to be "fully justified pursuant to the filing of a (timely) petition". Petitioner's filing appears to be in response to the foregoing admonition in Decision No. 74310.

Petitioner has failed to show that a statewide exception rating is justified. Except from the Metropolitan Los Angeles Area to Oxnard, the movements of ice by for-hire carriers appear to be sporadic. It also appears that (with the foregoing exception) for-hire carriers are used only when needed to supplement the use of petitioner's proprietary equipment. No movements are made within any of the drayage areas; nor do competing producers require or use for-hire carriers to move truckload shipments of ice.

On the other hand, the record shows that for-hire carriers participate in a heavy movement of ice to Oxnard; that such movements constitute an important part of the services of the two carriers performing such transportation; that such carriers believe present Class 35.4 rates are compensatory; that loss of such traffic would adversely affect said carriers; and that, in face of the low value of ice, increases in rates resulting from the application of Class 35 rates on ice would dry up such traffic by causing the shipper to use its own equipment. The circumstances surrounding the transportation of ice in 300-pound blocks to Oxnard warrant the establishment of specific commodity rates for this movement on the same level as the current rates based on the truckload exception rating of Class 35.4. Such rates should be established in Minimum Rate Tariff 2 and the exception rating in Item 1830 of ERT 1 should be canceled.

#### Findings

1. Petitioner, Union Ice Company, engages in the manufacture and sale of ice in 300-pound blocks.
2. Ice is currently subject to a truckload exception rating of Class 35.4, which was scheduled to expire. In the absence of an exception rating the classification rating of Class 35 is applicable.

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3. Petitioner seeks the extension, on a permanent basis, of the aforementioned exception rating.

4. As indicated in the preceding opinion, the characteristics of the movement of ice do not warrant a general statewide exception rating; there are no regular movements (except to one point) and the necessary data to show that the transportation characteristics of ice compare favorably with other commodities accorded truckload ratings of Class 35.4 have not been furnished. Therefore, the exception rating set forth in Item 1830 of Exception Ratings Tariff 1, now under suspension, should be canceled.

5. The record demonstrated that there is a regular and substantial movement of ice by for-hire carriers from points in the Los Angeles Metropolitan Area to Oxnard; that such movement will not continue to be handled by for-hire carriers if Class 35 rates are made applicable thereto; and that the two carriers which now engage in such transportation are satisfied with the present Class 35.4 level of rates on ice, and would be adversely affected by the loss of such traffic.

6. The factors enumerated in finding 5 warrant the establishment of specific truckload commodity rates on ice in 300-pound blocks to Oxnard from points in the Metropolitan Los Angeles Area on the level of Class 35.4 rates, subject to a minimum weight of 40,000 pounds.

7. The specific commodity rates on ice incorporated in Minimum Rate Tariff 2 by the order which follows are, and will be for the future, the just, reasonable and nondiscriminatory minimum rates for the transportation services to which they apply.

8. Increases, if any, resulting from the order herein are justified.

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Conclusions

The Commission concludes that:

1. Petition No. 583 in Case No. 5432 should be granted to the extent provided in the order which follows.
2. Other petitions herein should be denied.
3. Minimum Rate Tariff 2 should be amended by the order which follows, and Exception Ratings Tariff 1 should be amended by separate order.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D to Decision No. 31606, as amended) is further amended by incorporating therein, to become effective March 20, 1971, the following revised pages attached hereto, which pages by this reference are made a part hereof:

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

3. 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 March 20, 1971; 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.

4. Common carriers, in establishing and maintaining the provisions 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 provisions published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

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

6. Petitions Nos. 149, 117, 193 and 72, in Cases Nos. 5435, 5439, 5441 and 7858, respectively, are denied; and Petition No. 583 in Case No. 5432, to the extent not granted herein, is denied.

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

Dated at San Diego California, this 20 day of FEBRUARY, 1921

[Signature]  
Chairman  
[Signature]  
[Signature]

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioners





SECTION 3--COMMODITY RATES (Continued) In Cents Per 100 Pounds				ITEM
<p>(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>				
COMMODITY	FROM	TO	RATE	
<p>ICE (101600), in 300 Pound Blocks.  Minimum Weight 40,000 pounds, subject to Note 2</p>	<p>Points in Los Angeles Area Metropolitan Zones 201 through 262</p>	<p>COGNARD</p>	<p>See Note 1</p>	<p>*660</p>
<p>NOTE 1.--Apply Class 35.4 rates in Item 507 subject to Note 3.</p> <p>NOTE 2.--The minimum weight applies to each unit of equipment in which the shipment is transported.</p> <p>NOTE 3.--The rates are not subject to the provisions of Item 85 - Shipments Transported in Multiple Lots; Item 160 - Split Pickup; or Item 170 - Split Delivery.</p>				
<p>* Addition, Decision No. 78291</p>				
EFFECTIVE				
Correction 2411		ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.		