

Decision No. 79054

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 commodi- )  
 ties 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).

Case No. 5432  
 Petition for Modification  
 No. 645  
 (Filed April 26, 1971)

Herbert S. Rush, for The Original House of Pies,  
 Inc., petitioner.

J. C. Kaspar, A. D. Poe, Attorney at Law, and

H. F. Kollmyer, for California Trucking  
 Association, protestant.

George L. Hunt, for the Commission staff.

### O P I N I O N

In this proceeding, The Original House of Pies, Inc., petitioner, seeks the inclusion of Pies, NOI, requiring baking, frozen, in Items 360 and 360.5 of Minimum Rate Tariff 2. Said items provide exception ratings of Class 55, minimum weight 20,000 pounds, and Class 35, minimum weight 30,000 pounds on groceries and grocers supplies as described in said items. Frozen pies requiring baking are subject to classification ratings of Class 100, less truckload, and Class 37.5, truckload, minimum weight 36,000 pounds, as set forth in Item 74340 of the Governing Classification.

The petition also requests that the Commission investigate to determine the lawfulness of temperature control rates in the instance where the Governing Classification provides higher ratings

on the same commodity when shipped frozen than when shipped not frozen. The latter request was withdrawn at the hearing, based on the understanding that this Commission had given consideration to such question in prior proceedings.

Public hearing was held and the matter was submitted before Examiner Mallory at Los Angeles on June 16, 1971. Evidence was presented by petitioner. California Trucking Association opposed the granting of the relief sought.

Petitioner presented data showing the transportation characteristics of the products shipped by it and other relevant data concerning its shipping practices. Cross-examination by California Trucking Association showed that there are other manufacturers of frozen pies requiring baking who ship their products within California and, although such manufacturers do not compete directly with petitioner, the preponderance of such frozen pies are manufactured and shipped by companies other than petitioner. While the record herein contains quite detailed information with respect to the transportation conditions and circumstances surrounding the movement of petitioner's products, it contains no information with respect to any other movements.

California Trucking Association argued that petitioner had not sustained the necessary burden of proof to justify the proposed reduction in ratings on frozen pies requiring baking, because it failed to produce evidence concerning the preponderant movements of such pies. California Trucking Association argued that the proposed ratings would apply to all frozen pies requiring baking which are transported in California; therefore, without information concerning the transportation conditions and circumstances surrounding pies other than those shipped by petitioner, the Commission does not have sufficient data to determine the reasonableness of the request herein. As a basis for its position, California Trucking Association cited Petition of Lyons - Magnus, Inc., 58 Cal. P.U.C. 353 (1960). In said proceeding the Commission stated at page 354:

"The showing of petitioner was developed and presented on the basis of its own products only. The evidence shows that about 60 percent of the total production of fruit and fruit peel in California is produced by processors other than petitioner. In the absence of information concerning the transportation characteristics of the fruit and fruit peel of other producers, no determination may be made of the transportation characteristics of the fruit and fruit peel items as a group. In the circumstances, the record shown does not support the granting of the petition. The petition should be denied."


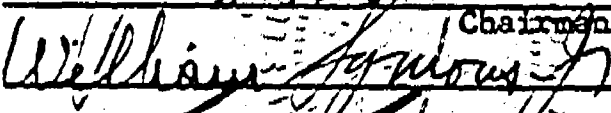


The record shows, and we find, that petitioner, The Original House of Pies, Inc., manufactures less than 10 percent of the frozen pies requiring baking moving in intrastate transportation service within California. We further find that the record contains no data concerning the transportation characteristics of frozen pies requiring baking other than those manufactured and shipped by petitioner. Based on such findings, we must conclude that the record does not support the granting of the petition herein, and that the relief sought therein should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 645, in Case No. 5432, filed by The Original House of Pies, Inc., is hereby denied.

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

Dated at San Francisco, California, this 31st  
day of AUGUST, 1971.

  
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Chairman  
  
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Vernon L. Sturgeon  
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Commissioners