

Decision No. 82344

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
reissues of Exception Ratings
Tariff No. 1.

Case No. 7858
Petition for Modification
No. 157
(Filed July 16, 1973)

O. M. Ellis, for Ellis Distributing Company, petitioner.
R. C. Broberg, A. D. Poe, Attorney at Law, and H. W.
Hughes, for California Trucking Association,
protestant.
Gary E. Haas, for the Commission staff.

OPINION

This matter was heard and submitted on October 19, 1973 before Examiner Thompson at San Francisco. Ellis Distributing Company, a partnership, markets a fertilizer known as Kel-Gro Kelp. By this petition it requests amendment of Item 560 of Exception Ratings Tariff 1 to provide for the specific listing of "Agricultural-Grade Kelp."

Kelp is gathered from the sea near Santa Barbara and is washed, chopped, and dried by the harvesters. Petitioner purchases kelp from the harvesters and causes it to be shipped by highway carrier to its place of business at Modesto. Petitioner there subjects the kelp to a hammering process under which the fibre constituents are separated from a crystalline residue. The residue is marketed as Kel-Gro Kelp Fertilizer. For over 20 years petitioner has used the services of highway carriers to transport inbound and outbound shipments. Until recently the shipments of kelp received by petitioner and the shipments of Kel-Gro have been considered by the highway carriers as exempt from the minimum rates prescribed in Minimum Rate Tariff 2. Originally the minimum rate tariff stated

that the rates therein did not apply to "Fertilizer." Over the years there have been changes made to the item specifying the exemptions and it now reads:

"Fertilizers, as described in Items 540, 560, and 580 of the Exception Ratings Tariff."

Item 540 specifies liquid manufactured fertilizing compounds, Item 560 names what might be called compounds other than chemical fertilizers, and Item 580 names chemical fertilizing compounds. Kelp is not mentioned specifically by name in any of the aforesaid items. The highway carriers transporting petitioner's shipments have informed him that representatives of the Commission have informed them that the shipments are not exempt from the minimum rates, and are subject to the rates applicable to ratings provided in Items 59240 through 59300 under the generic headings, "Sea Grass, Sea Moss, or Seaweed." Petitioner presented evidence showing that the shipments of kelp and Kel-Gro have until recently always moved at rates other than class rates, that the articles have been classified as commercial fertilizers by the Department of Agriculture and for tax purposes by the State Board of Equalization. Exhibit 1 contains a letter addressed to petitioner from the National Classification Board stating that Kel-Gro and kelp meal are governed by ratings applicable to fertilizing compounds (Manufactured Fertilizers) N.O.I.

Informal Ruling No. 115, issued by the Commission's Transportation Division, provides, in part,

"If the article is not subject to exception ratings and is subject to National Motor Freight Classification ratings, the ratings so determined by the National Classification Board should be applied on California intrastate class-rated traffic in the absence of any formal decision on the question by the Commission."

Item 560 of the Exception Ratings Tariff specifically names "Fertilizer Compounds (Manufactured Fertilizers), noibn in the GC."

Protestant California Trucking Association argues that the kelp commodities received by and shipped by petitioner have been determined to be fertilizer compounds, are therefore included in Item 560 of the Exception Ratings Tariff so that the petitioner already has the relief it seeks through this petition, and that therefore the petition should be denied.

Commission staff concur that the articles are subject to Item 560 but suggests that the provisions may be clarified so as to remove any doubt.

Petitioner really does not care just so long as the truckers, and representatives of the Commission staff, are made aware that the articles in question are fertilizer compounds not subject to the rates and rules in Minimum Rate Tariff 2.

We find that the article described by petitioner as agricultural-grade kelp, washed, chopped (or ground), dried, in sacks or bags, and the article described by petitioner as Kel-Gro are fertilizing compounds (Manufactured Fertilizers) as described in Item 560 of the Exception Ratings Tariff.

We see no necessity for further clarification of Item 560. The petitioner already having the relief it seeks; the petition should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 157 is denied.

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

Dated at San Francisco, California, this 15th
day of JANUARY, 1974.

Veronica L. Sturgeon
President
William J. Sturgeon
William J. Sturgeon
William J. Sturgeon
William J. Sturgeon
Commissioners