

ORIGINAL

Decision No. 83103

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).

Case No. 5432
Petition for Modification
No. 781
(Filed December 18, 1973)
Petition for Modification
No. 783
(Filed December 28, 1973)

Robert Earl Howard, for Mc Cormick and Company, Inc. - Schilling Division, petitioner.
Thomas G. Griffith, Attorney at Law, for Transcal Express, and Charles Ramorino, for Bob Rich Truck Service, respondents.
R. C. Broberg and Herbert W. Hughes, for California Trucking Association, interested party.

O P I N I O N

The Mc Cormick and Company, Inc., petitioner, requests that the commodities listed under the generic heading "Groceries and Grocers' Supplies" in Items 360 and 360.5 of Minimum Rate Tariff 2 (MRT 2) be clarified and amended so as to clearly include: (1) "Tortilla Chips; with vegetables or prepared sauce, with or without other ingredients" and (2) "Mixes, Basic Food Sauce, Dry".

Because the California Trucking Association (CTA) protested, Petitions 781 and 783 were heard before Examiner Gagnon at San Francisco on March 18, 1974. The petitions were submitted subject to the receipt of late-filed Exhibits 3 and 4 which were received on May 16, 1974. As a result of petitioner's clarification of the sought relief CTA withdrew its objections.

Items 360 and 360.5 of MRT 2 provide Classes 55 and 35 ratings, subject to minimum weights of 20,000 and 30,000 pounds, respectively, for various commodities listed under the generic heading for "Groceries and Grocers' Supplies". These class ratings are exceptions to the otherwise applicable higher classification ratings provided in the governing National Motor Freight Classification 100-A (NMFC 100-A). The current exception ratings named in Items 360 and 360.5 of MRT 2 apply to a rather extensive list of grocery products including "Food, Prepared, NOI (73180 or 73200)" and "Compounds, Food Curing, Preserving or Seasoning (73220)".^{1/}

Petitioner has been shipping its "Dinner Mexicana" product line for several years under the bill of lading description "Food, prepared, NOI, released value 50¢/LB." in compliance with an informal ruling by the National Classification Board. Accordingly, the exception ratings named in Item 360 of MRT 2 for "Food, Prepared, NOI (73180 or 73200)" was applied to such shipments. Similarly, petitioner is shipping its spaghetti sauce under the bill of lading description "Food Seasoning Compound (73220)" at the exception ratings named in Item 360 of MRT 2.

^{1/} The numerical reference immediately following the designated commodity description refers to such commodities as they are described in the corresponding item numbers of NMFC 100-A.

Petition 781. Item 73750 of the Governing Classification was amended to read "Macaroni, Noodles, Rice, Spaghetti or Vermicelli, dry, not cooked;...or Tortilla Chips; with cheese, meat, vegetables or prepared sauce, with or without other ingredients, in inner containers in boxes." (Underscoring indicates addition.)

Petitioner states it was informed by the National Classification Board that the "Dinner Mexicana" product line was now more appropriately described under Item 73750 of the Governing Classification. In order to eliminate any question as to petitioner's continued application of the exception ratings contained in Item 360.5 of MRT 2, it is requested that the commodity description published therein for "Macaroni, Noodles, Rice, Spaghetti or Vermicelli, except canned (73730 or 73750)" be expanded to include reference to petitioner's Tortilla Chips product line.

CTA requested that petitioner be directed to submit written confirmation relative to the National Classification Board's classification of petitioner's products involved herein. In response to CTA's request petitioner agreed to solicit such written confirmation and submit same as late-filed Exhibits 3 and 4. Subject to that filing CTA withdrew its opposition to the sought relief. The National Classification Board's written informal ruling in question (Exhibit 3) states:

"Re: Taco Casserole, dried, consisting of seasonings, tortilla chips, and tomato sauce, to be mixed with hamburger and baked..."

"...it is the Board's opinion that the classification provisions applicable are listed in Item 72785, naming 'Dinner or Soup Ingredients', subject to the Note in Item 72787 which states 'Applies only on mixtures of dry ingredients, cooked or not cooked'. Prior to the establishment of the new Item 72785, that is, prior to May 3, 1974, the proper classification provisions...were listed in Item 73750,... However, Item 73750 has been canceled, and Item 72785 entered into the classification as of May 3, 1974."

The clarification of Items 360 and 360.5 of MRT 2 should be accomplished in the following manner:

1. Eliminate numerical reference to Item 73750 of the Governing Classification from the commodity description for "Macaroni, Noodles, Rice, Spaghetti or Vermicelli..."^{2/}
2. Cancel commodity description for "Soup Ingredients (Soup Mix),...(74800)" and in lieu thereof add:

Dinner or Soup Ingredients (72785 and 72787)-

Petition 783. Petitioner is currently shipping sauce under a bill of lading description for "Food Seasoning Compound (73220)" for which the exception ratings in Item 360 of MRT 2 apply. However, a witness for petitioner correctly observed that Item 74060 of NMFC 100-A more accurately describes petitioner's product as "Mixes, basic food sauce, or food dip, dry..." which, in effect, precludes

^{2/} The numerical reference 73750 in connection with commodity description for "Macaroni, Noodles, Rice, Spaghetti or Vermicelli, except canned (73730 or 73750)" should also be eliminated since the Item 73750 of NMFC 100-A was canceled.

the MRT 2, Item 360 exception ratings for seasoning compounds. Therefore, petitioner is changing its computerized bill of lading program description for spaghetti sauce to read "Mix, food sauce, dry (74060)". Since this latter commodity description is not covered by the lower exception ratings in Item 360 series of MRT 2 the higher classification ratings named in Item 74060 will apply. Petitioner's understanding in this matter is also confirmed by the National Classification Board's informal opinion (Exhibit 4) which states: "...it is the Board's opinion that the classification provisions applicable for...spaghetti sauce mix are listed in Item 74060, naming 'Mixes, basic food sauce', subject to Note in Item 74062". In the circumstances petitioner seeks and has so demonstrated that the following description should be added to the list of commodities contained in Item 360.5 of MRT 2:

Mixes, basic food sauces, or food dip, dry
(74060 and 74062).

Findings

1. Items 360 and 360.5 of MRT 2 contain reduced class ratings for various commodities generally described as "Groceries and Grocers' Supplies".
2. The class ratings named in Items 360 and 360.5 of MRT 2 are exceptions to the otherwise applicable higher classification ratings named in the governing NMFC 100-A.
3. The proposed revision of Items 360 and 360.5 of MRT 2 has been shown to be justified and the resulting rates and charges will be just, reasonable, and nondiscriminatory minimum rates and charges for the transportation governed thereby.

Conclusions

1. Petitions for Modification Nos. 781 and 783 in Case No. 5432 of Mc Cormick and Company, Inc. should be granted to the extent provided in the order herein and MRT 2 amended accordingly.
2. Common carriers should be authorized to depart from the long- and short-haul provisions of Section 460 of the Public Utilities Code only to the extent necessary to publish the reduced exception ratings adopted herein.
3. To the extent not granted herein Petitions 781 and 783 should be denied.

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 August 9, 1974, Forty-Fifth Revised Page 6, Fifty-Sixth Revised Page 7, Twelfth Revised Page 37-CC, and Third Revised Page 37-CCC, attached hereto and by this reference made a part hereof.
2. Common carriers subject to the Public Utilities Act, to the extent that they are subject to Decision No. 31606, as amended, are hereby authorized to establish in their tariffs the amendments necessary to conform with the further adjustments ordered herein.
3. Tariff publications authorized to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than the fifth day after the effective date of this order, and may be made effective on not less than five 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 rates authorized by this order, are 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 rates 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 Decision No. 31606, as amended, shall remain in full force and effect.

6. To the extent not granted herein Petitions 781 and 783 in Case No. 5432 are denied.

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

Dated at San Francisco, California, this 9th
day of JULY, 1974.

James L. Johnson
President
William J. Johnson
William J. Johnson
William J. Johnson
William J. Johnson
Commissioners

INDEX OF COMMODITIES (Continued)

Only those articles which are named in commodity rate items or in Exceptions to the Governing Classification and Exception Ratings Tariff are shown in the following list.

COMMODITY	ITEM	COMMODITY	ITEM
Figs, powdered	350	Gelatine	360
Fire Brick (M)	365	Generators, Electric (M)	365
Fire Clay (M)	365	Germs, wheat	652-654½
Fish (animal feed)	338	Girders	318
Fish, cooked, pickled or preserved	320, 345	Glucose	360
Fish, fresh, frozen	775	Grain as described under the heading of "Grain Group" in the Governing Classification	652-654½
Fish, other than fresh or frozen	360	Grain Products as described under the heading "Grain Products" in the Governing Classification	652-654½
Fish Roe	320	Grate Bars	365
Fittings, Pipe, Iron or Steel	365, 378	Grit, processed from rock or shell	652-654½
Flavoring Compounds	360	Groceries and Grocers' Supplies	360
Flour, Bean	652-654½	Gum, Chewing	360
Flour, cooked	339	Hominy	320-1
Flour, edible	360	Honey	320, 360
Flour, gelatinized	339	Horseradish	360
Flour, Grain	339	Horseradish, prepared	320-1
Flour, Potato	339, 652-654½	Hulls, cocoa bean	652-654½
Flour, prepared, edible	339, 652-654½	Hulls, cottonseed	652-654½
Flour, Rice	339, 652-654½	Hulls, Nut	652-654½
Flour, Soybean	339	Hulls, sunflower	652-654½
Flour, Tapioca	652-654½	Hulls, whole or ground	652-654½
Flues, Boiler	365	Ice	660
Fondant, Candy	360	Ice Cream	335.6
Food, Baby	320	Icings	360
Food, Cereal	360	Ingredients, Dinner or Soup	360
Food, Milk, other than malted, liquid	320	Insecticides (M)	377.5, 723-726
Food, prepared	360	Iron, plate or sheet (M)	365
Food Preparations, Cereal (M)	360	Jam	320
Foodstuffs for human consumption	345, 620, 630	Jelly	320
Fruit (not dried, evaporated nor fresh)	320	Joints, Sucker Rod	365
Fruit, candied, crystallized, glazed or stuffed	360	Joists	318
Fruit, crushed	320	Juice, Apple (M)	335.7
Fruits, dried or evaporated	350	Juice, citrus fruit (M)	335.7
Fruit Drink	320	Juice, Clam	320
Fruit Juice Powders or Crystals, Citrus	360	Juice, Fruit	320, 335.7
Fruit Peel, candied, crystallized, glazed or stuffed	360	Juice, grape (M)	335.7
Fruit Syrups	360	Juice, prune (M)	335.7
Fuel, Wood	729	Labels	363
Gardening or Landscaping Products	370	Lard	335.5
Garlic Chips	320	Lard Compounds	335.5
Garlic Powder	320	Lard Substitutes	335.5
Gas, petroleum liquefied	377.5, 723-726		
Gears, running, steam boiler (M)	365		

(M) Denotes articles on which application of rates is limited to mixed shipments.

Change, Decision No. 83103

EFFECTIVE

Correction

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

INDEX OF COMMODITIES (Continued)

Only those articles which are named in commodity rate items or in Exceptions to the Governing Classification and Exception Ratings Tariff are shown in the following list.

COMMODITY	ITEM	COMMODITY	ITEM
Limestone, crushed or ground (feed grade)	652-654½	Milk, Sterilized	320,335.7,345
Lime, Chlorinated	730-732	Milk Substitutes	335.7,345
Liquid, cigar or cigarette lighter (M)	377.5,723-726	Mince Meat	320
Liquors, Malt	360	Mineral Mixtures	652-654½
Liquors, Vinous	360	Mix, Pizza Pie	345
Litter, Poultry (M)	652-654½	*Mixes, basic food sauce, or food dip, dry	360.5
Loins, fish, frozen	775	Mixtures, Mineral	652-654½
Lubricant, Grease Binder	377.5,723-726	Molasses	320-1
Lubricant, metal cutting, drawing or drilling (M)	377.5,723-726	Molasses (M)	652-654½
Lumber	685,690,700,710	Monoglycerides of Fat-forming Fatty Acids	335.5
Lye, Concentrated	730-732	Mud or Compounds, well drilling	365
Macaroni, except canned	360.5	Mushrooms	320-1
Macaroni (prepared)	320	Mustard	360.5
Macaroni, dry, and other ingredients	345,360	Mustard, prepared	320-1
Malted Milk	360.5	Noodles and Cheese	345
Manholes	334.8	Noodles, except canned	360.5
Material, roofing, building or paving	761,762,767	Noodles, (prepared)	320
Mayonnaise	320-1,335.7	Noodles, dry, and other ingredients	345,360.5
Meal, feather	652-654½	Nut Meats	377
Meat (Animal Feed)	338	Nuts, edible, shelled	350,360.5
Meat, other than fresh	360.5	Oil, Cooking	320-1,335.5
Meat Substitutes	360	Oil, Olive	320-1
Meats, cooked, cured or preserved	320,345	Oil (other than medicinal) (M)	377.5,723-726
Meats, fresh	376	Oil, petroleum medicinal (M)	377.5,723-726
Mechanics' Tools (M)	365	Oil, Salad	320-1,335.5
Milk	335.6,345	Oleomargarine	335.5
Milk (condensed, evaporated or sterilized)	320,335.7	Olives	320-1
Milk Food, other than malted, liquid	320,335.7	Onion Chips	320
Milk, Malted	360.5	Onion, Powdered	320
Milk, Pasteurized	345	Outfits, insect destroying (M)	377.5,723-726
Milk, Solids, dry	345	Outfits, Oil, Water or Gas Well	365

(M) Denotes articles on which application of rates is limited to mixed shipments.

* Addition, Decision No. **83103**

EFFECTIVE

Correction

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

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p align="center">EXCEPTIONS TO GOVERNING CLASSIFICATION AND EXCEPTION RATINGS TARIFF (Continued)</p> <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>	<p align="center">Class Rating</p>
<p>GROCERIES AND GROCERS' SUPPLIES, viz.: (Items 360 and 360.5)</p> <p>Bakery Goods (21180, 21190, 21210, 21220, 21225 or 21230) Beverages, or Beverage Preparations (72140, 72160, 72162, 73790, 73810, 73960, 73970 or 75180) Bluing, laundry, combined with washing compounds, dry (24330) (subject to Notes 1 and 2) Candy Fondant (Candy Filler), Confectionery Paste or Icing Paste (39940) Candy or Confectionery (39970, 39974 or 39976) Cereal and Nuts combined (Meat Substitutes) (73840) Cereal Food Preparations (42310 through 42435) (subject to Notes 1 and 3) Chocolate (39990) Chocolate Coating (40015) Coating, candy, other than chocolate (40015) Cocoa (72520) Coffee (72660 or 72680) Coffee, extract of (condensed or instant), dry (72600) Coffee Substitutes (72700) Coloring, confectioners' (50026) Compounds, food curing, preserving or seasoning (73220) Dessert Preparations (72760 or 72762) Dinner or Soup Ingredients (72785) Eggs, shelled (Egg Albumen, white or yolks), desiccated or frozen, cooked or not cooked (55560, 55570 or 55580) Extracts or Flavoring Compounds, NOI (72910) Fish, other than fresh or frozen (72930, 72950 or 72970) Flour, edible (73030, 73040, 73060, 73080, 73100, 73120, 73140, 89430 or 89450) Food, prepared, NOI (73180 or 73200) Fruit, or Fruit Peel, candied, crystallized, glazed or stuffed, NOI (73340) Fruit Juice Powders or Crystals, citrus (73360) Fruit Syrups (75170) Gelatine (73380) Glucose (75140 or 75150) Gum, chewing (40040) Honey (73440 or 73460) Horseradish (74710 or 171080) Liquors, malt (111470) Liquors, vinous (75430, 111490 or 111510), including Brandy made from grapes (111450)</p> <p>Minimum Weight 20,000 pounds ----- Minimum Weight 30,000 pounds -----</p> <p align="center">(Continued in Item 360.5)</p>	<p align="center">#360</p> <p align="center">55 35</p>
<p>Change) Addition) Decision No. 83103</p>	
EFFECTIVE	
<p align="center">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p>	

Correction

SECTION 1—RULES OF GENERAL APPLICATION (Continued)	ITEM
<p>EXCEPTIONS TO GOVERNING CLASSIFICATION AND EXCEPTION RATINGS TARIFF (Continued)</p> <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>	<p>Class Rating</p>
<p>GROCERIES AND GROCERS' SUPPLIES, viz.: (Items 360 and 360.5)</p> <p>*Macaroni, Noodles, Rice Spaghetti or Vermicelli, except canned (73730 **) Malt Syrup (75180) Meat, other than fresh (134620, 134640, 134660, 134680, 134760, 134800 or 134890) Milk, malted (73860) *Mixes, basic food sauce, or food dip, dry (74060) Mustard (74150 or 74710) Nuts, edible, shelled, plain, salted or sweetened (141660, 141760, 141780 or 141820) Popcorn, not popped (89150) Popped Corn (74380) (subject to Notes 1 and 2) Potatoes, cooked and powdered, other than frozen (74445 or 74450) Potato Chips (74480) (subject to Notes 1 and 2) Powder, Baking (72040) Rice, dry, cooked, with seasoning and dry vegetable or other dry ingredients (74570) Sago or Tapioca (74600) Salads, Fish, Macaroni, Meat or Vegetable (74640) Salad Dressing Preparations, dry (74620) Salt (46260 or 74660) (subject to Note 1) ** Spices, (71520, 71560, 71570, 170720, 170740, 170760, 170780, 170800, 170820, 170840, 170860, 170880, 170900, 170920, 170940, 170960, 170980, 173010, 171020, 171040, 171140, 171160, 171180, 172830, 172970, 172990, 173010, 173110, 173170, 173190, 173210, 173230, 173370, 173490, 173510, 173620 or 173780) Tea (75240) Tea, extract of (condensed or instant), dry (72600) Wax, Laundry Compound (196740) Yeast or Yeast Powder (75470, 75480 or 75490)</p> <p>Minimum Weight 20,000 pounds ----- Minimum Weight 30,000 pounds -----</p> <p>NOTE 1.—Ratings shown apply only when commodities subject to this note are shipped in mixed shipment with one or more other commodities named in this tariff item.</p> <p>NOTE 2.—Ratings shown apply only when the weight of the commodities subject to this note does not exceed 5 percent of the total weight of the shipment.</p> <p>NOTE 3.—Ratings shown apply only when the weight of the commodity subject to this note does not exceed 10 percent of the total weight of the shipment.</p>	<p>360.5</p> <p>55 35</p>
<p> * Change) * Addition) ** Eliminated) </p> <p>Decision No. 83103</p>	
EFFECTIVE	
<p>ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> <p>Correction</p>	