

Decision 84-10-093 October 17, 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
for the purpose of considering and)
determining whether wood residues)
should be exempt from rate regulation.)

Application 83-12-63
(Filed December 30, 1983)

Patrick W. Pollock, for Fibreboard Corporation,
a subsidiary of Louisiana-Pacific Corporation,
applicant.
Maira E. Simmerson, for the Commission staff.

O P I N I O N

In this proceeding, Fibreboard Corporation (Fibreboard), a subsidiary of Louisiana-Pacific Corporation, requests that wood residues, not suitable for any use other than as a fuel, be added to the list of rate-exempt items listed in the publication "Commodities and Geographic Areas Exempt from Rate Regulation" issued as Appendix A to Decision (D.) 82-06-091 dated June 15, 1982 in Order Instituting Investigation (OII) 85. The original request in the application was for the rate exemption of wood residues which are to be used either to manufacture paper pulp or as a fuel. At the hearing, Fibreboard limited its request to wood residues useful only as a fuel.

Public hearing was held before Administrative Law Judge Arthur M. Mooney in San Francisco on April 18, 1984. Evidence on behalf of Fibreboard was presented by its manager of transportation and its manager of bio-mass fuel. While it did not present evidence, the Commission Staff assisted in the development of the record. The matter was submitted upon the filing of concurrent written closing statements by the parties on May 18, 1984.

The transportation of wood residues usable only for fuel is subject to Transition Tariff (TT) 2. Commodity rates for this transportation not over 250 miles are named in Item 729 of the tariff. Beyond this distance, applicable class rates in the tariff apply.

Fibreboard's purpose for requesting the exemption is to avoid the delays in rate negotiations with carriers resulting from the requirements of the rules and regulations governing tariff filings by common carriers and contract filings by contract carriers during the transition period of the Commission's reregulation program stated in General Order (GO) 147, adopted by D.93766 dated November 13, 1981 in Order Instituting Rulemaking (OIR) 4.

GO 147 requires contract carriers desiring to haul a commodity subject to TT 2 to enter into a continuing contract with the shipper providing for service over a period of time and to file the contract with the Commission. If the rate in the contract is higher than the TT 2 rate, it will be effective on the date filed or such later date as may be provided by the terms of the contract. If the rate in the contract is less than the applicable rate in TT 2, the contract must be on file with the Commission 30 days before the rate is allowed to become effective. A reduced rate contract, to be accepted for filing, must be accompanied by cost justification which shows that the particular haul or hauls will contribute to the carrier's profitability. The reduced rate filing is subject to a protest before it becomes effective, and if such a protest is filed and accepted, the effective date of the rate is stayed pending staff review of the protest.

A highway common carrier seeking to increase its tariff rate above that of any transition tariff or any previously authorized increase must include justification supporting the need for the increase with its request. Generally such increases will be authorized on 30 day's notice unless shorter notice is requested and justified by the carrier. Increase requests are subject to protest. A highway common carrier desiring to reduce its tariff rate below that found in a transition tariff must follow the same procedure as set out for contract carriers.

Following is a summary of the evidence presented by Fibreboard's two witnesses:

1. Fibreboard manufactures paper board and paper products and employs over 500 people at its mill at Antioch. Escalating energy costs and the depressed economy have resulted in an operating loss at this plant of \$26,000,000 during the last 36 months. Fibreboard's monthly electric bill had been as high as \$600,000. To reduce its energy costs, Fibreboard has installed a waste fuel boiler and steam turbines for generating electricity for the plant at a cost of over \$20,000,000. Wood residues, aka waste wood, usable only for burning are the major fuel for the boiler. Some rubber chips from ground rubber tires are also used for fuel. A small amount of oil or natural gas is used as supplemental fuel to maintain the steam load. The new system has reduced Fibreboard's fossil energy cost by 80%. With the savings in energy costs, Fibreboard has commenced to show a profit during the past three-month period.
2. The boiler generates 32.5 megawatts of electricity a day which is equivalent to that used by 40,000 homes. After the steam passes through the turbines, it is reduced in pressure and sent to dryers in the paper machines. Fibreboard is now constructing a hydroponic farm for raising cucumbers and herbs and will use the hot water from the paper dryers to control the temperature of the buildings for this project.
3. Fibreboard requires 1,400 tons of waste wood a day to keep the boiler operating efficiently. This is the equivalent of one ton a minute, 24-hours a day and requires the delivery of 64 truckloads of wood residues a day, seven days a week to the mill. Approximately 60% of the waste wood obtained by Fibreboard is from solid waste dumps. The dump operator separates various commodities brought to it, including wood residues from tree cuttings, building demolition, and the like. The wood is chipped or otherwise packaged for transportation. The remaining wood residues used are mainly wood refuse from forests, sawmills, tree and orchard removal sites, tree prunings, and manufacturing plants. All

of this wood waste would normally end up as landfill if it were not used by Fibreboard.

4. Fibreboard is the major user of waste wood fuel for generating electricity in California. A few other companies have co-generation boilers. One uses some wood residues from the Los Angeles Basin area, several others use almond shells or refuse from canning and prunings from local orchards, and a few sawmills in Northern California use refuse from their mills. However, Fibreboard uses substantially more wood residues than all of these combined.
5. Most of the waste wood has been obtained from Northern California. However, there is a large source available from solid waste dumps in the Los Angeles area. The wood residues in this area are drier and, for this reason, are preferable to those from the northern part of the state. It is anticipated that in the future approximately 40% of Fibreboard's supply will be obtained from there.
6. The waste wood is purchased on an F.O.B. Antioch plant basis. Fibreboard has determined a maximum price it can pay for the fuel. Freight charges average approximately 60% of the price. Slightly more is paid for the wood residues from Southern California because of the distance involved. A small amount of the waste wood is delivered in proprietary equipment. Fibreboard arranges for substantially all of the for-hire transportation. The carriers with whom it deals are all small, specialized carriers with one to five trucks. They are either contract or agricultural carriers and have open-top van equipment which is used to transport agricultural and animal feed commodities. This equipment is not suitable for hauling general commodities but is ideal for handling wood residues as backhaul traffic. The waste wood is loaded by the shipper, and unloading at destination is either by mechanical means in the equipment or by gravity by tilting the trailer on a platform.

7. All rates are negotiated by Fibreboard for the individual hauls. For distances not over 250 miles the negotiated rates exceed those published in Item 729 of TT 2. For greater distances, they are generally less than applicable class rates. Because the small operators used for the transportation do not have the time or facilities to prepare the contracts, rate schedules, and cost justifications required by GO 147, Fibreboard does this work for them. It has prepared about 50 such contracts during the last three years. Under this arrangement, it takes at least seven days after the agreement has been negotiated to comply with the general order requirements when the distance involved is not over 250 miles. For greater distances, the delay between the negotiation of the agreement and Commission approval averages over two months. Because equipment for this transportation becomes available when the specialized carriers make deliveries and are looking for return movements, the delay in securing the necessary authority from the Commission prevents movement and the truck returns empty.
8. In 1977, the state legislature in Assembly Concurrent Resolution (ACR) 48 determined that the productive recycling and reuse of materials found in solid waste are in the public interest and that intrastate truck rates to transport those materials had a negative impact on their marketability. It requested the Commission to investigate truck rates under which recyclable materials move and recommended adjustments to those rates in order to remove any negative impact they may have on the movement of these materials. In California Trucking Association v. Public Utilities Commission (1977) 19 C 3d 240, the State Supreme Court upheld the Commission's right and authority to set minimum and maximum rates, or no rate at all, including the right to exempt commodities from regulation because of attending transportation peculiarities. At the request of the legislature, the Commission issued OII 85 to consider whether recyclable materials should be exempt from rate regulation. D.82-06-091 issued in this proceeding added

certain recyclable materials to the list of commodities exempt from rate regulation. In that proceeding, Fibreboard had requested that waste wood be exempt from rate regulation. The decision pointed out that since the waste wood was for reuse and not for recycling into its original form, the request was beyond the scope of the investigation. The decision stated, however, that the request did have merit and invited Fibreboard to file a separate application to add wood residues to the exempt list. Accordingly, Fibreboard filed this request.

9. The granting of the sought exemption would allow Fibreboard to negotiate rates with carriers for the immediate transportation of wood debris without the delays necessitated by GO 147. This would allow the movement of many on-the-spot sources which would otherwise end up as landfill. It is in the public interest that the sought request be granted.

It is the staff's position that the record supports Fibreboard's contention that the exemption of this commodity from intrastate rate regulation would result in the same economic benefit as recycling and reuse of solid wastes and is in the public interest. It pointed out, however, that the supporting evidence is specific and limited to the transportation of wood residues for use as fuel to Fibreboard's Antioch plant only. With the condition that the sought exemption be restricted to such transportation, the staff recommended that it be granted. It asserted that without further evidence, a general exemption to any and all other locations in the state is not warranted.

We agree with Fibreboard and the Staff that the recovery and reuse of wood residues, usable only as a fuel, is in the public interest. We likewise agree with the staff that the evidence before us is limited to transportation destined to Fibreboard's Antioch facility only. With the restriction recommended by the Staff limiting the exemption to transportation to this destination, it

should be granted. Because there is no opposition to the sought relief and there is an immediate need for it, the following order should be made effective on the date it is signed.

Findings of Fact

1. Because of high electric energy costs at its paper board manufacturing plant at Antioch, Fibreboard has invested over \$20,000,000 in the installation of a boiler and steam turbine electric generating system at this plant. To fire the boiler, it requires 64 truckloads a day, seven days a week of wood residues that are useful only as a fuel.

2. Approximately 60% of the wastewood used for the boiler is obtained from solid waste dumps. The major sources of the balance are sawmills, wood debris from manufacturing plants, and tree removal and pruning sites.

3. While most of the wastewood has been obtained in the northern part of the State, there is a substantial source available at solid waste dumps in Southern California. The wood residues from the southern part of the State have less water content because of the drier weather and, because of this, are more desirable for Fibreboard's use. Fibreboard projects this to be the source for 40% of its future need.

4. Fibreboard purchases the waste wood on an F.O.B. Antioch plant basis. However, Fibreboard arranges for most of the transportation. The carriers it deals with are all small, specialized carriers with one to five trucks and hold agricultural and/or contract carrier authority. Few, if any, also hold common carrier authority. All have specialized, open-top van equipment used to transport agricultural, animal feed, and similar commodities. This equipment is not compatible with hauling general commodities. It is ideal for transporting the wood residues as backhaul traffic.

5. Fibreboard negotiates rates with the carriers who transport the waste wood. For distances not over 250 miles, these rates are higher than those stated in the TT 2, and for greater distances, they are lower. Because the carriers used are small and do not have the

expertise or time to file the negotiated rate contracts with the Commission in compliance with GO 147, Fibreboard prepares all of the necessary paper work and sends it to the carrier for filing. This causes delays in commencing transportation from new material sources and has also resulted in the loss of supplies from some sources that require immediate removal.

6. Unless the costs required to recover the wood residues that are usable only as a fuel are less than the value to Fibreboard at its Antioch plant, most of these materials would not move and would remain in solid waste dumps and at other locations as landfill.

7. The recovery and productive reuse of wood residues, useful only as a fuel, found in the solid waste stream is energy efficient and in the public interest.

8. Fibreboard is the primary user of wood residues that are useful for fuel purposes only. Intrastate motor carrier rate regulation has a negative impact on this transportation.

9. This negative impact can be eliminated by exempting the transportation in issue from rate regulation and the requirements of GO 147.

10. The evidence presented in this proceeding in support of the requested rate exemption was limited to such transportation destined to Fibreboard's Antioch plant only. With the condition that the requested exemption is limited to transportation destined to this plant only, the requested exemption is reasonable and justified.

11. There is a persuasive need to give priority to the transportation of wood residue, usable only as a fuel, to Fibreboard's Antioch plant as it will help with solving the State's waste disposal crisis.

12. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

13. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. Subject to the condition limiting the transportation to shipments destined to Fibreboard's Antioch plant, wood residues, usable only as a fuel, should be added to the list of rate-exempt commodities in the publication "Commodities and Geographic Areas Exempt from Rate Regulation."

2. The commodity exemption referred to in Conclusion 1 accomplishes the exemption of transportation of that commodity from GO 147.

3. Because there is a need by Fibreboard for the sought relief and, with the condition referred to in Conclusion 1, there is no opposition to it, the following order should be made effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. The document "Commodities and Geographic Areas Exempt from Rate Regulation" (Appendix A of D.82-06-091) is amended by incorporating Original Page A and First Revised Pages 7 and 8, to become effective five days after today.

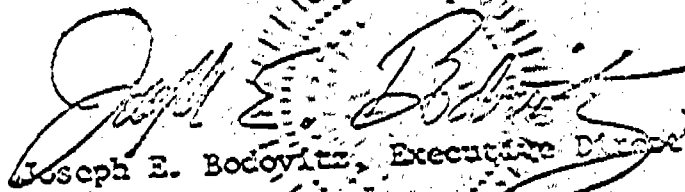
2. The Executive Director shall cause a copy of this amendment to be served by mail on each highway common carrier, each highway contract carrier, and each subscriber to Transition Tariffs 1-B, 2, 9-B, 11-A, 15, and 19.

3. The application is granted subject to certain conditions.
This order is effective today.

Dated OCT 17 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VEAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

CORRECTION NUMBER CHECKING SHEET

This list is issued in loose-leaf form. Correction numbers appearing on all added and revised pages will be shown consecutively in the lower left-hand corner. These correction numbers should be checked below on this checking sheet before pages are filed.

CORRECTION NUMBERS

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*Addition, Decision

84-10-093

ISSUED

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

Correction 3

SECTION 2--LIST OF COMMODITIES EXEMPT FROM RATE REGULATION (continued)

- (a) Within the exterior boundaries of a city;
- (b) Shipments having both point of origin and destination within Metropolitan Zones 218, 227, 228, 229, 234, 235, and 236; and shipments having both point of origin and destination within Metropolitan Zones 301, 302, 303, 304, 305, 306, 307 and 308;
- (c) Shipments having both point of origin or destination at Corn Fed Cattle Co. Feed lot, 5440 Southern Avenue, South Gate, on the one hand and point of destination or origin within Metropolitan Zones 218, 227, 228, 229, 234, 235 and 236;
- (d) See Section 3 for description of the geographic areas of Metropolitan Zones 218, 227, 228, 229, 234, 235 and 236; and 301 to 308 inclusive.

Shell Marl, crushed, ground or powdered, exemption applies only when shipper certifies on the shipping document covering the transportation that the shell marl is being shipped for use as a fertilizer; Subject to Notes 1, 2, and 3.

Shells, walnut.

Steel, Scrap.

Sulphur; Subject to Notes 1, 2, and 3.

Tires, Scrap.

Trailer Coaches and Campers, including integral parts and contents when the trailer coaches and campers are property of the United States, state, county or municipal governments or they are transported under an agreement whereby the government has contracted for carrier's service.

United States mail transported for the United States Postal Service under contract.

Vegetables, dried, unmanufactured, viz.: Beans (except Mesquite) lentils, onions, peas, (except cow peas), pepper pods.

Vegetables, fresh or green, including mushrooms, fresh, not cold pack nor frozen (when rates are not otherwise provided in Minimum Rate Tariff 8-A).

Vegetables, which are placed in a preservative and are destined to a cannery for processing into a preserved or pickled vegetable.

Vehicles, Disabled, when transported by towing.

Voting Booths, Ballot Boxes, Election Tents and Election Supplies, when transported from or to polling places.

*Wood residue, not suitable for use other than as fuel, destined to the Fibreboard facility at Antioch.

Commodities of abnormal size or weight which because of such size or weight require the use of and are transported on low bed trailers: LOW BED TRAILER means trailing equipment, other than van-type, having its principal load carrying bed or platform not more than 42 inches above ground or street level. Subject to Notes 1, 2, and 3.

Change
Addition

} Decision

84-10-093

ISSUED

Correction 1

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

SECTION 2--LIST OF COMMODITIES EXEMPT FROM RATE REGULATION (continued)

Commodities weighing 100 pounds or less per package or piece when delivered from retail stores or retail store warehouses, or when returned to the original stores or retail store warehouses, via the carrier which handled the outbound movement.

NOTE: This exemption applies only within East Bay Drayage Area and San Diego Drayage Area as described in Section 5, and the City and County of San Francisco.

Commodities which consist of or contain materials essential to National Defense and which have been donated to and are transported for the United States government, governmental agencies or non-profit organization acting for in behalf of said government in the collection, assembly or transportation of said commodities in connection with the recovery of said essential materials from the commodities transported; Subject to Note 2.

Commodities when transported in an armored car operated under permit from the Commissioner of the California Highway Patrol.

Commodities which have been sold at retail by a retail merchant, and transported from a retail store or retail store warehouse to residences of retail customers or transported from residences of retail customers to retail stores or retail store warehouses, and such transportation is performed in vehicles in the exclusive use of the retailer and provided no shipment exceeds 2,000 pounds in weight, further, that the merchandise is for the use or consumption of retail customers and is not for use in the furtherance of an industrial or commercial enterprise; and provided that the retailer shall certify on the shipping document for each delivery that the merchandise was sold at retail to a retail customer.

Disaster Supplies, i.e., those commodities which are allocated to provide relief during state of extreme emergency or state of disaster, and those commodities which are transported for a civil defense or disaster organization established and functioning in accordance with the California Disaster Act to ultimate point of storage or use prior to or during a state of disaster or state of extreme emergency.

Property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services. See Used Property.

Property transported to a United States Post Office for mailing and United States Mail transported from a post office to the addresses thereof. Applies only to transportation between points within a radius of 25 miles of the intersection of First and Main Streets, Los Angeles, said mileage to be computed in accordance with the provisions of the Distance Table.

Property transported for a displaced person when the cost thereof is borne by a public entity as provided in Section 7262 of the Government Code.

Property transported by special messenger service. NOTE: Exemption applies only within the East Bay Drayage Area as described in Section 5.

No change on this page, Decision No.

84-10-093

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

Correction 2

Decision 84 10 093

OCT 17 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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2. The commodity exemption referred to in Conclusion 1 accomplishes the exemption of transportation of that commodity from GO 147.

3. Because there is a need by Fibreboard for the sought relief and, with the condition referred to in Conclusion 1, there is no opposition to it, the following order should be made effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. The document "Commodities and Geographic Areas Exempt from Rate Regulation" (Appendix A of D.82-06-091) is amended by incorporating First Revised Page 7, to become effective five days after today.