

Decision No. 89013 JUN 27 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of any and all commodities statewide including, but not limited to, those rates which are provided in Minimum Rate Tariff 2 and the revisions or reissues thereof.

Case No. 5432
Petition for Modification
No. 943
(Filed January 26, 1977)

In the Matter of the Investigation for the purpose of considering and determining exception ratings which apply in lieu of those named in the governing classification as provided in Exception Ratings Tariff 1 and the revisions or reissues thereof.

Case No. 7858
Petition for Modification
No. 221
(Filed January 26, 1977)

William R. Daly, for K-Bar Products, Inc.,
petitioner.
Clifford J. Van Duker, for Duraflame, Inc.;
and William R. Haerle, for California
Trucking Association; interested parties.
Donald J. Harvey, for the Commission staff.

O P I N I O N

By the above petitions K-Bar Products, Inc. (K-Bar), seeks to have established in Exception Ratings Tariff 1 (ERT 1)^{1/} a new Item 602 providing a truckload exception rating of Class 35.4, minimum weight 45,000 pounds, on logs, compressed

^{1/} The class ratings and other provisions of ERT 1 govern several of the Commission's minimum rate tariffs. The one principally involved in this proceeding is Minimum Rate Tariff 2 (MRT 2) which contains statewide minimum rates and rules for transportation of general commodities by highway carriers.

cotton gin waste,^{2/} wax impregnated, paper wrapped, in fibreboard cartons. Provisions for excess loading time would be the same as now contained in Note 1 of Item 600 of ERT 1.

The class ratings and truckload minimum weights in ERT 1 are exceptions to class ratings and truckload minimum weights provided in the National Motor Freight Classification (NMFC). Effective May 5, 1978, fireplace logs made of cotton gin waste and wax were added to Item 111790-A in Supplement 1 of NMFC 100-E which now provides a less truckload rating of Class 60 and a truckload rating of Class 35, minimum weight 40,000 pounds for "Logs or Fuel, fireplace, ground wood, ground peanut hulls, sawdust or cotton gin waste, compressed, with or without wax, in boxes." A rating of Class 35.3, minimum weight 45,000 pounds, is provided in Item 600 of ERT 1 for certain fuel wood commodities, including logs made of compressed sawdust. The proposed rating of Class 35.4 is lower than either Class 35 or Class 35.3.

Public hearing was held on March 7, 1978 at Los Angeles before Administrative Law Judge Norman Haley and the matter was submitted.

Presentation of K-Bar

Evidence on behalf of K-Bar was presented by the company's general manager. According to this witness K-Bar has been manufacturing fireplace logs from cotton gin waste at Brawley for about 2½ years. Prior to K-Bar using cotton gin waste to make logs it had to be disposed of as a waste material. Much of it was burned. Pinky's Transportation obtains the waste

^{2/} Cotton gin waste consists of bolls, leaves, stems, and other portions of cotton plants that remain after the cotton and seeds have been removed. Some residual cotton fibres also cling to and become part of the waste.

free and sells it delivered to K-Bar for \$1.50 per ton. Pinky's has notified K-Bar that the delivered cost will be increased to about \$4.00 per ton next year.

The logs are made by mixing cotton gin waste with wax and relatively small amounts of calcium carbonate and copper chloride to impart color to the flame when the logs are burned. The wax is brought to Brawley mostly by rail tank cars from interstate sources. The delivered cost of the wax is about 8 cents per pound, of which about 2 cents represents transportation cost. The flame-coloring chemicals are shipped in 400-pound drums and cost about 86 cents per pound delivered. The logs are formed from the ingredients under high pressure.

K-Bar logs are wrapped in paper and packed six in a case which measures one cubic foot. A pallet can hold 54 cases, and 21 pallets can be loaded in a 45-foot trailer. There have been no loss or damage claims. K-Bar logs have a value of \$3.75 per case of one cubic foot wholesale. The witness stated that this equates to a wholesale price per log about 20 cents less than logs made of sawdust. K-Bar can underprice competition because of plant efficiency. Assertedly, transportation characteristics of K-Bar logs are no different from those of competitive products.

K-Bar logs are now shipped only within California. Transportation is performed mostly by for-hire highway carriers.^{3/} The largest market is the San Francisco Bay Area. K-Bar bases its request for a truckload exception rating of 35.4 (compared to the higher rating of 35.3 on logs made from sawdust) upon lower raw material cost, lower value per pound of finished

^{3/} K-Bar also anticipates making some future shipments by rail to interstate destinations. Its Brawley facility is on rail. K-Bar currently is unable to meet rail carload minimum weights on individual shipments of manufactured logs to California destinations.

product, and low costs of potential proprietary truck transportation (Exhibit 1), including available backhauls (Exhibit 2). The witness for K-Bar said that Brawley, in the Imperial Valley, constitutes an unfair geographic location in relation to manufacturers of logs made of sawdust who are located in major metropolitan areas. He stated that based upon proprietary trucking costs in Exhibit 1, and rate and cost comparisons in Exhibit 3, he will recommend to the board of directors of K-Bar that transportation be performed in proprietary equipment if an exception rating of Class 35.4 cannot be obtained. He said that a rating of Class 35.3 would not be low enough to prevent the logs from being diverted to proprietary transportation.

Presentation of Duraflame, Inc.

Evidence on behalf of Duraflame, Inc., was presented by an employee of United Shippers Association which is Duraflame's industrial traffic manager. Duraflame manufactures fireplace logs from sawdust and wax. Most of the wax comes from Gulf ports, with the balance being imported from Mexico. Between 350,000 and 400,000 cases of Duraflame logs are sold each year, mostly in southern California. Transportation is performed by public carriers. Duraflame would object to any rating for manufactured fireplace logs that would be lower than the rating applicable to logs made of sawdust. It was stated that if a rating of 35.4 is established for logs made from cotton gin waste, Duraflame will file for the same rating for logs made from sawdust.

Presentation of California Trucking Association

California Trucking Association (CTA) presented evidence through the manager of CTA's Weighing and Classification Bureau. According to this witness studies made by the National Classification Committee disclose that fireplace logs made of several kinds of raw materials have substantially the same classification characteristics. Densities of logs made from the different materials range from 36 to 42 pounds per cubic foot. Values range from 7 to 9 cents per pound. Logs made from cotton gin waste weigh about 42 pounds per cubic foot and have a value of about 8 cents per pound. Classification characteristics of logs made of various raw materials assertedly are similar.

CTA proposes that logs made of cotton gin waste be added to Item 600 of ERT 1 and that they be subject to the exception rating provided in that item of Class 35.3, minimum weight 45,000 pounds.^{4/} The CTA witness is of the opinion that the way Item 600 now reads Class 35 is a low rating for the commodities involved. He referred to items of MRT 2 governing volume incentive which provide that when the requirements of those items are met, Class 35.3 becomes either 35.4, 95 percent of 35.4, or 90 percent of 35.4 (MRT 2, Items 292 through 293.3).

Position of Commission Staff

The Commission staff recommends that logs made from cotton gin waste and wax be added to Item 600 of ERT 1, subject to the truckload rating of Class 35.3, minimum weight 45,000

^{4/} CTA proposes in Exhibit 7, as amended, that the description of logs in Item 600 of ERT 1 be amended to read as follows: "Logs, compressed sawdust or cotton gin waste, wax impregnated, paper wrapped, in fibreboard cartons, (111790), see Note 1."

pounds. The staff opposes K-Bar's proposal for a rating of Class 35.4 in ERT 1 as being unduly preferential to that company's product.

Discussion

Fireplace logs made from cotton gin waste and wax have classification characteristics very similar to logs made of other raw materials. Item 111790-A of NMFC 100-E now provides the same class ratings and truckload minimum weight for fireplace logs made of ground wood, ground peanut hulls, sawdust, or cotton gin waste. The record demonstrates that logs made of cotton gin waste and wax should be included in Item 600 of ERT 1 and made subject to the same truckload rating of Class 35.3, minimum weight 45,000 pounds, applicable to the other commodities described in that item. The record does not support establishment of a rating of 35.4 in ERT 1 for logs made of cotton gin waste and wax. A rating of 35.4 in ERT 1 would give shippers of such logs an unwarranted competitive advantage over shippers of logs made of sawdust and other commodities described in Item 600 of ERT 1. Items 292 through 293.3 of MRT 2 provide for ratings of 35.4 and lower when designated volume incentive requirements are met.

Findings

1. K-Bar proposes that a rating of Class 35.4, minimum weight 45,000 pounds, be established in ERT 1 for fireplace logs made of cotton gin waste and wax.
2. Fireplace logs made of cotton gin waste and wax have classification characteristics very similar to logs made of other materials, including sawdust.
3. Item 600 of ERT 1 provides a rating of Class 35.3, minimum weight 45,000 pounds, for logs made of compressed sawdust, but not including logs made of cotton gin waste and wax.

4. Unless logs made of cotton gin waste and wax are assigned a rating of Class 35.3 in ERT 1, they will continue to be subject to a rating of Class 35 in Item 111790-A of NMFC 100-E, which will result in higher rates in MRT 2 than rates applicable to logs made of compressed sawdust.

5. Fireplace logs made of cotton gin waste and wax should be added to Item 600 of ERT 1, subject to a rating of Class 35.3, minimum weight 45,000 pounds.

6. The proposal of CIA in Exhibit 7 should be adopted, except that the term "cotton gin waste" should be substituted for "cotton gin trash."

7. The proposal specified in Finding 6 is reasonable and the resulting rates and charges will be just, reasonable, and nondiscriminatory minimum rates and charges for the transportation involved.

O R D E R

IT IS ORDERED that:

1. Exception Ratings Tariff 1 (Appendix A to Decision No. 66195, as amended) is further amended by incorporating therein, to become effective thirty-five days after the date hereof, Forty-third Revised Page 3 and Eleventh Revised Page 22, 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 also to Decision No. 66195, as amended, are hereby directed to establish in their tariffs the amendments 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 fifth day after the effective date of this order on not less than five days' notice to the Commission and to the public, and such tariff publications shall be made effective not later than thirty-five days after the date hereof; 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 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 ratings 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 ratings 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. 66195, as amended, shall remain in full force and effect.

C.5432, Pet. 943, C.7858, Pet. 221 es/avm

6. Except as otherwise provided in this order, Petition 943, Case No. 5432, and Petition 221, Case No. 7858, are dismissed.

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

Dated at _____, California, this 27th day of JUNE 7, 1978.

President
William Snous Jr.

Vernon L. Sturgeon

Charles D. Good

Clair T. DeBach
Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

INDEX OF COMMODITIES			
COMMODITIES	ITEM	COMMODITIES	ITEM
Acids	1200	Machines:	
Articles as described in the Governing Classification	1030-1050	Business or office, viz:	
Blankets	1800	Machines, Systems, or Devices Typewriters and Computing combined	1850
Carriers, used packages	320,321,340	Machines:	
Cartons, egg, pulp	270	Copying, Collators, Duplicating or Reproducing	1850
Chemicals	1320	Pads, sanitary	755
Confectionery	480	Recorder, tape	1850
Compounds, tree or weed killing	460	Salt common (Sodium Chloride)	880
Dental or Hospital Supplies	1830	Sets, expendable, aspirat- ing, administration or transference	1830
Explosives, propellant	1835	Sheeting, plastic	490
Explosives, Propelling Units	1835	Shipments, returned	820
Fertilizers	540,560,580	Sod, chopped or not chopped	860
Filler Flats, Egg		Strontium Nitrate	870
Case or Egg Carrier	450	Sugar	940
Film, plastic	490	Wood, Fuel	600
Flowers, fresh, cut	592		
Kindling, fire, wood	600		
Kits, hospital patient	1830		
Kits, inpatient treatment	1830		
Logs, compressed sawdust *or cotton gin waste	600		

♂ Change) Decision No. **89013**
 * Addition)

EFFECTIVE

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

Correction

EXCEPTION RATINGS TARIFF I

ELEVENTH REVISED PAGE.....22
 CANCELS
 TENTH REVISED PAGE.....22

SECTION 2--RATINGS WHICH ARE EXCEPTIONS TO THE GC (Continued)			ITEM
(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.)			
ARTICLES	Rating		
	LTL	TL	
Fertilizers, viz.: Ammonia, phosphate of, Ammonia, sulphate of, in packages or in bulk, Ammonium, sulphate nitrate (Lounsalt peter), in bags or in bulk, Calcium carbonate ammonium nitrate (Calnitro), Calcium nitrate urea (Calurea), Cyanamid, Lime (Calcium), nitrate of, in packages or in bulk, Pomace, olive, in packages or in bulk, Potash, muriate of, in packages or in bulk, Potash, nitrate of, Potash, sulphate of, in packages or in bulk, Pulp, olive, in packages or in bulk, Soda potash, nitrate of, in packages or in bulk, Sodium (Soda), nitrate of, or Chili Saltpetre in packages, or in bulk, Sulphate, zinc, monohydrate, agricultural-grade, Urea.			580
Flowers, fresh, cut.	100		592
Fuel wood (112580), in bundles wrapped in fibreboard, see Note 1 Kindling, fire, wood (112740), in packages, see Note 1 Logs, compressed sawdust, *6 or cotton gin waste, paper wrapped, wax impregnated, in fibreboard cartons, *(111790), see Note 1 Minimum Weight 45,000 pounds, subject to Note 2----- NOTE 1.--An allowance of 2 1/2 hours free time for loading shall be made for each unit of equipment used. Excess loading time shall be computed at the rates named in the applicable rate tariff. Time shall be computed from time of arrival of carrier's equipment at loading point until loading is completed and equipment is released. NOTE 2.--If more than one vehicle or combination of vehicles constituting a single unit of carrier's equipment is used for the transportation of a single shipment, each such vehicle or combina- tion of vehicles shall be subject to the highest minimum weight applicable to any rate used in computing charges.		35.3	6600
Δ Change) * Addition) Decision No. 89013 Δ Reduction)			
EFFECTIVE			
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.			
Correction			