

Decision No. 55114**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
 motion into the operations, rates, and ) Case No. 5876  
 practices of LOU-JAK TRUCKING SERVICE, )  
 a corporation. )

Marcum C. George and Royston E. Campbell,  
 for respondent.  
Edward F. Walsh, for the Commission's staff.

O P I N I O N

On January 15, 1957, the Commission issued an order instituting investigation into the operations, rates and practices of Lou-Jak Trucking Service, a corporation.

A public hearing was held before Examiner Thomas E. Daly at San Francisco and Los Angeles. The matter was submitted on May 2, 1957, and is now ready for decision.

During the course of the hearing the staff presented two witnesses from its Field Section and one from its Rate Section. The results of their investigations were introduced into the record.

Respondent is engaged in the transportation of property over the public highways, having been issued permits as a radial highway common carrier, highway contract carrier, and a city carrier. Its business address is 655 Lewelling Boulevard, San Lorenzo, California. The order of investigation alleges that respondent in the conduct of such business may have assessed and collected charges less than the applicable minimum charges prescribed by the Commission in Minimum Rate Tariff No. 2. The records of the Commission, as evidenced by Exhibit 1, indicate that copies of the appropriate minimum tariffs were mailed to respondent.

The record indicates that a member of the Commission's Field Section visited respondent some time in June of 1956. Respondent's attention was directed to a commodity transported for the Excel-Mineral Company located near McKittrick. Respondent had transported the commodity on many occasions under various trade names. It first transported the product for the Best Fertilizer Company as a fertilizer at the agreed price of 33 cents per 100 pounds. Thereafter, respondent continued to transport the same commodity at the same rate although it was shipped under various trade names and used for different purposes.

Exhibits 2 to 13, inclusive, introduced by the Commission's staff consist of 12 freight bills and supporting documents covering shipments of the commodity in question during the period from November, 1955, to June, 1956. The commodity is referred to under the trade names of "Jonny Cat", "Quick Sorb", "Excel Litter" and "Kat Komfort". The freight bills were rated by the Rate Section of the Commission which applied the Class C rate of 45 cents per 100 pounds applicable to earths, infusorial (fossil flour, fossil meal or kieselguhr) or diatomaceous (diatomite). A surcharge of 7 percent was also applied as provided in Supplement No. 30 to Minimum Rate Tariff No. 2. By so doing, undercharges result in the amount of \$932.75.

The question for determination is the nature of the product itself and its appropriate rate classification. It is mined by the Exel-Mineral Company in McKittrick. Taken from the earth by a bulldozer, it is loaded upon trucks and taken to loading bins adjacent to the mill. From there it is fed into a

crusher and thereafter screened and dried. Its uses range from fertilizer filler and insecticides to specialty absorbents.

According to the General Manager of Excel-Mineral Company the commodity is not diatomaceous nor infusorial and is more correctly classified as shale. Because of its absorptive qualities, he stated that it could be described as Fullers earth, which would also take the same higher rate applied by the staff.

In approximately June of 1956, as the result of certain correspondence between the Excel-Mineral Company and a traffic consultant representing respondent, the higher rate was assessed and the payment of the undercharges was requested. Excel-Mineral Company refused to pay the undercharges and ceased doing business with respondent.

After consideration the Commission is of the opinion and so finds that under the rule of analogy the commodity herein considered should be rated the same as Fullers earth. Respondent will be directed to cease and desist from the collection of charges not authorized and will be directed to collect the undercharges set forth in Appendix A attached hereto.

O R D E R

The Commission having instituted investigation herein, public hearing having been held and the Commission being informed in the premises,

IT IS ORDERED:

(1) That Lou-Jak Trucking Service, a corporation, cease and desist from violating the Public Utilities Code by charging, demanding, collecting or recovering a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2.

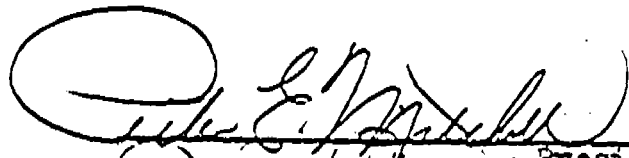
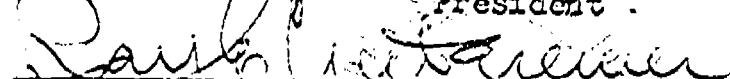


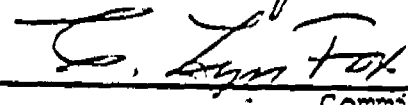
(2) That Lou-Jak Trucking Service, a corporation, is directed within twenty days after the effective date of this order:

- (a) To collect the undercharges indicated on Appendix A attached hereto.
- (b) To notify the Commission in writing upon the consummation of said collections.

(3) That in the event the charges to be collected as provided in paragraph (2) of this order, or any part thereof remain uncollected eighty days after the effective date of this order, Lou-Jak Trucking Service, a corporation, shall submit to the Commission, on Monday of each week, a report specifying the action taken to collect said charges and the results of said action, until said charges have been paid in full or until further order of this Commission.

(4) That the Secretary of the Commission is directed to cause personal service of this order to be made upon Lou-Jak Trucking Service, a corporation, and this order shall be effective twenty days after the completion of said service.

Dated at San Francisco, California, this 11th day of JUNE, 1957.

  
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President  
  
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Commissioners

## APPENDIX A

<u>Freight Bill No.</u>	<u>Amount Charged</u>	<u>Amount that Should Have Been Charged</u>	<u>Amount of Undercharge</u>
SL44931	\$137.28	\$200.30	\$63.02
SL44842	139.30	223.19	83.89
SL44564	136.00	208.60	72.60
SL43526	150.50	225.76	75.26
SL43498	136.00	213.40	77.40
SL42934	142.60	224.27	81.67
SL42817	137.80	215.08	77.28
SL42835	162.40	253.88	91.48
SL42698	135.67	213.91	78.24
SL42385	136.00	213.40	77.40
SL42359	137.30	205.73	68.43
SL42064	151.51	237.59	86.08