

ORIGINALDecision No. 58214

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates, and practices of Arnold)
 Miller and Nathan Morrell, doing)
 business as MILLER AND MORRELL)
 TRUCKING CO.)

Case No. 6143

Glanz and Russell by R. Y. Schureman, for
 respondent.
Karl K. Roos and George Cates, for the
 Commission staff.

O P I N I O N

This investigation was instituted by the Commission on July 8, 1958. A public hearing was held in Los Angeles on October 21, 1958. Submission was delayed pending an effort by respondents to collect on a new group of undercharges which were called to respondents' attention on the day before the hearing. Evidence that these had been collected was filed on November 18, 1958, and the matter is now ready for decision.

Respondents made no attempt to defend the case. A stipulation was entered into between the respondents and the Commission staff acknowledging the service of applicable rate orders and the accuracy of both the charges and the staff exhibits. This stipulation disposed of the issues in the investigation. Witnesses, including a respondent, an executive of the shipper, and a member of the Commission staff filled out the record. The respondent and shipper witness gave testimony in mitigation of the stipulated offenses.

The number of undercharges was large. However, another and more serious offense came to light in this investigation. This was rebating by means of a device. The device employed was a charge for the use of a crane at the shipper's establishment in Downey. More than eight thousand dollars was rebated to the shipper by this device.

The transaction which led up to the rebate was described by witnesses. Respondents had been quoting a certain rail rate to the shipper. Representatives of the Commission staff called respondents' attention to the fact that the quoted rate was not applicable and directed that undercharges be collected. The shipper was willing to pay the correct rate in the future but unwilling to pay the back undercharges. Nevertheless shipper did pay the undercharges and the crane device was adopted to refund this payment less the amount for taxes.

The evidence in mitigation offered by respondents was chiefly twofold. The steel shipper involved here supplied 80% of respondents' business at the time of the offenses, 90% at the time of hearing. Thus loss of the account meant possible ruin to respondents and the economic compulsion was great. The second matter in mitigation was that all known undercharges have been collected. These included the rebate, which, after having been paid over to the shipper, was collected by respondents a second time. The undercharges to which respondents' attention was directed just before the hearing were collected after that date.

The manager of the shipper testified that it was company policy to comply with Commission regulations. He further stated that he had been ill and completely out of the business at the

time of the affair of the crane. He went on to say that he had repaid the rebate to respondents and that he had paid or would pay all undercharges.

The Commission has given due consideration and weight to mitigating circumstances. Nevertheless the offenses here are of too serious a nature to be lightly treated. This is particularly true of the rebating that was done. The order following will impose a substantial suspension with the greater part of it conditionally suspended. In this connection the evidence revealed that respondent Miller, or companies in which he was interested, had been involved in undercharge violations before the present series of transactions.

The Commission therefore finds and concludes as follows:

1. That all minimum rate orders applicable to the transportation investigated in this proceeding were served upon respondents prior to the performance of the services and the rendering of the bills for rates and charges for such transportation.
2. That in numerous transportation services performed for Rutherford & Skoubye of Downey, California, during the years 1955, 1956 and 1957, specifically identified in Exhibits Nos. 1 and 3, in evidence herein, respondents assessed charges less than the minimum rates and charges applicable to such transportation under applicable minimum rate orders issued by this Commission.
3. That respondents were billed by Rutherford & Skoubye and paid for the services of a crane; that some of said services were not in fact rendered; that other of said services were rendered but were of a type for which charges are not assessed in the normal course of the trade.

4. That all rebates and undercharges referred to in the evidence herein were collected on or before November 18, 1958.

5. That respondents, in performing the transportation services referred to in paragraphs Nos. 2 and 3 above, committed violations of Sections 3667, 3668 and 3737 of the Public Utilities Code and of the Commission's minimum rate orders issued pursuant to said code.

O R D E R

Investigation having been instituted, public hearing held and the Commission basing its decision on the findings set forth in the foregoing opinion,

IT IS ORDERED that:

1. Arnold Miller and Nathan Morrell, and each of them, shall cease and desist from violating the Public Utilities Code or any Commission rate order issued in pursuance of authority granted in said code.

2. Respondents, or either of them, shall perform no transportation of property for Rutherford & Skoubye, Inc., for a period of fifteen consecutive calendar days beginning at 12:01 a.m. on the second Monday after the effective date of this order and ending at 11:59 p.m. on the fourth Monday following the effective date of this order.

3. As an additional penalty for the violations noted in the foregoing opinion, respondents, or either of them, shall perform no transportation services for Rutherford and Skoubye, Inc., for a separate and additional period of thirty consecutive calendar

days, this other, further and additional penalty to be without force or effect if, for a period of one year, the respondents, and each of them, shall refrain from violating any provision or provisions of the Public Utilities Code applying to rates and charges and binding upon these respondents, or any order of the Commission or rate, rule and regulation contained in such an order issued pursuant to said provision or provisions of said code.

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

Dated at San Francisco, California, this 31st day of March, 1959.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners