

ORIGINALDecision No. 59006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of WILLIAM J.
POPE and VIVIAN W. POPE, doing
business as AETNA FREIGHT LINES;
VIVIAN W. POPE, doing business as
AETNA FREIGHT LINES; and WILLIAM
J. POPE, doing business as
AETNA TRUCK EXPRESS.

Case No. 6177

Scott Elder, for the respondents.
Karl K. Roos, for the Commission's staff.

O P I N I O N

On September 10, 1958, the Commission issued its order instituting an investigation into the operations, rates, and practices of William J. Pope and Vivian W. Pope, doing business as Aetna Freight Lines; Vivian W. Pope, doing business as Aetna Freight Lines; and William J. Pope, doing business as Aetna Truck Express. This investigation was instituted for two principal purposes. The first is to determine whether the respondents violated Sections 494 and 532 of the Public Utilities Code by charging, demanding, collecting, or receiving a different compensation for the transportation of property or for any services in connection therewith from the applicable rates, tolls and charges specified in their tariffs filed and in effect at the time. The second purpose is to determine whether the respondents violated Section 3452 of the Public Utilities Code by engaging in the transportation of property on the public highways of the State of California, both as a common carrier and as a highway contract carrier of the same commodities between the same points.

A public hearing was held in Los Angeles before Examiner William L. Cole on February 25, 1959. The matter was submitted at that time subject to the filing of briefs. These briefs have now been filed and the matter is ready for decision.

Findings and Conclusions

Based upon all of the evidence of record, the Commission finds and concludes as follows:

1. That during the period from December 1957 through February 1958, W. J. Pope and V. W. Pope, doing business as Aetna Freight Lines, conducted a highway common carrier operation pursuant to a certificate of public convenience and necessity issued to them by the Commission. This certificate authorized highway common carrier operations for the transportation of general commodities, with certain exceptions not relevant in this matter, between the San Francisco Territory, which included San Leandro, and the Los Angeles Territory, which included Los Angeles and South Gate.

2. During this same period of time, W. J. Pope, doing business as Aetna Truck Express, also operated as a radial highway common carrier and as a highway contract carrier pursuant to permits issued to him by the Commission.

3. V. W. Pope, doing business as Aetna Freight Lines, also operated as a radial highway common carrier and as a highway contract carrier during this period pursuant to permits issued to her by the Commission.

4. W. J. Pope and V. W. Pope were at that time, and now are, husband and wife.

5. The respondents, doing business as Aetna Freight Lines, had a highway common carrier tariff on file with the Commission when the shipments hereinbelow referred to took place.

6. During this same period of time, the respondents transported various shipments of washing compounds, drain pipe solvent, bleach, cleaning compound, lye, fibreboard, chemicals, and laundry case partitions for the Purex Corporation between San Leandro and South Gate. Likewise, during this period of time, the respondents transported various shipments of roasted coffee and coffee extract between San Leandro and Los Angeles for the General Foods Corporation. The shipments of the Purex Corporation were transported on the billing of Aetna Truck Express, the name under which W. J. Pope performs his permitted carrier operations. Notwithstanding this fact, however, all of the transportation in question came within the scope of the respondents' certificated operating authority. The respondents and the Commission staff stipulated that the rates and charges legally assessable for this transportation were those specified in the respondents' highway common carrier tariff on file with the Commission at the time. In view of this, the Commission must conclude that all of the transportation was performed under the respondents' certificated operating authority. Further facts relative to the shipments in question, together with the Commission's conclusions as to the correct transportation charges, are set forth in the following table:

<u>Freight Bill</u>	<u>Date</u>	<u>Shipper</u>	<u>Assessed</u>	<u>Correct Charge</u>	<u>Under-charge</u>
LA 31931	12/ 4/57	Purex Corp.	\$222.62	\$228.16	\$ 5.54
LA 32112	12/ 6/57	" "	195.51	201.05	5.54
LA 33111	12/30/57	" "	302.10	307.63	5.53
LA 32778	12/18/57	" "	327.03	332.57	5.54
LA 33220	1/ 2/58	" "	234.27	239.81	5.54
LA 34093	1/16/58	" "	195.89	201.43	5.54
LA 34349	1/22/58	" "	200.07	205.61	5.54
LA 35232	2/ 4/58	" "	200.82	218.95	18.13
LA 36127	2/13/58	" "	200.08	216.23	16.15
LA 37311	2/27/58	" "	211.60	239.74	28.14
LA 37329	2/28/58	" "	233.00	250.81	17.81
LA 41564	12/ 3/57	Gen. Foods Corp.	479.38	557.19	77.81
LA 41641	12/ 5/57	" " "	619.09	691.33	72.24
LA 41861	12/19/57	" " "	267.78	326.91	59.13
LA 41941	12/26/57	" " "	165.00	189.00	24.00
LA 41969	12/30/57	" " "	190.69	218.42	27.73
LA 42287	1/13/58	" " "	188.52	215.95	27.43
LA 42447	1/16/58	" " "	454.30	508.96	54.66

The amount of the undercharges for the shipments in question totalled \$462.00.

7. The respondents operate about 89 pieces of revenue equipment and have terminals located in Los Angeles, San Diego, Bakersfield, Fresno, San Leandro, San Francisco, Sacramento, and San Bruno.

With respect to the first seven shipments of Purex Corporation, the reason the undercharges occurred appears to be due to the fact that the respondents used railhead competitive rates in assessing their charges, but did not include the required switching charge of \$5.53. With respect to the next four shipments of the Purex Corporation, this switching charge was likewise not assessed but in addition there were some other rating errors. The respondents did not include, with respect to these four shipments, the required charge for tailgate loading and unloading. The respondents did assess this charge with respect to the first seven shipments of Purex Corporation. In addition, with respect to two of the last four shipments of Purex Corporation, there were certain other minor violations.

With respect to the shipments transported for the General Foods Corporation, it is to be noted that they all consisted of mixed truckload shipments composed of roasted coffee and dry coffee extract. The respondents assessed the same rate for both commodities whereas the respondents' highway common carrier tariff required that the dry coffee extract receive a higher rate. The respondents' tariff authorized the use of the same rate for roasted coffee and dry coffee extract on less-than-truckload shipments but not on truckload shipments.

Violations and Penalty

Based on the foregoing findings and conclusions, the Commission further finds and concludes that the respondents violated Sections 494 and 532 of the Public Utilities Code by charging, demanding, collecting, or receiving a different compensation for the transportation of property or for any services in connection therewith from the applicable rates, tolls and charges specified in their schedules filed and in effect at the time.

Inasmuch as it was concluded that all of the shipments in question were shipments transported under the authority of the respondents' certificated operating rights, it cannot be found from the evidence that the respondents violated Section 3542 of the Public Utilities Code by engaging in the transportation of property on the public highways of the State of California, both as a common carrier and as a highway contract carrier of the same commodities between the same points. Notwithstanding this, however, the Commission calls this section to the respondents' attention and expects them to comply in all respects with its terms and provisions.

In view of the violations hereinabove found, it is the Commission's conclusion that respondents' highway common carrier certificate of public convenience and necessity and the radial highway common carrier permits and highway contract carrier permits of

both respondents be suspended to the extent that the respondents will be prohibited from serving the shippers hereinabove referred to in paragraph 6 for a period of three days. The evidence shows that the calculation of the correct charges involved the application of complex tariff provisions. With the exception of a request to collect certain undercharges as the result of a Commission audit in 1955, there is no evidence in the record that the respondents have ever been the subject of any disciplinary action by the Commission. In view of this, it is the Commission's conclusion that the imposition of this three-day period of partial suspension should be deferred and suspended for a period of one year. If the Commission finds at any time during the one-year period that William J. Pope and Vivian W. Pope are failing to comply with all orders, rules and regulations of the Commission, the three-day period of partial suspension will be imposed together with whatever additional penalty the Commission deems necessary. If no further order of the Commission is issued affecting this suspension within one year from the date of issuance of this decision, the three-day period of suspension shall expire.

Motion

At the time of the hearing, the Commission staff moved to amend the order instituting investigation by deleting therefrom any reference to certain shipments. This motion was taken under submission at that time. The motion is hereby granted.

O R D E R

A public hearing having been held in the above-entitled matter and the Commission being fully informed therein,

IT IS ORDERED:

1. That William J. Pope and Vivian W. Pope shall cease and desist from all violations of Sections 494 and 532 of the Public Utilities Code.

2. That, commencing at 12:01 a.m. on the second Monday following the effective date hereof, William J. Pope, whether operating as a highway common carrier, radial highway common carrier, or highway contract carrier, shall not serve the Purex Corporation or the General Foods Corporation or their successors or agents, either as consignees or consignors, for a period of three days. This prohibition shall be considered as a partial suspension of the respondents' certificates of public convenience and necessity to operate as a highway common carrier and their permits to operate as radial highway common carriers and highway contract carriers. This three-day period of partial suspension, however, shall be deferred and suspended pending further order of this Commission. If no further order of the Commission is issued affecting this suspension within one year from the date of issuance of this decision, the three-day period of suspension shall expire.

3. That William J. Pope and Vivian W. Pope shall examine their records for the period from September 1, 1957, to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

4. That, within ninety days after the effective date of this decision, the respondents shall file with the Commission a report setting forth all undercharges found pursuant to the examination hereinabove required by paragraph 3.

5. That the respondents are hereby directed to take such action as may be necessary to collect the amounts of undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph 3 of this order, and to notify the Commission in writing upon the consummation of such collections.

6. That, in the event charges to be collected as provided in paragraph 4 of this order, or any part thereof, remain uncollected one hundred and twenty days after the effective date of this order, the respondents shall submit to the Commission, on the first Monday of each month, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such action, until such charges have been collected in full or until further order of this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon William J. Pope and Vivian W. Pope and this order shall be effective twenty days after the completion of such service upon these respondents.

Dated at San Francisco, California, this 15th day of September, 1959.

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

Commissioner Theodore E. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.