

ORIGINALDecision No. 60079

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of CECIL M.)
 SILLS, MORRIS BEIGEL, and ERNIE J.)
 BEIGEL, doing business as JAT)
 TRUCKING COMPANY.)

Case No. 6379

Arthur H. Glanz of Glanz & Russell, for
 respondents.
Martin J. Porter, for the Commission staff.

O P I N I O N

On November 10, 1959, this Commission issued an order of investigation into the operations, rates and practices of Cecil M. Sills, Morris Beigel and Ernie J. Beigel, doing business as Jat Trucking Company, who are engaged in the business of transporting property over the public highways as a highway contract carrier. Pursuant to said order a public hearing was held in Los Angeles on December 15, 1959, before Examiner James F. Mastoris. On February 2, 1960, the submission of this matter was set aside and the case reopened for further proceedings. Further hearing was held in Los Angeles on March 31, 1960, at which time additional evidence was presented by the staff of the Commission and by the respondents.

Purpose of Investigation

The purpose of this investigation is to determine whether the respondents have or are violating Section 3668 of the Public Utilities Code by using a device by which a shipper obtains transportation for rates less than the minimum prescribed in Minimum Rate Tariff No. 2.

Facts

Based upon the evidence produced at the original and at the reopened hearing, the Commission hereby finds that the following facts exist:

1. The respondents transported 12 shipments of cast iron soil fittings for the Anaheim Foundry Company during the period from June 1957 to May 1959, between Anaheim and various northern California points.

2. The actual transportation of these shipments was performed by subhaulers who were paid rates less than the prescribed minimum by the respondents. The respondents as prime carrier were paid the minimum rates, and in some instances higher than the minimum, by the shipper.

3. The three partners of the carrier each hold a 33-1/3 percentage interest in said partnership and held such interest at the time the transportation in issue was performed.

4. Said partners are related to each other by blood or marriage as follows:

Morris Beigel - Father
Ernie J. Beigel - Son
Cecil M. Sills - Son-in-law

5. At the time the transportation was performed the same individuals possessed the following interest in Anaheim Foundry Company, the shipper:

Morris Beigel	74%
Ernie J. Beigel	1%
Cecil M. Sills	25%

Since the date of the original hearing this percentage has changed so that at present the interest held by each reads as follows:

Morris Beigel	62%
Ernie J. Beigel	9%
Cecil M. Sills	29%

This company is a corporation and the above interests are represented by shares of stock.

6. In addition, the same individuals hold the following stock interest and officer positions in two affiliated corporations:

Universal Supply Company

Morris Beigel	62%	- President
Ernie J. Beigel	9%	- Secretary
Cecil M. Sills	29%	- Vice-President

Silco Machine Company

Morris Beigel	33%	- Secretary
Ernie J. Beigel	33%	- Vice-President
Cecil M. Sills	33%	- President

7. During the eight-month period of investigation by the Commission staff in 1959, the respondents transported 137 shipments for the Anaheim Foundry Company, 96 of which were carried on the respondents' own trucks. The balance was subhailed by other carriers.

8. Since the formation of the partnership and the acquisition of the permit in 1955, all transportation performed by this carrier, except in one instance, has been for one shipper -- said Anaheim Foundry Company. The one exception involved a shipment for the aforementioned affiliated corporation, Universal Supply Company.

9. The partners at no time made any attempt to negotiate for or obtain new business for their trucking concern. They operate two tractors and semitrailers and one truck; two trucks are leased to said Anaheim Foundry Company. New or additional equipment was not acquired because the respondents believed purchased subhaul transportation would be more economically advantageous under the circumstances of their operation. Each partner realized approximately \$3300 net profit from their trucking operations in 1958; in 1959 this profit increased to approximately \$5600 for each individual.

10. Respondents' equipment and accounting records are stored on the premises of the aforementioned affiliate, Silco Machine Company. In addition, desk space is provided to this trucker by this company. A rental charge of \$30 a month is paid for the equipment storage to a banking account titled "Olive Street Property Account." The respondents hold and control said account.

11. Both the Anaheim Foundry Company and the Universal Supply Company are located on the same premises, a 2½-acre parcel in Anaheim. Both firms operate from seven business offices, five of which are physically connected to each other on said property. Silco Machine Company is situated on separate land several blocks from the other two organizations.

12. The bookkeeper employed by Universal Supply Company but working out of the plant offices of the said Silco Machine Company performs billing services, supervises rates assessed by the drivers, deposits checks received from Anaheim Foundry Company at the bank, prepares checks payable to subhaulers and prepares payroll and other expenses of said carrier. Said employee periodically carries invoices and statements from her offices at Silco over to Anaheim Foundry's offices where she presents said documents and in turn picks up checks payable to the respondents for transportation completed. Neither of the entities representing the shipper or the carrier make any direct remuneration to said bookkeeper for these services nor was said carrier charged for them. Prior to 1958 these activities were performed by Anaheim Foundry's office manager.

13. The carrier has no designated employees other than its drivers who, when not performing truck operation duties, are employed in a nondriving capacity by the aforesaid shipper and the affiliated Universal Supply Company. When said individuals drive Jat Trucking Company's trucks they are paid separate checks by the respondents.

14. All three partners devote the following percentages of time to the business of each of the following entities:

Anaheim Foundry - Universal Supply	70%
Silco Machine Company	15%
Jat Trucking Company	15%

15. The carrier's telephone number has never been listed in the telephone directory; the number displayed on the face of the freight bills was at one time that of Universal Supply Company and at another time that of partner Morris Beigel.

Findings

Based upon the evidence of record the Commission finds and concludes that the relationship between the respondents and the Anaheim Foundry Company is such that the separate personalities of either do not exist and both business organizations are in fact one and the same entity. It is obvious that the persons involved in all these companies were, and are, acting as a group or unit and not individually. The continued recognition of such entities under the circumstances of this case results in the evasion and circumvention of the Public Utilities Code. Therefore, we find that the other carrier and carriers who purportedly were subhaulers of the respondents were in fact prime carriers for said shipper, the Anaheim Foundry Company. Inasmuch as the subhaulers received less than the minimum rates prescribed by the Commission, the shipper-carrier group received transportation of property at less than the minimum charges in violation of law. Accordingly, we find that the improper designation of the prime carrier constitutes a false device whereby the respondents assisted and permitted the Anaheim Foundry Company to obtain transportation of property between points within this State at rates less than the minimum established by the Commission in violation of Section 3668 of said Public Utilities Code.

Respondents' highway contract carrier permit will not be revoked; however, it will be amended to include a restriction therein which prevents the carrier, whenever it engages subhaulers for the transportation of the property of the Anaheim Foundry Company, or of the Universal Supply Company and Silco Machine Company, from paying such subhaulers rates less than the minimum prescribed by the Commission for the transportation actually performed by such subhaulers.

O R D E R

Public hearing having been held in the above-entitled matter and the Commission being fully informed therein, now therefore, IT IS ORDERED:

1. That, on the effective date of this decision, the Secretary of the Commission is directed to cause to be amended Highway Contract Carrier Permit No. 30-2997 issued to Cecil M. Sills, Morris Beigel and Ernie J. Beigel, doing business as Jat Trucking Company, by inserting therein a restriction prohibiting Jat Trucking Company, whenever it engages other carriers for the transportation of the Anaheim Foundry Company, or of Universal Supply Company or Silco Machine Company, from paying such other carriers less than the minimum charges established by the Commission for the transportation actually performed by such other carriers.

2. That the Secretary of the Commission is directed to cause personal service of this decision to be made on Cecil M. Sills, Morris Beigel and Ernie J. Beigel, and this decision and order shall become effective twenty days after the date of such service.

Dated at San Francisco, California, this 9th day of May, 1960.

President

Commissioners