

ORIGINAL

Decision No. 60834

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates, and practices of Rusco )  
 Prime Window Company, a corporation.)

Case No. 6291

Marvin Handler for Dellason, Inc., doing business  
 as Rusco Prime Window Company, respondent.  
Hugh N. Orr for the Commission staff.

O P I N I O N

On June 23, 1959, the Commission instituted an investigation on its own motion for the purpose of determining:

1. Whether respondent Rusco Prime Window Company is the alter ego of Inland Lumber Company, a corporation, and as such has violated Section 3668 of the Public Utilities Code through the device of its alter ego by assisting, suffering or permitting a corporation or person to obtain transportation for property between points within this State at rates less than the minimum rates then established or approved by the Commission in Minimum Rate Tariff No. 2.

2. Whether said respondent has violated Public Utilities Code Sections 3664, 3667 and 3737 by charging, demanding, collecting or receiving a lesser compensation for the transportation of property over the public highways than the applicable charges prescribed in Minimum Rate Tariff No. 2.

3. What order should be issued by the Commission as the result of the hearing of this matter.

Public hearing herein was held before Examiner Wilson E. Cline on June 30, 1960, at San Francisco.

At the hearing it was stipulated that:

1. The respondent Rusco Prime Window Company has heretofore operated as a radial highway common carrier under Permit No. 36-3494, and that it was duly served with Minimum Rate Tariff No. 2, Distance Table No. 4 and all pertinent supplements affecting the carrier's operations.
2. Dellason, Inc., is now a corporation which is operating as Rusco Prime Window Company under the permit specified in paragraph 1 above.
3. The undercharges indicated in the rate summary which is entitled "Case No. 6291, Summary of Certain Shipping Data Contained in Records of Rusco Prime Window Company Together With Statements as to the Applicable Minimum Rates for Shipments Reflected by Such Data, July 21, 1959", correctly indicate undercharges which occurred and that the exhibit should be offered in evidence without further proof.
4. Dellason, Inc., on June 19, 1959, became the successor to and the operator of Rusco Prime Window Company, and the order herein may be directed to and shall be equally binding upon Rusco Prime Window Company and Dellason, Inc.
5. The carrier's permit shall be revoked and respondent will discontinue its carrier operation.

At the close of the hearing the matter was taken under submission subject to the condition that the operating permit of respondent herein either be canceled or revoked and the condition that the proposal to compromise for the sum of \$2,000 the penalty action instituted in the Superior Court in and for the County of Sacramento, be approved by the Commission. It was understood that if these conditions were not met further hearings would be held in this matter.

The Commission takes official notice of the revocation of respondent's radial highway common carrier Permit No. 36-3494 by Commission Resolution No. 11330 adopted July 12, 1960, and of the authorization to compromise for the sum of \$2,000 the penalty action instituted in the Superior Court in and for the County of Sacramento by Commission Resolution No. A-2384 adopted July 12, 1960. On July 12, 1960, this matter was taken under submission.

Findings and Conclusions

Upon the evidence of record the Commission finds that:

1. Respondent has engaged heretofore in the transportation of property over the public highways for compensation as a radial highway common carrier under Permit No. 36-3494 which permit has been revoked by the Commission at the request of respondent.

2. Respondent assessed and collected rates and charges less than the applicable minimum rates and charges which resulted in undercharges as follows (from Exhibit No. 1):

<u>No. of Freight Bill</u>	<u>Date</u>	<u>Amount of Undercharge</u>
217	2/23/59	\$11.41
230	2/24/59	22.65
218	2/24/59	24.49
219	2/24/59	17.57
224	2/24/59	23.27
222	2/24/59	23.39
227	2/24/59	18.21
225	2/24/59	22.63
251	2/27/59	1.09

The total undercharges for the above shipments amount to \$164.71.

In the performance of the various transportation service hereinabove set forth respondent has violated Sections 3664, 3667, and 3737 by charging, demanding, collecting or receiving a lesser compensation for the transportation of property over the public highways than the applicable charges prescribed in Minimum Rate Tariff No. 2.

The Commission having found the facts hereinabove set forth and concluding that respondent has violated Sections 3664, 3667 and 3737 of the Public Utilities Code makes its order as follows:

O R D E R

Public hearing having been held and the Commission basing its decision on findings and conclusions set forth in the foregoing opinion,

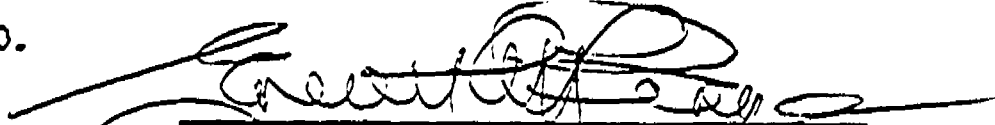


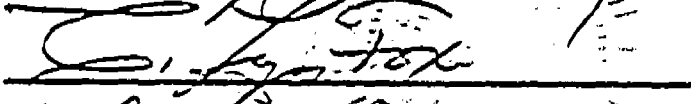
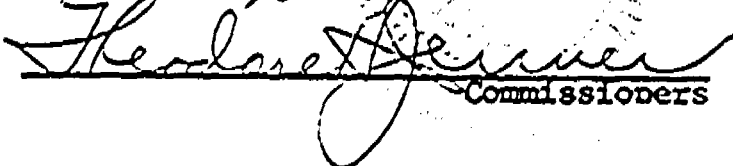
IT IS ORDERED that:

1. Rusco Prime Window Company and Dellason, Inc., shall examine their records for the period from February 28, 1959 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.
2. Within ninety days after the effective date of this decision, Rusco Prime Window Company and Dellason, Inc., shall complete the examination of their records hereinabove required by paragraph 1 and file with the Commission a report setting forth all undercharges found pursuant to that examination.
3. Rusco Prime Window Company and Dellason, Inc., are hereby directed to take such action, including legal 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 1 of this order, and to notify the Commission in writing upon the consummation of such collections.
4. In the event charges to be collected as provided in paragraph 3 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Rusco Prime Window Company and Dellason, Inc., shall institute legal proceedings to effect collection and 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, 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 Rusco Prime Window Company and Dellason, Inc., and this order shall be effective twenty days after the completion of such service upon Rusco Prime Window Company and Dellason, Inc.

Dated at San Francisco California, this 4th day of October, 1960.

  
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President  
  
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Commissioners