

**ORIGINAL**Decision No. 62570

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the relationships,  
operations, rates and practices of  
TRUCK MAINTENANCE, INC., a corpora-  
tion; TRIANGLE GRAIN COMPANY, a  
corporation; DICK HUIZENGA; PETE  
VAN DER MAARL; DALE SMITH; GEORGE  
BROWN; DARYL LEONARD; I. L. PARKER;  
FRED ROBINSON; WILLIAM PERRY;  
WILLIE KNEVELBAARD; and H.C. MUNK.

Case No. 7007

Knapp, Gill, Hibbert & Stevens, by Karl Roos, for  
respondent Truck Maintenance, Inc.  
Eagleton and Petterson, by Gail H. Eagleton, for  
respondent Triangle Grain Company; and  
Dick Huizenga, Pete VanDer Maarl, Dale Smith,  
George Brown, Daryl Leonard, Hans C. Munk,  
Willie Knevelbaard, William Perry, Fred B.  
Robinson, and Irvan Lee Parker, respondents,  
in propria personae.  
Hugh N. Orr, for the Commission's staff.

O P I N I O N

This proceeding, instituted on the Commission's own motion, is an investigation into the operations, rates and practices of Truck Maintenance, Inc., a corporation, Triangle Grain Company, a corporation (hereinafter referred to as Truck Maintenance and Triangle Grain, respectively), and the ten named individuals, all, except Triangle Grain, engaged in the business of transporting property as Radial Highway Common Carriers, as defined in Section 3516 of the Public Utilities Code.

Public hearings were held in Los Angeles on March 21, 22 and 23, 1961, before Examiner Mark V. Chiesa, to determine whether

or not said respondent corporations are functioning as a single entity and thereby obtaining transportation of property at rates less than those prescribed by Minimum Rate Tariff No 2 in violation of Sections Nos. 3668 and 3669 of the Public Utilities Code, and to determine whether or not the said individuals have charged, demanded, collected or received for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges applicable to such transportation, which have been established by the Commission, in violation of Section 3667 of the Public Utilities Code, for transportation purportedly performed by them as subhaulers for Truck Maintenance.

Upon the evidence of record the Commission makes its findings and conclusions as follows:

That at all times hereinafter mentioned, Truck Maintenance, Dick Huizenga, Pete Van Der Maarl, Dale Smith, George Brown, Daryl Leonard, I. L. Parker, Fred Robinson, William Perry, Willie Knevelbaard, and H. C. Munk, were actively engaged in transporting property as Radial Highway Common Carriers, as defined in Section 3516 of the Public Utilities Code; that all the transportation performed by them pertinent to this proceeding was performed as Radial Highway Common Carrier permittees; that all applicable minimum rate orders were served upon each of said permittees prior to any of the shipments hereinafter noted.

That the officers, directors and stockholders of the respondent corporations are as follows:

Triangle Grain

Truck Maintenance

Officers

J. Karl Williams  
President  
Leo M. Williams  
Vice President  
S. J. Glaser  
Secretary-Treasurer

Leo M. Williams  
President  
J. Karl Williams  
Vice President  
S. J. Glaser  
Secretary-Treasurer

Directors

J. Karl Williams  
Leo M. Williams  
S. J. Glaser

Leo M. Williams  
J. Karl Williams  
S. J. Glaser  
Robert H. Keller

Stockholders

J. Karl Williams  
and wife as Joint Tenants  
-- 600 shares  
S. J. Glaser  
and wife as Joint Tenants  
-- 600 shares  
Irrevocable trust for the benefit  
of 4 children of Leo M. Williams

Leo M. Williams  
-- 200 shares  
J. Karl Williams  
-- 200 shares  
S. J. Glaser  
-- 200 shares

That Robert H. Keller is manager of operations for Truck Maintenance and general manager of Triangle Grain; that the principal place of business of both corporations is at 10118 Artesia Place, Bellflower, California, where Triangle Grain processes animal feed in bulk for dairy and beef cattle, and Truck Maintenance operates its trucking business; that Triangle Grain holds no authority from this Commission; that Truck Maintenance holds Radial Highway Common Carrier permit No. 19-51330 and City Carrier permit No. 19-51331, issued by this Commission on December 3, 1957; that Truck Maintenance has not, during any time pertinent to this proceeding, operated as a City Carrier but has purportedly transported as the prime Radial Highway Common Carrier the products of Triangle Grain in the manner hereinafter more specifically set forth.

That Truck Maintenance owns only one truck unit which it has leased to Triangle Grain for use by the latter in its proprietary hauling operations; that all the trucking operations of Truck Maintenance are actually performed by other permitted carriers, including the ten individual carriers herein also named as respondents, with whom it purports to enter into so-called "subhaul agreements." That the operations of Truck Maintenance consist almost exclusively of contacting so-called subhaulers to transport the products of Triangle Grain.

That Triangle Grain owns and operates 19 units of equipment in proprietary hauling of its own products; that it uses Truck Maintenance for the purpose of arranging transportation of its products only when Triangle Grain equipment is not available, or when it is otherwise advantageous not to operate its own equipment; that Triangle Grain also owns trailer equipment which it leases to carriers employed by Truck Maintenance for transporting Triangle Grain property under so-called "subhaul agreements"; that some officers or directors of Triangle Grain also own trailer equipment which they lease on their own account in similar manner and for similar service; that all of this equipment is kept at the terminal facilities occupied by both Triangle Grain and Truck Maintenance; that the compensation paid by the "subhaulers" for the rental of said equipment is wholly independent of the compensation paid to them for their transportation services.

That Truck Maintenance has no paid employees; that its business is handled by the officers and/or employees of Triangle Grain under a so-called managerial arrangement involving a payment of \$300 per month by Truck Maintenance to Triangle Grain; that

Triangle Grain owns or controls several other companies located at 10118 Artesia Place, Bellflower, which are also managed by Triangle Grain officers and/or employees under similar arrangements; that the corporate functions and operations of Truck Maintenance are conducted by Triangle Grain under said management agreement; that a separate set of books and records are kept for each of the respondent corporations.

That equipment owned or leased by "subhaulers" employed by Truck Maintenance to transport property of Triangle Grain is loaded and dispatched by the same personnel in substantially the same manner as equipment owned and operated by Triangle Grain in its proprietary capacity; that all loading and dispatching is directed by an employee of Triangle Grain who, after supervising the loading, calls a "subhauler" and gives him instructions relative to the transportation service to be performed.

The manner in which the transportation service was performed and the documentation thereof is clearly apparent from the record and is substantially as follows:

The "subhauler" is informed that a load will be ready for pickup at a specified time. The "subhaul" driver is given a Triangle Grain invoice on which appears the date, the name and address of the consignee, the place of destination, and the kind of commodity and the weight of the load. At the time of delivery, the driver presents the invoice to the consignee or his agent and secures his signature acknowledging receipt of the shipment.

From the data appearing on the invoice the driver enters on a multicopy form designated "Shipping Order and Freight Bill", and bearing the name of Truck Maintenance, Inc., data relating to

his transportation and delivery of the load, including date, shipper, consignee, point of origin, point of destination, commodity and weight. Spaces provided for the entry of figures showing the rate and amount of charges are not filled in by the driver. The driver delivers the multicopy form to the dispatcher as his report of the transportation which he has performed. The form is then completed by a Triangle Grain employee. On one copy (Exhibit 1) is entered the rate and amount which Truck Maintenance purports to charge Triangle Grain, and the document becomes a bill for transportation to be paid to Truck Maintenance by Triangle Grain.

On another copy (Exhibits 3-9) the amount to be paid to the "subhauler" is entered, and this copy is forwarded to the subhauler. Said amount is substantially less than the amount shown on Triangle Grain's bill. Thereafter, a summary is prepared of the freight bills for transportation performed by each "subhauler", including the amount due the subhauler for each load transported. Periodically, usually on the 1st and 15th of each month, Truck Maintenance pays each "subhauler" the total amount of the freight bills sent to him.

We find also that Triangle Grain is charged and pays charges which usually equal or exceed the minimum rates prescribed by Minimum Rate Tariff No. 2, and that Truck Maintenance pays part of said charges to the subhaulers and retains the balance, and that in all cases the subhaulers are paid substantially less than the minimum rates applicable under Minimum Rate Tariff No. 2.

The Commission's staff contends that respondent Triangle Grain has utilized an alter ego, Truck Maintenance, as a device to

secure transportation of its products at less than the minimum rates provided by Minimum Rate Tariff No. 2 by employing the individual respondent carriers as so-called subhaulers.

It is the position of the respondent corporation that the intercorporate relationship existing between them was "occasioned by reason of sound business considerations upon the part of the management of both corporations", and that the conduct of the transportation service as hereinabove related is not adverse to the public interest or in conflict with the regulatory purpose of the Public Utilities Code; that, therefore, the matter of alter ego is immaterial and was not a device to evade the minimum rates prescribed by this Commission; that it was necessary or desirable for them to handle the shipments of Triangle Grain in the manner indicated so that Triangle Grain might "compete effectively for the business of brokers and grain people" and because its new mill operation resulted in a change in the manner of its shipments from sacks or bags in conventional van-type or flat-bed vehicles to bulk shipments in tank-type vehicles, and in order to facilitate shipments Triangle Grain acquired the new equipment for its proprietary use as well as additional similar equipment which it rents to "for-hire" carriers. The use of the tank-type equipment does facilitate the transportation of Triangle Grain products, but the need for the services, if any, of Truck Maintenance, a carrier without equipment or employees of its own, to perform the transportation service, when other for-hire carriers could be hired as prime carriers is not apparent.

The fiction is obvious and the evidence of record is clear and convincing that the two respondent corporations are indistinguishable. Truck Maintenance was created by and is owned, controlled and managed by the same persons who own, control and manage Triangle Grain. Truck Maintenance owns no equipment used in performing a transportation service, performs no physical acts of carriage, and merely purports to act as a prime carrier. The so-called subhaulers are actually the prime carriers. It is clearly apparent that no material change would result in the operations of Triangle Grain or in the quantity or quality of service which it could render to its customers if it were to hire the carriers that are now used as "subhaulers", or other carriers, as prime carriers. The only change would be that the nebulous service performed by Truck Maintenance would be eliminated and the actual carriers would receive the prescribed tariff rates.

We find that Truck Maintenance is the alter ego of Triangle Grain and a mere sham and device and that, by reason thereof, the latter has obtained transportation of its property at rates less than minimum rates prescribed in Minimum Rate Tariff No. 2, which resulted in undercharges as follows (Exhibit No. 2):



<u>Carrier</u>	<u>Freight Bill No.</u>	<u>Date</u>	<u>Amount of Undercharge</u>
Dick Huizenga	11418	2/ 1/60	\$ 4.25
" "	11419	2/ 2/60	12.12
Pete Van Der Maarl	11453	2/ 3/60	12.99
" " " "	11465	2/ 4/60	18.65
Dale Smith	11496	2/ 5/60	19.63
" "	11497	2/ 6/60	6.96
George Brown	11527	2/ 8/60	6.90
" "	11528	2/ 9/60	12.24
Daryl Leonard	11556	2/10/60	13.50
I. L. Parker	11559	2/11/60	15.82
" " "	11601	2/12/60	17.07
" " "	11702	2/16/60	7.72
" " "	11705	2/17/60	16.00
Fred Robinson	11638	2/13/60	19.51
" "	11639	2/15/60	15.49
William Perry	11714	2/19/60	2.50
" "	11827	2/27/60	20.10
Willie Knevelbaard	11668	2/20/60	21.85
H. C. Munk	11701	2/23/60	7.55
" " "	11774	2/24/60	16.62
		Total	<u>267.47</u>

That the commodity transported, the weight thereof, the name of the consignor and consignee, and points of origin and destination, and the applicable rates and charges pertaining to each of the above listed shipments are as set forth in Exhibit 2. That the herein named individual respondents or "subhaulers" did not knowingly charge or collect less than the applicable minimum rates prescribed in Minimum Rate Tariff No. 2.

That Truck Maintenance, Inc., as to the transactions as hereinabove set forth, has assisted and permitted Triangle Grain Company to obtain transportation of property at rates less than the minimum rates prescribed in Minimum Rate Tariff No. 2 in violation of Sections 3667 and 3668 of the Public Utilities Code; that Triangle Grain Company has obtained said transportation in violation of Section 3669 of said Code.

The Commission makes its order as follows:

O R D E R

Public hearings having been held, the Commission being fully advised in the premises and basing its decision on the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

1. That Radial Highway Common Carrier Permit No. 19-51330 and City Carrier Permit No.19-51331, issued to respondent Truck Maintenance, Inc., a corporation, are hereby revoked.

2. That respondents Truck Maintenance, Inc., Triangle Grain Company, and Dick Huizenga, Pete Van Der Maarl, Dale Smith, George Brown, Daryl Leonard, I. L. Parker, Fred Robinson, William Perry, Willie Knevelbaard, and H. C. Munk, shall examine their respective records for a period from January 1, 1960, to the effective date of this order for the purpose of ascertaining if any additional undercharges have occurred other than those listed in the foregoing opinion and within ninety days after the effective date of this order shall complete the examination of their records and file with the Commission a report setting forth all undercharges found pursuant to said examination. Truck Maintenance, Inc., and Triangle Grain Company shall pay to the furnishers of the transportation the difference between the lawful minimum rate and charge applicable to such transportation, and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.

3. That respondents Dick Huizenga, Pete Van Der Maarl, Dale Smith, George Brown, Daryl Leonard, I. L. Parker, Fred Robinson, William Perry, Willie Knevelbaard, and H. C. Munk, individually, 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 2 of this order, and to notify the Commission in writing upon the consummation of such collections.

4. That in the event undercharges, or any part thereof, to be collected as provided in paragraph 3 of this order, remain uncollected one hundred twenty days after the effective date of this order, respondents Dick Huizenga, Pete Van Der Maarl, Dale Smith, George Brown, Daryl Leonard, I. L. Parker, Fred Robinson, William Perry, Willie Knevelbaard and H. C. Mumk, 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 results thereof, 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 all of the corporate and individual respondents herein named.

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

Dated at San Francisco, California, this 12th day of September, 1961.

Robert D. Ray  
President  
George L. Brown  
George L. Brown  
Frederick B. Holbrook  
Commissioners