

ORIGINAL

Decision No. 66412

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of COAST TRUCKING, INC., a corporation, et al

Case No. 7049  
(Order to Show Cause)  
(Filed December 20, 1962)

Russell and Schureman, by Theodore W. Russell,  
for defendants, Coast Trucking, Inc., a  
corporation, Robert P. Baugh and William E. Baugh.  
Franklin G. Campbell, for the Commission staff.

O P I N I O N

On December 14, 1962, Arthur J. Lyon, Jr., senior transportation representative of this Commission, filed his affidavit and application for an order to show cause wherein it was alleged, among other things, that Decision No. 63228 issued by the Commission had been served on Coast Trucking, Inc., a corporation, by personally serving William E. Baugh, its vice president; that Coast Trucking, Inc., Robert P. Baugh, its president, and William E. Baugh, its vice president, and each of them, have omitted, failed and refused to comply with the terms of ordering paragraphs 2 and 4 of said Decision No. 63228 and that such omission, failure and refusal were in violation and disobedience of said Decision No. 63228, and that such failure to comply with and violation of said decision and of ordering paragraphs 2 and 4 thereof, on the part of said corporation and said officers thereof, and each of them, was committed in

violation of law and in contempt of the Public Utilities Commission of the State of California. Affiant requested that the Commission issue an order requiring Coast Trucking, Inc., Robert P. Baugh and William E. Baugh to appear and show cause why they, and each of them, should not be punished for contempt.

On December 20, 1962, the Commission issued its order to show cause directing Coast Trucking, Inc., a corporation, Robert P. Baugh, as president of said corporation, and William E. Baugh, as vice president of said corporation, and each of them, to appear before Commissioner Frederick B. Holoboff or Examiner Mark V. Chiesa on the 16th day of January, 1963, in the Commission Courtroom, State Office Building, Los Angeles, California, and show cause why they should not be adjudged to be in contempt of the Commission, and punished, for their failure and refusal to comply with ordering paragraphs 2 and 4 of the Commission's Decision No. 63228. The order to show cause and the affidavit in support thereof were duly served upon the respondents on December 26, 1962.

On January 16, 1963, Coast Trucking, Inc., Robert P. Baugh and William E. Baugh, appeared before the Commission personally and through counsel and requested a continuance for hearing to January 28, 1963, which continuance was granted. The matter was heard on January 28, 1963, before Commissioner Holoboff and Examiner Chiesa. Said respondents appeared in person and by their counsel.

By Decision No. 63228, dated February 6, 1962, this Commission found, among other things, that Robert P. Baugh and William E. Baugh were officers and directors of Coast Trucking, Inc.,

a corporation, and the Baugh Lumber Sales Co., Inc., a corporation,<sup>1/</sup> and that they owned a majority of the outstanding shares in each of said companies and managed and controlled the operations of each of them; that Coast Trucking, William K. Hart, Lonnie Waggoner, Landis Morgan and Richard Pratt, and each of them, were permitted highway carriers under the jurisdiction of this Commission; that Coast Trucking performed no actual transportation service for Baugh Lumber, but purported to hire as "subhaulers" the said four named persons to transport the property of Baugh Lumber; that Coast Trucking charged Baugh Lumber the prescribed minimum rates for services which were performed by said "subhaulers", except for the seven shipments where undercharges were found; that Coast Trucking was a device whereby Baugh Lumber obtained transportation for less than the prescribed minimum rates; that said "subhaulers", William K. Hart, Lonnie Waggoner, Landis Morgan and Richard Pratt, were in fact prime carriers and as such were entitled to the full amount of the prescribed rates; that Robert P. Baugh and William E. Baugh by reason of their ownership in and control over Coast Trucking and Baugh Lumber enabled the latter to receive transportation of property at rates less than prescribed by the Commission in violation of Section 3668 of the Public Utilities Code.

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<sup>1/</sup>Coast Trucking, Inc., will be also referred to as Coast Trucking and Baugh Lumber Sales Co., Inc., as Baugh Lumber. ✓  
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Having thus found and concluded, this Commission ordered in paragraphs 2 and 4 of said Decision No. 63228 as follows:

- "2. That Coast Trucking, Inc., shall review its records of all transportation purchased by Baugh Lumber Sales Co., Inc., between December 1, 1959, and the effective date of this order in which Coast Trucking, Inc., was ostensibly prime carrier and the furnishers of such transportation were ostensibly sub-haulers. Coast Trucking, Inc., shall then pay to such furnishers of transportation the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.
- "4. That within ninety days after the effective date of this decision, Coast Trucking, Inc., William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General Transportation, and Landis Morgan shall file with the Commission a report setting forth the lawful minimum rates for the transportation and the amount paid William K. Hart, Lonnie Waggoner, Richard Pratt, doing business as Pratt's Livestock and General Transportation, and Landis Morgan found after the examination required by paragraphs 2 and 3 hereof."

On February 23, 1962, Coast Trucking filed its petition for rehearing of Decision No. 63228, which petition was denied by the Commission on April 24, 1962, which date became the effective date of said decision. No application to the Supreme Court of the State for a writ of certiorari or review having been filed, the Commission's order became final as of said date and, not having been revoked, is still in full force and effect.

Based upon the evidence of record the Commission finds that:

1. The Commission on February 6, 1962, rendered its Decision No. 63228 in Case No. 7049. Said decision has never been

revoked and, insofar as it contains mandatory orders, said decision is in full force and effect. A copy of said decision was duly served upon Coast Trucking on February 15, 1962.

2. On December 14, 1962, the affidavit and application for order to show cause herein were filed with the Commission, in which it was alleged, in substance, that respondents had failed and refused to comply with ordering paragraphs 2 and 4 of said Decision No. 63228.

3. On December 20, 1962, the Commission issued its order to show cause directing respondents to appear and show cause why they should not be punished for the alleged contempt set forth in said affidavit and application for order to show cause. The order to show cause and affidavit in support thereof were duly served upon the respondents on December 26, 1962.

4. Coast Trucking, Inc., did review its records as required in paragraph 2 of the order in Decision No. 63228, but has not paid to the "subhaulers" who furnished the transportation the difference between the lawful minimum rates and charges applicable to such transportation and the amount previously paid to them, as ordered in said paragraph.

5. No report has been filed with the Commission setting forth the lawful minimum rates for the transportation and the amount paid to the "subhaulers" as required by paragraph 4 of the order in Decision No. 63228.

6. Robert P. Baugh and William E. Baugh, as officers of and majority owners of the outstanding shares, had control

and management of the affairs of said corporation and had timely notice of the requirements of the order in Decision No. 63228, and have failed and refused to comply with the provisions of ordering paragraphs 2 and 4 of said decision, except that portion of paragraph 2 thereof requiring the review of the records of Coast Trucking, Inc.

7. At the time of the rendition of Decision No. 63228, respondents were able to comply with the requirements of ordering paragraphs 2 and 4 thereof, and that they have been able at all times since said time to so comply and are now able to comply. ✓

Respondents contend that the Commission has no jurisdiction to issue an order for the collection and payment of money such as is contained in said ordering paragraph 2. There is no merit in this contention. Requiring the collection of undercharges is a judicially approved method of effecting regulation of highway carriers. The respondents further contend that Exhibit No. 4 in this proceeding complies with paragraph 4 of the order. Said exhibit is a letter, dated August 20, 1962, addressed to this Commission by Coast Trucking, which merely repeats respondents' position that this Commission does not have jurisdiction to order a carrier to comply with the Commission's tariffs pertaining to the charging and collecting of lawfully prescribed rates, and sets forth various matters in explanation of respondents' refusal to furnish the information requested. The letter does not report the information required by the Commission's order. On the other hand, it is clear from the testimony of the respondents Baugh, and statements of their ✓

counsel as well as the contents of said Exhibit No. 4, that said respondents, and each of them, did not intend to comply with the order of the Commission.

Respondents also contend that there are certain offsets to the claims of the said "subhaulers" which must be resolved in court. This contention has no merit as respondents could have filed the required report showing any offsets and could have attached to the report a statement that such report was being filed in compliance with Decision No. 63228 and was not to be construed as a waiver of any legal rights. It is significant that Coast Trucking takes the position that this Commission has no jurisdiction in the matter and yet sets up as an excuse for not complying with the order certain minor offset claims. There is no evidence that any of said respondents made any attempt whatever to come to an agreement on the amount that should be paid to the "subhaulers".

The evidence in this record is clear, and based on the findings herein set forth, we conclude that Coast Trucking, Inc., Robert P. Baugh and William E. Baugh, and each of them, have failed and refused to make the payments as ordered in said ordering paragraph 2, and have not filed the report required by ordering paragraph 4 of Decision No. 63228, and that such failure and refusal were and are in contempt of the Public Utilities Commission of the State of California and its said order.

JUDGMENT AND ORDER

Coast Trucking, Inc., a corporation, Robert P. Baugh, as president of said corporation, and William E. Baugh, as vice president of said corporation, and each of them, having appeared in person and by counsel and having been given full opportunity to answer the order to show cause of December 20, 1962, and to exonerate themselves from the alleged contempts set forth in the affidavit and application for order to show cause herein, now therefore, based upon the foregoing findings of fact,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Coast Trucking, Inc., a corporation, is guilty of contempt of the Public Utilities Commission of the State of California in disobeying the Commission's order made on February 6, 1962, in Decision No. 63228, by failing and refusing to make the payments as ordered in ordering paragraph 2 of said decision, and that for such contempt said corporation shall be punished by a fine of Five Hundred Dollars (\$500), which fine shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this Opinion, Findings, Judgment and Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Robert P. Baugh, as president of Coast Trucking, Inc., a corporation, and William E. Baugh, as vice president of said corporation, are guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made on February 6, 1962, in Decision No. 63228, by causing Coast Trucking, Inc., a corporation,



to fail and refuse to make the payments as ordered in ordering paragraph 2 of said decision, and that for such contempt Robert P. Baugh, as president of said corporation, and William E. Baugh, as vice president of said corporation, shall be punished by requiring each of them to pay a fine of Five Hundred Dollars (\$500), which fines shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this Opinion, Findings, Judgment and Order. ✓

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Coast Trucking, Inc., a corporation, is guilty of contempt of the Public Utilities Commission of the State of California in disobeying the Commission's order made on February 6, 1962, in Decision No. 63228, by failing and refusing to file the report required by ordering paragraph 4 of said decision, and that for such contempt said corporation shall be punished by a fine of Five Hundred Dollars (\$500), which fine shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this Opinion, Findings, Judgment and Order. ✓

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Robert P. Baugh, as president of Coast Trucking, Inc., a corporation, and William E. Baugh, as vice president of said corporation, are guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made on February 6, 1962, in Decision No. 63228, by causing Coast Trucking, Inc., a corporation, to fail and refuse to file the report as required by ordering

paragraph 4 of said decision, and that for such contempt Robert P. Baugh, as president of said corporation, and William E. Baugh, as vice president of said corporation, shall be punished by requiring each of them to pay a fine of Five Hundred Dollars (\$500), which fines shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this Opinion, Findings, Judgment and Order. ✓

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the fines herein assessed against Robert P. Baugh, he shall be committed to the County Jail of Los Angeles County, State of California, until such fines be paid or satisfied in the proportion of one day's imprisonment for each Fifty Dollars (\$50) of such fines that shall so remain unpaid; and if such fines or any part thereof shall not be paid within the time specified above, the Secretary of the Commission is hereby ordered and directed to prepare an appropriate order or orders of arrest and commitment in the name of the Public Utilities Commission of the State of California, directed to the Sheriff of Los Angeles County, to which shall be attached and made a part thereof a certified copy of this Opinion, Findings and Judgment.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the fines herein assessed against William E. Baugh, he shall be committed to the County Jail of Los Angeles County, State of California, until such fines be paid or satisfied in the proportion of one day's imprisonment for each Fifty Dollars (\$50) of such fines that shall so remain unpaid; and if such fines or any part thereof shall not

be paid within the time specified above, the Secretary of the Commission is hereby ordered and directed to prepare an appropriate order or orders of arrest and commitment in the name of the Public Utilities Commission of the State of California, directed to the Sheriff of Los Angeles County, to which shall be attached and made a part thereof a certified copy of this Opinion, Findings and Judgment.

IT IS FURTHER ORDERED that certified copies of this Opinion, Findings and Judgment be personally served upon Coast Trucking, Inc., a corporation, Robert P. Baugh, and William E. Baugh. The effective date of the Opinion, Findings and Judgment, as to each of the respondents, shall be twenty days after personal service of a certified copy thereof upon said respondent.

Dated at San Francisco, California, this 3rd day of DECEMBER, 1963.

William L. Arnold  
President

George H. Trover

Frederic B. Holoboff  
Commissioners

Commissioner Peter E. Mitchell  
present but not voting.

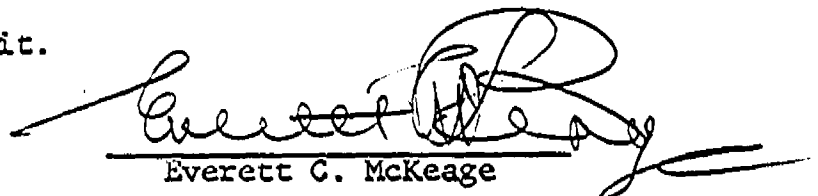
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McKEAGE, Commissioner, dissenting:

I dissent to the decision of the majority for the obvious reason that the public interest, not to say equal justice, requires that these corporate officials be imprisoned for their brash contempt of this Commission.

Why this generosity conferred upon these respondents by the majority decision? The fines levied and the conditions attached to their non-payment are nominal in light of the continuing contempt of the Commission. The majority action solves the problem, not at all. The act which these respondents are lawfully required to perform remains unperformed, the majority decision, to the contrary notwithstanding.

The action by the Commission in this case should be to imprison these corporate respondents until the act required of them has been performed. This would constitute the efficient, effective and just action which the transgressions of these respondents so richly merit.

  
Everett C. McKeage

December 3, 1963.