

66903

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into the operations,)
 rates and practices of WESTERN)
 FOAM SALES, INC., dba D & F)
 TRUCKING, and VITA-PEAT, INC., a)
 California corporation.)

Case No. 7761

James F. Thacher, for Western Foam Sales,
Inc., and F. E. Koser, for Vita-Peat
 Trucking, respondents.
Donald B. Day, for the Commission staff.

O P I N I O N

By its order dated October 29, 1963, the Commission issued its order instituting an investigation into the operations, rates and practices of Western Foam Sales, Inc. (hereinafter referred to as Western Sales), doing business as D & F Trucking and Vita-Peat, Inc., a California corporation.

A public hearing was held before Examiner Daly on December 17, 1963, at San Francisco.

Respondent Western Sales presently conducts operations pursuant to a highway contract carrier permit and a city carrier permit. Vita-Peat, Inc., conducts operations pursuant to a contract carrier permit. Western Sales has an office at 464 Victory Avenue, South San Francisco, and Vita-Peat, Inc., maintains its terminal at Bethel Island. Both respondents were served with copies of the applicable minimum rates and distance tables.

The order instituting the investigation was issued because it appeared that Western Sales through D & F Trucking may have arranged for the transportation of its own property by engaging

Vita-Peat, Inc., as a subhauler, thereby receiving transportation at rates less than the minimum provided in Minimum Rate Tariff No. 2.

The record indicates that Western Sales is affiliated with Kransco Manufacturing Company (hereinafter referred to as Kransco), which is engaged in manufacturing a line of recreational merchandise, and Western Foam Products, Inc. (hereinafter referred to as Western Products), a company engaged in the distribution of styrofoam products from the Dow Chemical plant in Torrance, California, to points in northern California. All three corporations are located at the same South San Francisco address and have the same corporate officers. When Western Sales applied for its permits it failed to list its affiliation with Western Products. When the permits were issued, they contained the usual subhaul restriction prohibiting D & F Trucking from transporting the property of Western Sales and Kransco without paying the subhauler the full minimum rate.

On February 21, 1963, a representative of the Commission's Field Division visited Western Sales' place of business and checked its records for the period from July 1, 1962 through January 30, 1963, inclusive. During said period respondent Western Sales transported 142 shipments, 57 of which were transported by Vita-Peat, Inc., as a subhauler. According to the staff representative, the records maintained by Western Sales were not complete. He testified that the only records on the subhaul shipments were maintained by Vita-Peat, Inc. The underlying documents relating to 17 subhaul shipments were submitted to the License and Compliance Branch of the Commission's Transportation Division. The shipping charges on all 17 shipments were paid by Western Products. Based upon the data taken from said shipping documents a rate study was prepared and introduced in evidence as Exhibit 5. The amount paid to Vita-Peat,

Inc., for its services on said shipments was \$427.76 less than the applicable minimum rates.

A representative of Western Sales testified that he filed the application for the permits and had inadvertently failed to list Western Products as an affiliate corporation. He further testified that prior to May 1962, Western Products had used the services of a common carrier on the shipments moving from Torrance; because of the light and bulky nature of styrofoam, it was difficult to get transportation service; from May 1962 to January 1963 Western Sales used the services of Vita-Peat, Inc., as a subhauler on shipments for Western Products; at the present time Western Products is again using the services of a common carrier; and Western Sales is not now operating pursuant to its permitted authority and has no intention of doing so in the future.

After consideration, the Commission finds:

1. Respondents were served with appropriate tariffs and distance tables.
2. Western Sales and Western Products have the same corporate officers, share the same office space, utilize the same employees and for all practical purposes Western Products is the alter ego of Western Sales.
3. Transportation performed for Western Products is tantamount to transportation performed for Western Sales.
4. Western Sales failed to list Western Products as an affiliate corporation when making application for its permits.
5. When Western Sales, doing business as D & F Trucking and operating pursuant to permits issued by this Commission, engaged the services of Vita-Peat, Inc., as a subhauler to transport shipments of Western Products it, in effect, negotiated the transportation of its own products.

6. On the transportation of shipments for Western Products Vita-Peat, Inc., was, in reality, a prime carrier and not a subhauler. Vita-Peat, Inc., should have been paid the full minimum rate.

7. Western Sales paid Vita-Peat, Inc., less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 5.

8. Western Sales failed to maintain proper records.

Based upon the foregoing findings of fact, the Commission concludes that Western Sales, doing business as D & F Trucking, violated Sections Nos. 3664, 3668 and 3737 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. On the effective date of this decision the Secretary of this Commission is directed to cause to be amended Contract Carrier Permit No. 41-2065 and City Carrier Permit No. 41-2066 issued to Western Foam Sales, Inc., doing business as D & F Trucking, by prohibiting said respondent, whenever it engages other carriers in connection with the transportation of property for Western Foam Products, Inc., or of the customers and suppliers of Western Foam Products, Inc., from paying such carriers less than the applicable minimum rates established by the Commission.

2. Vita-Peat, Inc., shall review its records relating to all transportation wherein it was engaged by Western Foam Sales, Inc., doing business as D & F Trucking, to transport property on behalf of Western Foam Products, Inc., between May 1, 1962 and the effective date of this order for the purpose of ascertaining the lawful minimum rates for such transportation, and shall take such action, including legal action as may be necessary to collect the difference between the lawful minimum rates and the amounts it received for such transportation.

3. Within ninety days after the effective date hereof Vita-Peat, Inc., shall file with this Commission a report setting forth

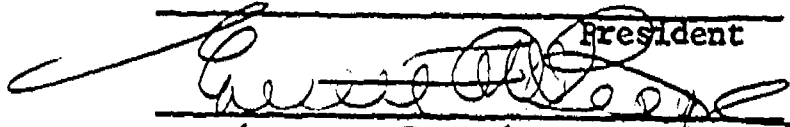
the lawful minimum rates for the transportation and the amount received from Western Foam Sales, Inc., doing business as D & F Trucking, as indicated by the examination required by paragraph 2 hereof.

4. In the event charges to be collected as provided by paragraph 2 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order Vita-Peat Sales, Inc., shall institute legal proceedings to effect collection and shall submit to the Commission on the final 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 thereof, until such charges have been collected in full or until further order of this Commission.

5. Western Foam Sales, Inc., shall pay a fine of \$3,000 to this Commission on or before the twentieth day after the effective date of this order.

The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondents. The effective date of this order, as to any of the above respondents, shall be twenty days after the completion of such service upon such respondents.

Dated at Los Angeles, California, this 3rd day
of MARCH, 1964.

 President
George L. Grover
Frederick B. Hallock

Commissioner William M. Bennett, being
necessarily absent, did not participate
in the disposition of this proceeding.
-5 Commissioner Peter E. Mitchell, being
necessarily absent, did not participate
in the disposition of this proceeding.