

Decision No. 67439

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
rates and practices of RAY WHEELER  
PICKUREL, an individual, doing  
business as ACE SAND & GRAVEL  
COMPANY.

Case No. 7808

Jackson S. Niebrugge, for respondent.  
Elmer Sjostrom and George Kataoka, for  
Commission staff.

O P I N I O N

By its order dated December 27, 1963, the Commission instituted an investigation into the operations, rates and practices of Ray Wheeler Pickurel doing business as Ace Sand & Gravel Company.

A public hearing was held before Examiner Porter on February 26, 1964, at Los Angeles on which date the matter was submitted.

Respondent presently conducts operations pursuant to a radial highway common carrier permit. Respondent has a terminal in Pomona, California. He owns and operates eight tractors, one dump truck, eight dump semitrailers, eight dump full trailers and one flat semitrailer. He employs one mechanic, one driver and one bookkeeper.

His total gross revenue for the four quarters ending with the third quarter of 1963 was \$34,194. A copy of the appropriate tariff was served upon respondent.

In June 1963 an audit of respondent's rates was performed by a member of the Field Section; there were minor discrepancies found. The audit did reveal that included with the billing for transportation were many invoices for the sale of material.

Invoices that were representative of the respondent's method of buying and selling of material were analyzed and copies forwarded to the rate analysis unit of the Commission. A rate study was prepared treating the buy and sell transactions as if there were in fact transportation of property and showed that there would be undercharges.

The staff presented evidence that P & K Materials, Inc., a for-hire carrier also engages in buying and selling of gravel and sand, and is owned by individuals who have substantial interest in the producers and consumers of the rock materials bought and sold. The respondent buys primarily from the same producers that P & K Materials, Inc., purchases from and supplies primarily two of the large customers of P & K Materials, Inc.

The theory of the staff's case is that as there is such an ownership relation between the producers, consumers and P & K Materials, Inc., that when respondent allegedly buys and sells materials from and to these same producers and consumers he would be acting as a subhauler of P & K Materials, Inc., but because of the ownership relation of producer, consumer and P & K Materials, Inc., he should be considered the prime carrier and receive the minimum rate for transportation.

The respondent presented evidence that he obtained a stock pile of material from a debtor and sought purchasers for the material. He supplied these customers before P & K Materials, Inc., was formed and these customers are now also customers of P & K Materials, Inc. He has a valid resale permit for this business and is listed in the Pomona telephone directory. Respondent maintains a small stock pile of rock aggregate; however, when sales are made in large quantities to a consumer it is the practice

to pick up the rock product at a rock producing plant and make deliveries directly to the customer. All negotiations as to purchase price and sale price are conducted by the respondent. The producers do not know the destination of shipments at the time respondent's order and pick up is made and have no right to control the transportation after the rock products are loaded in the trucks of respondent at the producer's plant. The consumer pays respondent; respondent pays the producer and neither payment is dependent on the other payment. The producer does not know at what price the rock products will be resold nor does the purchaser know at what price the rock products were purchased other than a general value knowledge possessed by the industry. The respondent receives and quotes guaranteed prices on materials for specific periods of time.

After consideration the Commission finds that:

1. There is here present substantial evidence of bona fide buy and sell incidents and characteristics.
2. Respondent is engaged in bona fide buy and sell transactions.




Based upon the foregoing findings of fact, the Commission concludes that respondent has not violated Section 3663 of the Public Utilities Code.

O R D E R

IT IS ORDERED that this investigation be discontinued.

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

Dated at San Francisco, California, this 23rd day of June, 1964.

  
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President  
  
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Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

I dissent.

In my view, respondent's operations constitute a device for circumvention of the prescribed minimum rates.

I concede that there is "substantial evidence of bona fide buy and sell incidents and characteristics." For example, respondent does stock-pile materials on small orders and does have certain loading devices in his yard. He testified, however, that for loads of substantial quantity he does not use his yard, but transports the materials directly from the point of pickup to his customer. He also testified that some of the loading equipment in his yard is too large for the type of orders he handles there and was obtained for future use at another location. There is evidence of at least two transactions in which respondent arranged to have material transported by other carriers; I would not deny that he was a dealer in property, and not a carrier, on these occasions. Even so, a limited number of legitimate buy and sell transactions cannot alter the fact that most of respondent's operations were not of that character.

Taken as a whole, respondent's contribution to the transactions in question is no more than transportation. He testified that he holds quotations from rock suppliers which guarantee him a price for as long as a month; that he usually arranges to sell material even before he picks it up; that the rock suppliers who supply him are only a few minutes from his place of business; that his "profit" is usually less than the minimum rates; and that he does not purchase large quantities of material in advance. So far as I can perceive, his customers could just as readily deal with the rock plants directly - except that they would then have to pay the minimum rates for the transportation involved.

  
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Commissioner