

ORIGINAL

Decision No. 67628

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates and)
practices of CONTRACTORS DUMP TRUCK)
SERVICE, INC., a corporation; CERNY)
& ELSEY EXCAVATING CO., INC.; DALE)
DOUCE; MARVIN WHITE; VERNON E. CLINE;)
and MICHAEL T. METZGER.)

Case No. 7760

Clair V. Logue, for Contractors Dump Truck Service, Inc.,
Vernon E. Cline, in propria persona; and Michael T.
Metzger, in propria persona; respondents.
Robert C. Marks and Charles Barrett, for the Commission
staff.

O P I N I O N

By its order dated October 29, 1963, the Commission instituted an investigation into the operations, rates and practices of Contractors Dump Truck Service, Inc., a corporation, ^{1/} and into the operations, rates and practices of Dale Douce, Marvin White, Vernon E. Cline, Michael T. Metzger and Cerny & Elsey Excavating Co., Inc., in connection with their subhaul transportation for Contractors Dump Truck Service, Inc., for the purpose of determining whether respondents and each of them violated Section 3737 of the Public Utilities Code by failure to collect charges for transportation within the time limit prescribed by paragraph (b), Item 45-C, Minimum Rate Tariff No. 7.

A duly noticed public hearing was held before Examiner Mooney on March 19, 1964, at Los Angeles.

It was stipulated that Contractors, Vernon E. Cline and Michael T. Metzger were each issued radial highway common carrier

^{1/} Hereinafter sometimes referred to as Contractors.

and city carrier permits and that each was served with Minimum Rate Tariff No. 7 and all supplements and corrections thereto. The Commission's records show that each of the other respondents who did not appear at the hearing was issued the necessary permit authority to conduct the for-hire transportation business herein involved and was served with Minimum Rate Tariff No. 7 and all supplements and corrections thereto.

Contractors has no terminal facilities or equipment. All transportation is performed for it by subhaulers. Its office is located at the home of its president in Montebello. The secretary-treasurer and a part time office assistant are the only personnel employed by Contractors, and they take care of the company's records and prepare the billing.

The gross revenue reported to the Commission by Contractors and the various respondent subhaulers for the year 1963, except as noted, was as follows:

<u>Respondent</u>	<u>1963 Gross Revenue</u>
Contractors	\$344,082
Dale Douce	40,402 (1)
Marvin White	8,191
Vernon E. Cline	13,464
Michael T. Metzger	9,337 (2)
Cerny & Elsey Excavating Co., Inc.	61,751

(1) Last two quarters of 1962 and first two quarters of 1963.

(2) First three quarters of 1963 only.

On August 5, 6 and 8, 1963 a transportation representative of the Commission's Field Section visited the office of Contractors and checked its records for the months of April, May and June 1963. The records were made available at the instruction of the president who was absent due to ill health. The representative testified that he made true and correct photostatic copies of seven invoices to shippers for transportation in dump truck equipment and also of various supporting documents, including statements to subhaulers, and that they are all included in Exhibit 1. He further testified that the accounts receivable and payable ledgers at the time of his survey in August showed that Contractors had not been paid by the shippers for the transportation covered by the seven parts of Exhibit 1 and that the subhaulers who performed the transportation covered by Parts 2 through 7 of the exhibit had not been paid by Contractors. He stated checks had been made out for each of the subhaulers, but with the exception of Part 1, the checks had not been delivered to nor negotiated by the subhaulers. Following is a tabulation which shows for each of the seven parts of Exhibit 1 the date or dates on which the transportation was performed, the date of the invoice to the shipper, the date the check or checks to the subhauler were made out and the name of the subhauler:

<u>Part No.</u>	<u>Date(s) Transportation Performed</u>	<u>Date of Invoice to Shipper</u>	<u>Date of Check(s) to Subhauler</u>	<u>Subhauler</u>
1	April 4	April 30	- (1)	Ed Gaudette
2	May 9 & 10	May 31	June 25	Dale Douce
3	May 13-29	June 6	June 25 (2)	Marvin White
4	May 14-21	May 28	June 25	Vernon E. Cline
5	June 19	June 26	July 25 (2)	Marvin White
6	June 26	June 28	July 25	Michael T. Metzger
7	June 21	June 28	July 25	Cerny & Elsey

- (1) Ed Gaudette was paid by Contractors prior to the survey and within the credit period.
 (2) Two separate checks which totaled the aggregate amount due the subhauler were prepared.

A rate expert of the Commission's Rate Analysis Unit explained the application of paragraph (b), Item 45-C, Minimum Rate Tariff No. 7 which reads as follows:

"Upon taking precautions deemed by them to be sufficient to assure payment of charges within the credit period herein specified, carriers may relinquish possession of freight in advance of the payment of the charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called debtors, for a period not to exceed 20 days, excluding Sundays and legal holidays other than Saturday half-holidays, following the last day of the calendar month in which the transportation was performed."

The rate expert stated that paragraph (b) applies to underlying carriers (subhaulers) as well as to overlying carriers (carrier for whom subhauling is performed).^{2/} He testified that he had reviewed Exhibit 1; that in each part, Contractors had not complied with the credit rule; and that in Parts 2 through 7, the subhaulers had likewise not complied with the rule.

The president and general manager of Contractors testified that this respondent has reduced the volume of business previously handled by it because of collection problems; that it is the usual practice in the industry for a contractor for whom the dump truck transportation has been performed to withhold payment to the carrier until it has been paid by its employer, and any controversy that would delay payment to the contractor will result in a similar delay in payment to the carrier; that generally if payment is not received from a shipper within the credit period provided in paragraph (b) of Item 45-C, further credit to the shipper is cut off and regular follow-ups are made until payment is received or legal action is commenced; and that payment has now been received from all shippers

^{2/} Decision No. 45175 in Case No. 4808, 50 Cal. P.U.C. 351, 356, 357, (1950).

included in Exhibit 1 with the exception of one who cannot be located and against whom legal action has been commenced. The witness further testified as follows regarding payment to subhaulers for the transportation shown in Parts 2 through 7 of Exhibit 1: The check made out to Dale Douce was mailed to his last known address during September or October 1963, but the canceled check has not been returned; Vernon E. Cline has the check made out to him in his possession, but he has not cashed it; checks were mailed to each of the other subhaulers and were cashed during August or September 1963. The witness also stated that the number of subhaulers hired by Contractors varies with the season of the year and that during 1963 approximately 50 subhaulers were engaged of which 10 were employed regularly.

Michael T. Metzger stated that he left town immediately after performing the transportation covered by Part 6 of Exhibit 1 and had requested Contractors to hold his check until his return; that he contacted Contractors when he returned in August 1963 and the check was mailed to him; and that he cashed the check within a week after it was received.

Vernon E. Cline testified that Contractors had difficulty collecting from the shipper of the transportation covered by Part 4 of Exhibit 1 and for this reason had not mailed the check dated June 25, 1963 to him until February 1964. He stated that although he had not cashed the check, he could do so any time he wished.

The Commission staff recommended that the operating authority issued to Contractors^{3/} be restricted to prohibit the employment of subhaulers until such time as Contractors can prove

^{3/} Radial Highway Common Carrier Permit No. 19-28164 and City Carrier Permit No. 19-39203.

to the Commission that it has collected all transportation charges not heretofore collected within the time period specified in paragraph (b) of Item 45-C and that it has paid all outstanding debts owed by it to underlying carriers for subhaul transportation. Contractors contended that paragraph (b) does not impose a requirement upon an overlying carrier to pay an underlying carrier within the time specified therein and that therefore the Commission is without jurisdiction to direct an overlying carrier to pay an underlying carrier. Counsel for the Commission staff agreed that the time limit in paragraph (b) does not apply to subhaul payments by an overlying carrier. He maintained, however, that an order directing payment by an overlying carrier to a subhauler may be based on the general jurisdiction of the Commission over permitted carriers.

After consideration the Commission finds that:

1. Respondent Contractors Dump Truck Service, Inc., operates pursuant to Radial Highway Common Carrier Permit No. 19-28164 and City Carrier Permit No. 19-39203.

2. Respondents Cerny & Elsey Excavating Co., Inc., Dale Douce, Marvin White, Vernon E. Cline and Michael T. Metzger held permits authorizing them to transport property over the public highways for compensation, at the time the transportation herein involved took place.

3. Respondents were served with Minimum Rate Tariff No. 7, with all supplements and corrections thereto.

4. Respondent Contractors Dump Truck Service, Inc., did not collect transportation charges from shippers in the instances set forth in Exhibit I within the time limit prescribed in paragraph (b), Item 45-C, Minimum Rate Tariff No. 7.

5. Respondent Contractors Dump Truck Service, Inc., has now collected the transportation charges shown in Exhibit 1 from all shippers involved with the exception of one who cannot be located and against whom legal action has been commenced.

6. Respondents Cerny & Elsey Excavating Co., Inc., Dale Douce, Marvin White, Vernon E. Cline and Michael T. Metzger did not collect charges for subhaul transportation performed for Contractors Dump Truck Service, Inc., from the latter carrier within the time limit prescribed in paragraph (b), Item 45-C, Minimum Rate Tariff No. 7.

7. Respondents Cerny & Elsey Excavating Co., Inc., Dale Douce, Marvin White, Vernon E. Cline and Michael T. Metzger have now collected the subhaul transportation charges shown in Exhibit 1 from Contractors Dump Truck Service, Inc.

Based upon the above findings we conclude that:

1. Respondent Contractors Dump Truck Service, Inc., has violated Section 3737 of the Public Utilities Code.

2. Paragraph (b), Item 45-C, Minimum Rate Tariff No. 7 applies to collections by an underlying carrier from an overlying carrier.

3. Respondents Cerny & Elsey Excavating Co., Inc., Dale Douce, Marvin White, Vernon E. Cline and Michael T. Metzger have violated Section 3737 of the Public Utilities Code.

4. Minimum Rate Tariff No. 7 does not specify the time within which an overlying carrier must pay an underlying carrier for subhaul transportation. In the absence of a specific tariff rule, payment to the subhaulers must be made within a reasonable time.

The order which follows will direct respondent Contractors Dump Truck Service, Inc., to review its records and ascertain all charges for transportation in dump truck equipment that have not been collected within the time period prescribed in paragraph (b), Item

45-C, Minimum Rate Tariff No. 7, and immediately collect all such charges; to collect charges for all future dump truck transportation performed by it within the required time; in the event any charges for transportation in dump truck equipment remain uncollected beyond the afore-mentioned time period, to proceed promptly, diligently and in good faith to pursue all reasonable measures to collect said charges; and to promptly remit payments due underlying carriers for subhaul transportation. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that Contractors Dump Truck Service, Inc., has not been diligent, or has not taken all reasonable measures to collect all charges for transportation in dump truck equipment within the required time or has not acted in good faith, or has not promptly remitted payments to sub-haulers, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

Respondents Cerny & Elsey Excavating Co., Inc., Dale Douce, Marvin White, Vernon E. Cline and Michael Metzger are placed on notice that failure to collect charges for dump truck transportation performed as a subhauler for an overlying carrier within the time specified in paragraph (b), Item 45-C, Minimum Rate Tariff No. 7, in the future will not be tolerated.

O R D E R

IT IS ORDERED that:

1. Respondent Contractors Dump Truck Service, Inc., shall examine its records for the period from April 1, 1963 to the present time for the purpose of ascertaining all charges for transportation

subject to Minimum Rate Tariff No. 7 that have not been collected within the time period prescribed in paragraph (b), Item 45-C, Minimum Rate Tariff No. 7.

2. Within thirty days after the effective date of this order, respondent Contractors Dump Truck Service, Inc., shall complete the examination of its records required by paragraph 1 of this order and shall file with the Commission a report setting forth for each transportation charge not collected within the time period prescribed in paragraph (b), Item 45-C, Minimum Rate Tariff No. 7, the following information: Name of the shipper, amount of money, period of time the transportation charge has remained uncollected and the reason for the delay.

3. Respondent Contractors Dump Truck Service, Inc., shall take such action, including legal action, as may be necessary to assure prompt collection of the overdue transportation charges found after the examination required by paragraph 1 of this order, and shall notify the Commission in writing upon the consummation of such collections.

4. In the event transportation charges ordered to be collected by paragraph 3 of this order, or any part of such charges, remain uncollected one hundred twenty days after the effective date of this order, respondent Contractors Dump Truck Service, Inc., shall file on the first Monday of each month thereafter, a report of the transportation charges remaining to be collected and specifying the action taken to collect such charges, and the result of such action, until such charges have been collected in full or until further order of the Commission.

5. Respondent Contractors Dump Truck Service, Inc., shall collect charges for all future transportation subject to Minimum Rate Tariff No. 7 within the time period prescribed in paragraph (b), Item 45-C thereof, and shall promptly, diligently and in good faith pursue all reasonable measures, including legal action, to collect any transportation charges which have not been collected within the required time.

6. Respondent Contractors Dump Truck Service, Inc., shall promptly remit payments to underlying carriers for subhaul transportation.

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

Dated at San Francisco, California, this 28th day of JULY, 1964.

Frederick B. Hallock
President
John E. [unclear]
Carroll [unclear]
George [unclear]
William [unclear]
Commissioners