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Decision No. 70644

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of J. A. STAFFORD TRUCKING, a California corporation, and JAMES A. STAFFORD, individually and doing business as J. A. STAFFORD TRUCKING.	Case No. 8083 (Filed December 15, 1964)

Donald Murchison, for respondent.
Mitchell M. Brockman, Robert C. Marks and Jerry Hannigan, for the Commission staff.

O P I N I O N

By its order dated December 15, 1964, the Commission instituted an investigation into the operations, rates and practices of J. A. Stafford Trucking, a California corporation, and James A. Stafford, individually and doing business as J. A. Stafford Trucking.

Public hearing was held before Examiner Mooney on May 11, June 29 and 30, and July 1, 1965, at Los Angeles.

It was stipulated that the investigation should be discontinued as to J. A. Stafford, individually and doing business as J. A. Stafford Trucking.

J. A. Stafford Trucking, a California corporation (hereinafter referred to as respondent) presently conducts operations pursuant to Radial Highway Common Carrier Permit No. 19-23198 and Highway Contract Carrier Permit No. 19-49273. Respondent's main office and terminal are located in El Monte. It also has a terminal in Lodi. During 1964, respondent owned and operated 11 power units, 17 trailers and three sets of hopper bottom trailers, and it employed ten drivers, three mechanics and four office employees. Its gross

operating revenue for the year 1964 was $475,596, and for the first quarter of 1965 was $43,524. Copies of appropriate tariffs and distance table were served upon respondent.

An investigation of respondent's operations was conducted by two staff representatives. One representative investigated respondent's for-hire transportation business, and the other representative investigated respondent's equipment lease arrangement with Ball Brothers Company, Incorporated, a glass manufacturer (hereinafter referred to as Ball Bros.).

Investigation of For-Hire Operations

The representative, who investigated respondent's for-hire operations, testified that he visited respondent's place of business in El Monte and also its terminal in Lodi during May and June 1964, and that he reviewed all of respondent's for-hire transportation records for the period from October 1, 1963 through June 11, 1964, inclusive. The witness stated that he made true and correct photostatic copies of 22 freight bills and supporting documents covering shipments of lumber and plywood, and that the photostatic copies are all included in Exhibit 2 as Parts 1 through 22 thereof.

The representative testified that the C. E. Williams Lumber Co., Terminal Island, the consignee of a component of the split delivery shipment covered by Part 13 and the two shipments covered by Parts 17 and 19 of Exhibit 2, is not served by rail facilities. The foreman of the C. E. Williams Lumber Co. yard at Terminal Island during 1963 and 1964 was subpoenaed by the staff to verify this fact. The yard foreman testified as follows: The Terminal Island yard is not served by rail facilities; during the time the aforementioned shipments were delivered in early 1964, C. E. Williams Lumber Co. received truck shipments at both its yard

and at a public team track area which is located one block away; the railroad did not object to the company receiving truck shipments at the rail spur; he could not recall whether the deliveries in question were made at the yard or at the team track area; the C. E. Williams Lumber Co. is no longer in business due to bankruptcy.

The representative also presented testimony regarding the precise location of origins, destinations and rail facilities in connection with a number of other parts of Exhibit 2.

A rate expert for the Commission staff testified that he took the photocopies in Exhibit 2, together with the supplemental information testified to by the representative, and prepared Parts 1 through 22 of Exhibit 1, which show the rate and charge assessed by the respondent, the minimum rate and charge computed by the staff and the resulting undercharge for the transportation covered by each of the 22 freight bills. The witness explained the rate violations in Parts 1 through 22 of Exhibit 1 as follows (several of the parts include more than one violation): assessing rates less than the applicable minimum distance rates (Parts 1, 7, 8 and 9); assessing incorrect alternative rail rates (Parts 2 and 10); failure to obtain written instructions from the shipper prior to the first pickup as required by Item 85 of Minimum Rate Tariff No. 2 for multiple lot shipments (Parts 3 and 4), by Item 170 of said tariff for split delivery shipments (Parts 5, 11 through 14, 18 and 21) and by Item 160 of said tariff for split pickup shipments (Parts 19, 20 and 22); failure to assess an off-rail charge at destination in connection with shipments rated under alternatively applied rail rates (Parts 6, 13, 15 through 17 and 19); failure to assess charges for transportation from the destination shown on the shipping document to a new destination (Parts 21 and 22).

Respondent stipulated as follows regarding Parts 1 through 22 of Exhibit 1: the rating and undercharge shown by the staff on Parts 1, 2, 6 through 11, 15, 16 and 18 are correct; the origin of the transportation covered by Parts 12 and 14 was the Yuba River Yard located 2.4 miles north of Grass Valley; the transportation covered by Delivery Tags 6867 and 6868 in Part 21 and the transportation covered by Part 22 were reconsigned from the destinations shown on the shipping documents to new destinations.

Counsel for respondent introduced four letters from shippers in evidence as Exhibits 6 through 9. He requested the staff rate expert to review the letters and determine whether they could be accepted as written instructions from the shipper for the transportation covered by Parts 3, 5, 12 and 20 of Exhibit 1. Respondent rated Part 3 as a multiple lot shipment, Parts 5 and 12 as split delivery shipments and Part 20 as a split pickup shipment. Because the written instructions from the shipper required by Minimum Rate Tariff No. 2 for such shipments were not included in respondent's files with the shipping documents covering the transportation at the time of the investigation, the staff rated each component in the four parts as separate shipments. Respondent's counsel explained that the letters had been misplaced and had not been located until after the investigation had been completed. The rate expert agreed that the correspondence in Exhibits 6 and 9 did meet the written instruction requirements for the transportation covered by Parts 3 and 20, respectively. By rating Part 3 as a multiple lot shipment, the undercharge is reduced from $227.59 to $23.78, and by rating Part 20 as a split pickup shipment, the undercharge is reduced from $153.70 to $108.49 (late filed Exhibit 10).

The rate expert testified that the correspondence in Exhibits 7 and 8 did not meet all of the tariff requirements regarding written instructions and were not acceptable as such.

The president of respondent testified as follows regarding Parts 1 through 22 of Exhibit 1: the rating was done by respondent's office manager who had limited rating experience at the time; respondent relied on its drivers and shippers for information regarding the precise location of origins, destinations and rail facilities; it was his understanding that the lumber consigned to C. E. Williams Lumber Co. (Parts 13, 17 and 19) was to be unloaded at the public team track located near the consignee's yard although he was uncertain whether it was in fact delivered there; respondent had informed lumber shippers that they must furnish written instructions for multiple lot and split pickup or delivery shipments but in most instances they failed to do so; respondent employed two traffic consultant firms to review the ratings in Parts 1 through 22; for the most part, neither firm agreed with the ratings by the other firm or with the ratings by either respondent or the staff; the rate errors that respondent did make were unintentional and most of them were technical errors.

Investigation of Lease Arrangement

The representative who investigated the lease testified that he visited respondent's office in El Monte during October 1964 and reviewed its equipment leasing arrangement with Ball Bros. The period reviewed was July 1, 1964 through October 1, 1964. He stated that, in connection with his investigation, he also contacted Ball Bros., California Portland Cement Company and the public weighmaster who weighed each load transported under this arrangement.

The lease in effect during the review period (Exhibit 3) provided that respondent (lessor) would lease one tractor and a set of hopper-bottom trailers to Ball Bros. (lessee); that lessor would service and maintain the equipment and furnish all necessary fuel and oil; that lessee would have exclusive use of the equipment and employ, control and supervise the drivers, using reasonable care in selecting safe and experienced drivers; that lessor would insure the vehicle against loss or damage, and that lessee would carry public liability and property damage insurance; and that lessee would pay lessor 21.5 cents per mile for each mile lessee operated the equipment.

The representative stated that he reviewed all records at Ball Bros. relating to the leased equipment, including time cards and payroll records of the drivers. He explained that the unit of equipment covered by the lease was used to transport silica sand in bulk from the Owens-Illinois Glass Company at Weisel and ground limestone in bulk from the California Portland Cement Company at Colton to the El Monte plant of Ball Bros. According to the record, charges under the lease were based on round trip distances of 94 miles for each load of silica sand and 88 miles for each load of ground limestone.

The representative extracted the following information from the records of Ball Bros. and the weighmaster for each of 12 loads of silica sand and 11 loads of limestone transported during September 1964: Date of shipment, weight tag number, bill of lading number, number designation of equipment on which load transported, name of driver, weight transported, round trip charge under lease, amount of driver wages allocated to the shipment, total cost to Ball Bros. for the shipment (charge for equipment plus driver wage).

This information is shown in Parts 23 (silica sand) and 24 (limestone) of Exhibit 1. Photostatic copies of invoices dated September 21, 1964, September 28, 1964 and October 5, 1964, from the lessor to the lessee were authenticated by the witness and introduced in evidence as Exhibit 5. Charges shown on the invoices for the silica sand and limestone hauls are based on the rate per mile stated in the contract and round-trip distance shown above. Each invoice shows "Truck No. 11" and "Johnson, Paz and Heaton" as the drivers.

The representative testified that the president of respondent had informed him that the only unit of equipment furnished to Ball Bros. under the lease was Truck No. 11. A review of Parts 23 and 24 of Exhibit 1 shows that six of the 12 loads of silica sand (Part 23) and eight of the 11 loads of limestone (Part 24) were transported on Truck No. 11 and that the balance (six loads of silica sand and three loads of limestone) was transported on Truck No. 14. The witness stated that in addition to the above transportation, Truck No. 14 also was used by respondent in its for-hire operations to transport soda ash for Ball Bros. He pointed out that the lease provides for a single unit of equipment.

According to Parts 23 and 24 of Exhibit 1, Truck No. 11 was driven by Johnson, Paz or Heaton and Truck No. 14 was driven by Scott, Price or Heaton. The record shows that Johnson, Paz and Heaton were employed as permanent, full-time drivers by Ball Bros. and that Scott and Price, who were regular employees of respondent, were employed by Ball Bros. as temporary relief or extra drivers. The representative testified that his examination of respondent's check register disclosed that respondent had hired Paz from time to time to unload hay and also on occasions hired Johnson for part time work.

The representative further testified that Truck No. 11 was operated 24 hours per day and was driven by Johnson, Paz and Keaton in eight hour shifts; that Truck No. 11, when not in use, was parked at respondent's premises located one-half block from Ball Bros.; that the time clock used by Ball Bros.' drivers was located at respondent's terminal; that respondent totaled the hours worked by each driver once a week and sent the totals to Ball Bros.; and that he observed a notice signed by Mr. Stafford on a bulletin board at the drivers' entrance to respondent's terminal which directed the drivers of silica sand to use a particular route to and from the sand plant at Weisel.

The staff rate expert rated each load of silica sand and limestone in Parts 23 and 24 of Exhibit 1 as a separate for-hire shipment subject to minimum rate regulation. The undercharges shown in the exhibit for Parts 23 and 24 are $116.52 and $213.96, respectively.

Respondent stipulated to the information shown in Parts 23 and 24 of Exhibit 1 under the following headings: Date of shipment, weight tag number, bill of lading number, truck number (with the exception of an asterisk before "Truck No. 14" to indicate it was not covered by the lease), driver and weight. It also stipulated to the distance of 41.5 actual miles from Owens-Illinois at Weisel to the plant of Ball Bros. at El Monte shown in Part 23.

The division controller, the plant engineer at the El Monte plant and a driver employee of Ball Bros. were subpoenaed by the staff to testify regarding the lease. Their testimony was as follows: The lease specified one unit of equipment only; the plant is operated on Saturdays and Sundays but no hauling is done on Sundays; when the

stockpiles of silica sand and limestone at the plant become too low, respondent furnishes an additional unit of equipment to assist Truck No. 11 with the hauling until the stockpiles are again at a sufficient level to assure uninterrupted glass production; this situation occurred after the Labor Day weekend in 1964 when no hauling was done and is the reason that Truck No. 14 was used to assist with the hauling during the period in September 1964 covered by Parts 23 and 24 of Exhibit 1; the additional equipment is paid for in accordance with the terms of the lease; charges for the equipment are calculated by respondent; the time clock used by the drivers was located at Ball Bros. until July 1962 when, for convenience, it was moved to respondent's premises so the drivers could punch in and out while the equipment was being fueled by respondent; two additional permanent drivers were hired in January 1965 due to plant expansion and the time clock was again moved back to Ball Bros. to attain better supervisory control over the drivers; the 350 other hourly workers employed by the plant use a different type of time clock; all drivers, including the occasional drivers of the extra equipment, are required to pass a company physical examination before they are hired; the payroll department makes up a time card for each regular and occasional driver, places it in the time card rack, maintains payroll records and pays the drivers; generally a driver will make two round trips per day; a driver may not be engaged in any employment outside the company during working hours; Ball Bros. has no control over an employee's activities during the hours he is not working for it; Ball Bros. exercises exclusive control over the leased equipment and over the drivers while they are working.

Respondent's president testified as follows regarding the lease arrangement: Truck No. 14 was furnished to Ball Bros. only when Truck No. 11 was withdrawn from service for maintenance or repairs, as provided for in the lease, or when an emergency arose and Ball Bros. required additional material hauled; respondent had orally agreed with Ball Bros. to furnish, under the terms of the lease, any additional equipment that might be necessary to meet peak transportation demands; during 1962 and prior years, the lease had been reviewed by Commission personnel and they were advised of the oral agreement regarding the additional equipment; the staff had never informed respondent that the oral agreement was deficient; payments by Ball Bros. for both Truck No. 11 and Truck No. 14 were in accordance with the terms of the lease; if Ball Bros. did not have a driver of its own available to drive Truck No. 14, it would employ Stafford personnel on a temporary basis to drive the equipment and would place the driver on its payroll for the time involved; Ball Bros. had exclusive control of the equipment furnished and the drivers; respondent occasionally hired several of Ball Bros.' regular drivers, who wished to earn extra money after their regular working hours, to perform various odd jobs; Ball Bros. authorized the notice on respondent's bulletin board to drivers hauling the silica sand; the time clock for the drivers of the leased equipment was moved to respondent's terminal for the convenience of the drivers; respondent has paid to the Commission under protest Transportation Rate Fund Fees on revenue earned under the lease.

Argument and Recommendation

Counsel for the Commission staff argued that the lease does not cover Truck No. 14 and that any hauling of silica sand or limestone performed with this unit of equipment must be rated as for-hire transportation. In addition, he argued that respondent controlled all of the transportation by the leased equipment; that the lease was not an arm's length transaction; that such an arrangement is prohibited by Section 3548 1/ of the Public Utilities Code; and that the transportation by Truck No. 11 should also be considered for-hire transportation. He contended that the staff had proved all of the undercharges shown in Exhibit 1.

The staff recommended that, pursuant to Section 3800 of the Public Utilities Code, a fine equal to the amount of the undercharges shown in Exhibit 1 and an additional fine of $5,000, pursuant to Section 3774 of the code, be imposed on respondent. The staff further recommended that respondent be required to pay the Transportation Rate Fund Fees provided in Section 5003.1 of the code on the gross for-hire revenue from the silica sand and limestone transportation for Ball Bros.

Counsel for respondent pointed out that the Order Instituting Investigation in this proceeding makes no reference to Section 3548 of the code. He argued that since respondent was not placed on notice by said order that it was to be charged with violating Section 3548, all evidence relating to the lease between respondent and Ball Bros. should be stricken from the record.

1/ Section 3548 provides as follows: "The leasing of motor vehicles for the transportation of property to any person or corporation other than to a highway carrier, is prohibited as a device or arrangement which constitutes an evasion of this chapter, unless the parties to such lease conduct their operation according to the terms of the lease agreement, which shall be in writing, and shall provide that the vehicle shall be operated by the lessee or an employee thereof and the operation and use of such vehicle shall be subject to the lessee's supervision, direction, and control for the full period of the lease. The lessor or any employee of the lessor shall not qualify as an employee of the lessee for the purposes of this section."

In answer to the motion to strike, staff counsel pointed out that although Section 3548 is not specifically mentioned in the order instituting investigation, Section 3668 is listed in the order. He explained that Section 3668 prohibits any device whereby a highway permit carrier allows any corporation or shipper to obtain transportation of property at rates less than the established minimum. The word "device", he stated, is defined in Section 3550 of the code as including "any and all methods, means, agreements, circumstances, operations, or subterfuges under which any person or corporation undertakes for hire to conduct, direct, control, or otherwise perform, the transportation by motor vehicle of property upon the public highways of this state." Staff counsel argued that Section 3548 is a prohibitive section which explains that all carrier-shipper leases which do not meet the standards set forth therein are a device. He contended that since Section 3668 prohibits "any device", it includes the specific device referred to in Section 3548. He also pointed out that the first ordering paragraph 3 [2/] in the Order Instituting Investigation directs that the investigation include a determination of whether respondent may have "by the use of a lease device or arrangement violated Section 3668." This specific language, he argued, placed respondent on notice that any lease to which it was a party would be subject to investigation. Staff counsel urged that the motion to strike be denied.

The motion to strike was taken under submission to be ruled upon herein.

2/ Two separate ordering paragraphs in the Order Instituting Investigation were designated as paragraph "3".

Respondent's counsel further argued that respondent had orally agreed with Ball Bros. to furnish, under the terms of the lease, any additional equipment required by Ball Bros. to meet peak transportation demands; that the transportation by Truck 14 in Parts 23 and 24 of Exhibit 1 was covered by an executed oral amendment to the lease which need not be in writing; that the lease and the oral amendment thereto in no way violate any provision of law; that the rate violations in Parts 1 through 22 of Exhibit 1 were technical in nature and were inadvertent errors; and that the penalty recommended by the staff is far too harsh.

Respondent paid a fine of $4,500 pursuant to Decision No. 63694 dated May 14, 1962, in Case No. 7104 (59 Cal. P.U.C. 602), for various minimum rate violations.

Findings and Conclusions

After consideration the Commission finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 19-23198 and Highway Contract Carrier Permit No. 19-49273.

2. Respondent was served with appropriate tariffs and distance table.

3. The staff ratings shown in Parts 1, 2, 4 through 12, 14 through 16, 18, 21 and 22 of Exhibit 1 are correct, and the total of the undercharges shown in Exhibit 1 for said parts is $1,391.76.

4. The documentation requirements of Item 85 (multiple lot) and Item 160 (split pickup) of Minimum Rate Tariff No. 2 were complied with by both the shipper and carrier in connection with the transportation covered by Parts 3 and 20, respectively, of Exhibit 1.

5. By rating the transportation covered by Part 3 of Exhibit 1 as a multiple lot shipment and by rating the transportation covered by Part 20 of Exhibit 1 as a split pickup shipment, the resulting undercharges are $23.78 and $108.49, respectively.

6. The evidence adduced does not establish with certainty whether any of the transportation covered by Parts 13, 17 and 19 of Exhibit 1, which was consigned to the C. E. Williams Lumber Company, was delivered to the consignee's yard at Terminal Island, which is not served by rail facilities, or to a railhead location one block away, and for this reason, it is not possible to make a determination as to whether an off-rail charge at destination should be assessed in connection with said deliveries.

Respondent is hereby placed on notice that Item 255 of Minimum Rate Tariff No. 2 requires that all information necessary to determine the applicable rate for a shipment, including the precise point of destination to which the shipment was physically delivered, be shown on the freight bill and failure to comply with this requirement in the future will not be tolerated. 3/

7. By excluding the off-rail charge at destination in connection with the deliveries to the C. E. Williams Lumber Company, the undercharge shown in Part 17 of Exhibit 1 is eliminated, and the resulting undercharges for the transportation covered by Parts 13 and 19 of Exhibit 1 are $117.64 and $160.02, respectively.

8. The written equipment lease between respondent and Ball Bros. provided for one unit of equipment only.

9. The time clock used by employee drivers of Ball Bros. was located at respondent's terminal from July 1962 to January 1965 for the convenience of Ball Bros. and its drivers.

10. The notice to sand drivers signed by respondent, which was placed on respondent's bulletin board, was authorized by Ball Bros.

3/ Investigation of Plywood Carriers, Inc., Decision No. 66860 dated February 25, 1964, in Case No. 7746 (unreported).

11. During the period of time covered by the investigation herein, the unit of equipment furnished by respondent to Ball Bros. under the written lease was Truck No. 11, the drivers of said equipment were regular, full time employees of Ball Bros., and both Truck No. 11 and the drivers thereof, during their regular working hours, were under the exclusive control of Ball Bros.

12. The transportation covered by Bill of Ladings Nos. 4032, 4034, 4038, 4041 and 4043 of Part 23 of Exhibit 1 and Bill of Ladings Nos. 1757C, 1758C, 1765C, 1850C, 1875C, 1890C, 1891C and 1892C of Part 24 of said exhibit was performed by Truck No. 11 under the terms of the written equipment lease between respondent and Ball Bros. and was not for-hire transportation subject to minimum rate regulation.

13. The transportation covered by Bill of Ladings Nos. 4033, 4035, 4037, 4039, 4040 and 4042 of Part 23 of Exhibit 1 and by Bill of Ladings Nos. 1733C, 1736C and 1876C of Part 24 of said exhibit was performed by Truck No. 14, which is not included under the written lease between respondent and Ball Bros., and was for-hire transportation subject to minimum rate regulation.

14. The staff rating shown in Parts 23 and 24 of Exhibit 1 for the transportation listed in Finding 13 above is correct and the total of the undercharges shown in Exhibit 1 for said transportation is $121.01.

15. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Findings 3, 5, 7 and 14 above, resulting in undercharges in the total amount of $1,922.70.

16. Respondent paid, under protest, the Transportation Rate Fund Fees provided in Section 5003.1 of the Public Utilities Code on the revenue it received from the transportation listed in Parts 23 and 24 of Exhibit 1.

Based upon the foregoing findings of fact, the Commission concludes that:

1. The motion by respondent to strike all evidence relating to the equipment lease arrangement between respondent and Ball Bros. should be denied.

The argument in support of the motion by respondent's counsel that respondent was not placed on notice that the equipment lease arrangement between itself and Ball Bros. was to be included in the investigation because no reference is made to Section 3548 of the Public Utilities Code in the Order Instituting Investigation is without merit. As pointed out by staff counsel in his answer to the motion, the first ordering paragraph 3 of the investigation order specifically directs that the investigation include a determination of whether respondent "by use of a lease device or arrangement violated Section 3668 of the Public Utilities Code." Section 3668 prohibits any and all devices to avoid minimum rate regulation. Section 3548 states that the leasing of transportation equipment by a carrier to a non-carrier, unless the conditions set forth in said section are met, is a device. The prohibition in Section 3668 includes the type of device specifically described in Section 3548. The language of first ordering paragraph 3 afforded respondent adequate notice on this issue. The investigation herein includes any and all leases to which respondent is a party and a determination as to whether any of them violate the provisions of Section 3548.

2. The written equipment lease between respondent and Ball Bros. covering one unit of equipment (Truck No. 11) for the purposes of this proceeding meets the conditions set forth in Section 3548 of the Public Utilities Code (see footnote 1, supra) for a valid lease of equipment by a carrier to a non-carrier.

The evidence on this issue is conflicting. Although it is resolved in respondent's favor in this proceeding, respondent's attention is directed to the provisions of Section 3548 which state that the operation and use of the leased equipment shall be under the supervision, direction and control of the lessee for the full period of the lease and neither the lessor nor any employee of the lessor shall qualify as an employee of the lessee. Respondent is placed on notice that in the future strict compliance with the provisions of Section 3548 will be required.

3. The terms of the written equipment lease between respondent and Ball Bros. may not be changed or modified by a subsequent parole agreement between the parties.

We do not agree with the argument by respondent's counsel that the oral amendment, insofar as the transportation by Truck No. 14 in Parts 23 and 24 of Exhibit 1 is concerned, was an executed oral agreement which need not be in writing. Section 3548 of the code sets out the specific and exclusive conditions that must be met for a lease of equipment by a carrier to a non-carrier to be valid. There are no exceptions. One of the conditions is that the lease must be in writing. It is obvious that any subsequent agreement between the parties to amend the terms of the lease would become a part of the lease and must likewise be in writing if it is to be given effect.

4. The fact that members of the Commission staff had reviewed the written lease and were purportedly advised of the alleged oral amendment thereto in 1962 and prior thereto and that said staff members had not informed respondent that the oral amendment was deficient does not estop the Commission from taking action against respondent on this issue.

It is a well-established principle of administrative law that statements of policy, administrative opinions, or interpretations of laws and regulations by employees of such an agency cannot be used to preclude the agency from taking whatever action is necessary.[4/] Furthermore, it is to be noted that Section 3548 of the code, which requires the writing, was not added to the code until 1963.

5. Respondent violated Section 3548, 3664, 3667, 3668 and 3737 of the Public Utilities Code.

6. Respondent is responsible for all Transportation Rate Fund Fees, based on the applicable minimum charges, for the transportation performed purportedly under the equipment lease between respondent and Ball Bros. by any and all equipment other than the one unit of equipment specifically covered by said lease.

7. The investigation of J. A. Stafford, individually and doing business as J. A. Stafford Trucking, should be discontinued.

The respondent will be fined pursuant to Section 3800 of the Public Utilities Code, in the amount of $1,922.70, and an additional fine, pursuant to Section 3774 of the Public Utilities Code, in the amount of $2,500.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. 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 respondent, or its attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges, or has not acted in good faith, 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.

4/ Investigation of Coast Trucking Co., 60 Cal. P.U.C. 70 (1962).

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of $4,422.70 to this Commission on or before the fortieth day after the effective date of this order.

2. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein and shall notify the Commission in writing upon the consummation of such collections.

3. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and, in the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of the sixty days, a report of the undercharges remaining to be collected and specifying the action taken to collect such undercharges, and the result of such action, until such undercharges have been collected in full or until further order of the Commission.

4. Respondent shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

5. The investigation of J. A. Stafford, individually and doing business as J. A. Stafford Trucking, is discontinued.

6. The motion by respondent to strike all evidence relating to the equipment lease arrangements between respondent and Ball Bros. is denied.

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 3rd day of MAY, 1966.

Theodore B. Holoboff, President

Peter E. Mitchell

George G. Grover

Arrigoni

William M. Bennett

Commissioners