

**ORIGINAL**Decision No. 70844

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
charges, rates and practices of  
MOISI & SON TRUCKING, INC., a  
California corporation.

Case No. 8336  
(Filed January 27, 1966)

Joseph A. Moisi, Paul Moisi, and Robert P. Jack,  
for the respondent.  
David R. Larrouy and Frank J. O'Leary, Jr., for  
the Commission staff.

O P I N I O N

By its order dated January 18, 1966, the Commission instituted an investigation into the operations, charges, rates and practices of Moisi & Son Trucking, Inc., a California corporation.

A public hearing was held before Examiner Fraser on March 15, 1966, at Anaheim, California.

Respondent presently conducts operations pursuant to radial highway common carrier and highway contract carrier permits. Respondent has a single terminal in Anaheim, California. It owns and operates 14 tractors and 12 sets of flatbed double trailers. It employs ten drivers, two mechanics and a dispatcher. Its total gross revenue for 1965 was \$285,231. Copies of applicable tariff and distance table were served upon respondent.

A representative of the Commission staff testified that he visited respondent's place of business during May and September of 1964 and again in January of 1965. He checked 1000 to 1200 freight bills on transportation performed from October 1, 1963 through July 31, 1964. Exhibit 1 consists of the underlying documents relating to 15 shipments which were taken from respondent's files and photocopied.

Said photocopies were submitted to the Rate Analysis Unit of the Commission's Transportation Division. Based upon the data taken from said photocopies a rate study was prepared and introduced in evidence as (Parts 1 through 15) Exhibit 4. Said parts of Exhibit 4 reflect purported undercharges in the amount of \$772.44. Exhibit 2 is composed of copies of all documents on seven additional hauls by respondent wherein the staff claims that respondent violated the minimum rate regulations by the device of purchasing goods from the manufacturer, then transporting and selling them to the consignee. The seven parts (Parts 16 through 22 of Exhibit 4) reflect undercharges of \$420. The undercharges total \$1,192.44. Exhibit 3 describes the commodity involved in the buy and sell transactions.

Respondent's representative agreed that the Staff rating on Parts 1 through 15 of Exhibit 4 is correct. These parts were rated by a rate expert who is no longer employed by respondent.

The Commission finds on Parts 16 through 22, which are identified as unlawful buy and sell transactions, that:

1. After contacting L & L Suppliers, Stockton, a purchaser of Ther-Mo Roofing, Joe Moisi, called on "Ther-Mo Roofs" and applied to sell their roofing materials as a wholesaler.

2. "Ther-Mo Roofs" was receptive to Moisi's suggestion and advised it could supply all he could sell. It also advised him to call on all contractors and builders to solicit business.

3. Joe Moisi contacted numerous users of roofing materials but was unsuccessful in obtaining any additional customers.

4. L & L Suppliers phoned the respondent about once a month and ordered a load of roofing material (Parts 16 through 22, Exhibit 2). After each phone call the respondent picked up the order at "Ther-Mo Roofs" plant in Montebello and paid the full wholesale price less a 2% discount.

5. Respondent was classified as the buyer of the load on all of the "Ther-Mo Roof" invoices and other documents.

6. Respondent's truck delivered the load to or for the L & L Suppliers the next day and the latter paid a purchase price which had been negotiated with respondent less a small discount which remained within a few dollars of 2%.

7. Respondent has a wholesaler's permit to handle building materials and a valid resale tax permit from the Board of Equalization.

8. Respondent had some lumber and pallets stored on its premises while the Commission representative was there but respondent never stored roofing materials, never employed salesmen and has never advertised as a sales outlet for "Ther-Mo Roof" products. Respondent had a single listing in the phone book identifying it only as a trucking company.

9. Prior to purchasing "Ther-Mo Roof" from respondent, L & L Suppliers, respondent's only roofing customer, had purchased "Ther-Mo Roof" from another source.

10. The hereinabove described buy-and-sell transactions are devices within the meaning of Section 3668 of the Public Utilities Code since the only real service performed by respondent was transportation.

The Commission further finds that:

1. Respondent operates pursuant to Radial Highway Common Carrier Permit No. 30-2623 and Highway Contract Carrier Permit No. 30-3204.

2. Respondent was served with the applicable tariff and distance table.

3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibit 4 resulting in undercharges in the amount of \$1192.44.

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

1. Respondent violated Section 3664 of the Public Utilities Code.

2. Respondent violated Section 3668 of the Public Utilities Code.

3. Respondent should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1192.44.

4. No punitive fine should be imposed under Section 3774 of the Public Utilities Code. The record does not justify it.

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 thereof. If there is reason to believe that either 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.

O R D E R

IT IS ORDERED that:

1. 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.

2. Respondent shall pay a fine of \$1192.44 to this Commission on or before the twentieth day after the effective date of this order.

3. 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.

4. In the event undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; respondent shall file with the Commission, on the first Monday of each month after the end of said 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.

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 14<sup>th</sup> day of JUNE, 1966.

Fredrick B. Goldblatt  
President

Robert M. Mitchell

George T. Hoover

Augustine

William G. Bernard  
Commissioners