

**ORIGINAL**

Decision No. 71514

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

An investigation on the Commission's own motion into the operations, rates, and practices of DIVERSIFIED ENTERPRISES, INC., a corporation.

Case No. 8490  
(Filed August 2, 1966)

John T. Underwood, Transport Business Service and Secretary and Treasurer for Diversified Enterprises, Inc., for respondent.  
George H. Roe, California Portland Cement Company, interested party.  
David R. Larrouy, Esq. and Jerome B. Hannigan, for the Commission staff.

O P I N I O N

By its order dated August 2, 1966, the Commission instituted an investigation into the rates, operations and practices of Diversified Enterprises, Inc., a corporation.

Public hearing was held before Examiner Mooney on September 7, 1966, at Los Angeles.

Respondent conducts operations pursuant to a radial highway common carrier permit and a cement carrier certificate. Respondent has a terminal at Whittier, California. It presently has 11 power units and 26 dump truck trailers. It employs 16 drivers, two mechanics and three office personnel. Respondent's gross operating revenue for the last three quarters of 1965 and the first quarter of 1966 was \$342,907. It was served with Minimum Rate Tariffs Nos. 2, 7, 10 and 15 and Distance Table No. 5, together with all supplements and additions to each.

On various days during November and December 1965, a representative of the Commission's field section visited respondent's

place of business and checked its records for the period April through September 1965. The representative testified that he made true and correct photostatic copies of invoices and documents in respondent's files covering transportation of aluminum scrap for Western Diversified Metals Corp. (Western) and bulk silica sand for Thatcher Glass Manufacturing Co. (Thatcher). He stated that respondent had informed him that the commodity transported for Western was aluminum scrap and not aluminum nuggets as shown on the documents. The witness testified that he also made true and correct photostatic copies of billing invoices in respondent's files and supporting shipping documents in the files of California Portland Cement Co. covering transportation of bulk ground limestone for Thatcher from Oro Grande Lime and Stone Co. (Oro Grande) at Colton, a subsidiary of California Portland Cement Co. He explained that Oro Grande prepared the shipping documents for the ground limestone shipments and furnished one copy to respondent; that respondent's copy was attached to the billing invoice sent to Thatcher; that the only record of this transportation retained by the carrier was the billing invoice which does not include sufficient information from which a determination can be made as to whether applicable rates and charges were assessed; and that for this reason, it was necessary to prepare photostatic copies of the underlying documents in the files of California Portland Cement Co. The shipping clerk of California Portland Cement Co., who was subpoenaed by the staff, testified that he is the custodian of the documents of Oro Grande and that the photocopies made by the staff representative of the documents in the files of Oro Grande are true and correct copies.

The photocopies prepared by the staff representative were not offered in evidence. Staff counsel pointed out that there were

voluminous photocopies and that they were in the hearing room and available for inspection by the respondent. He requested that summaries of the documents be received in evidence in their place. Respondent's representative stated that he had no objection to this procedure.

A rate expert from the Commission staff testified that he took the set of photostatic copies of documents prepared by the staff representative, together with the supplemental information testified to by the representative, and formulated Exhibit 1 which includes 2 parts (transportation of aluminum scrap for Western), Exhibit 2 which includes 202 parts (transportation of bulk silica sand for Thatcher) and Exhibit 3 which includes 27 parts (transportation of bulk ground limestone for Thatcher). The rate expert testified that each exhibit is a faithful summary of the documents it covers and includes all information necessary to rate the transportation. This was verified by the staff representative. The rate expert explained that each exhibit shows the rates and charges assessed by the respondent, the minimum rates and charges computed by the staff and the resulting undercharges for the transportation it covers. He stated that the undercharges in Exhibit 1 resulted from assessing a flat charge. The witness explained that the undercharges in Exhibit 2 resulted from incorrectly applying hourly rates in Minimum Rate Tariff No. 7 and that the alternative rail rates which he applied to the transportation produced lower charges than the hourly rates would have had they been correctly applied. He asserted that respondent had assessed incorrect rates for the transportation in Exhibit 3. The rate expert stated that the total amount of the undercharges shown in Exhibits 1, 2 and 3 is \$6,124.94.

The president of respondent testified that she has occupied this position since May 1965; that she owns 33 percent of the outstanding stock in respondent corporation and took over as president when the prior president left the company; that she did not have a detailed knowledge of the business when she became president; that she was not aware that there were any rate errors during the review period selected by the staff (April through December 1965); that the transportation covered by Exhibit 1 took place before she became president; that a traffic consultant firm had handled the billing of the transportation covered by Exhibits 2 and 3; and that all bills are now being audited to assure that correct rates and charges are being assessed.

The Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit and a cement carrier certificate.
2. Respondent was served with Minimum Rate Tariffs Nos. 2, 7, 10 and 15 and Distance Table No. 5, together with all supplements and additions thereto.
3. Respondent charged less than the lawfully prescribed minimum rate in the instances as set forth in Exhibits 1, 2 and 3 resulting in undercharges in the amount of \$6,124.94.

The Commission concludes that respondent violated Sections 3664, 3704 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$6,124.94, and in addition thereto respondent should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.00.

With respect to the transportation covered by Exhibit 3, respondent is placed on notice that Items 93 and 93.1 of Minimum

Rate Tariff No. 7 set forth rules regarding the issuance and retention of copies of shipping documents and that deviations from these requirements constitute violations of Section 3704 and 3737 of the Public Utilities Code.

The Commission expects that the 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 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 pay a fine of \$6,624.94 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 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.

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. Respondent shall cease and desist from violating the documentation requirements of Minimum Rate Tariff No. 7.

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 9th day of NOVEMBER, 1966

[Signature]  
President

George A. Hoover

Fredrick W. Halaluff

Augustus

William B. Bennett  
Commissioners