

ORIGINALDecision No. 71658

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates, operations,
and practices of ACCELERATED DUMP
TRUCKS, INC., a corporation.

Case No. 8412

Phil Jacobson, for respondent.E. O. Blackman, for California Dump Truck Owners
Association, interested party.David R. Larrouy and E. E. Cahoon, for the
Commission staff.O P I N I O N

By its order dated May 17, 1966, the Commission instituted an investigation into the operations, rates and practices of Accelerated Dump Trucks, Inc., a corporation.

Public hearing was held before Examiner Mooney on July 26 and 27, 1966, at Los Angeles.

Respondent conducts operations pursuant to radial highway common carrier and city carrier permits. It presently has two pickup trucks registered with the Commission. All of its for-hire transportation is performed by subhaulers. Respondent's office is located in Woodland Hills. It does not have a terminal. The three officers of the corporation, a president and two vice presidents, do all of the office work. It has no other employees. Respondent's gross operating revenue for the year 1965 was \$1,156,985. It was served with Minimum Rate Tariff No. 7, together with all supplements and additions thereto.

On January 31 through February 8, 1966, a representative of the Commission's field section visited respondent's place of

business and checked its records for the period from October 16, 1965 to December 31, 1965. The representative testified that approximately 1,500 freight bills were issued during the review period and that all of said documents failed to comply with the documentation requirements of Minimum Rate Tariff No. 7. All of the freight bills were prepared by subhaulers. The witness stated that he made true and correct photostatic copies of 20 of the freight bills and that they are all included in Exhibit 1. He pointed out that hourly rates in Section 4 of Tariff No. 7 had been applied to the transportation covered by each of the 20 parts. The representative explained, however, that since the origin and destination of the transportation covered by Part 1 of the exhibit are located in a production area and delivery zone, said transportation is subject to the zone rates in Section 3 of the tariff.^{1/}

The representative testified that the document in Part 1 of Exhibit 1 does not comply with the requirements of paragraph (b) of Item 93 of Tariff No. 7 which sets forth the information that must be shown on the shipping order and freight bill for transportation under production area to delivery zone rates in Section 3 of the tariff. He pointed out that the information required by the following subparagraphs of paragraph (b) was not shown on said document: (2) equipment number; (9) name of consignee; (12) production area letter; (14) delivery zone letter; (16) commodity description; and (17) weight of shipment.

With respect to the documents in Parts 2 through 20 of Exhibit 1, the witness testified that they do not comply with the requirements of paragraph (c) of Item 93.1 of Tariff No. 7 which sets forth the information that must be shown on the hourly

^{1/} The rule on Third Revised Page 10 of Tariff No. 7 provides that distance tonnage or hourly rates will not apply to transportation for which zone rates are provided in Section 3 of the tariff.

service freight bill for transportation performed under the hourly rates in Section 4 of the tariff. He indicated that none of the documents in Parts 2 through 20 include the information required to be shown thereon by the following subparagraphs of paragraph (c): (2) equipment number and capacity in cubic yards; (11) type of loading at origin; (12) description of commodity transported; (14) starting, ending and elapsed time of last trip; and (16) starting, ending and elapsed time for unloading of last trip. In addition, the address of the consignee required to be shown on the document by subparagraph (10) was not included on the documents in Parts 18, 19 and 20, and the address of the consignor required by subparagraph (6) was not shown on the documents in Parts 19 and 20.

The representative explained that because of the missing information, it is not possible to determine from the documents the applicable minimum rate and charge for any of the transportation in issue. Counsel for the staff made it clear, however, that the staff does not contend in this proceeding that respondent has charged less than minimum rates or falsified its records.

The president of respondent testified that respondent has been in business for 11 years and that he is the owner. He stated that the shipping documents are prepared in their entirety by the subhaulers who actually perform the transportation. He explained that no alterations are made on the documents by respondent with the exception of correcting errors, if any, in rate computations. The witness testified that respondent does not solicit business or send employees out to look over jobs. He stated that respondent obtains its business through orders placed with it by customers; that the customer will specify the particular job involved and the

type of equipment required; and that respondent must depend on the subhauler for information regarding the manner in which the job was performed.

Respondent's president testified that the forms on which the documents included in Exhibit 1 were prepared were purchased from the California Dump Truck Owners Association; that this same form was in use when respondent commenced operating; and that a new form which includes spaces for recording all of the information required by the revised documentation rules, which became effective October 16, 1965, were not made available by the Association until February 1966. He stated that all records requested by the staff representative during the investigation were made available to him. The witness pointed out that the Commission now had before it in Case No. 5437, Order Setting Hearing dated March 22, 1966, a proposal by the staff to revise the documentation requirements in issue.

In closing, counsel for respondent pointed out that all transportation was performed by subhaulers. He argued that it is the carrier who physically performed the transportation who is responsible for the errors, if any, in the documents in Exhibit 1. He requested that the investigation be dismissed.

Discussion

Two issues are involved in this proceeding. The first is whether the documents in Exhibit 1 fail to comply with the documentation requirements of Items 93 and 93.1 of Minimum Rate Tariff No. 7. The second is whether, in the event errors in documentation do exist, respondent is relieved of responsibility for such errors because of the fact that subhaulers performed the transportation and prepared the documentation.

As to the first issue, the record clearly establishes that the documents in Exhibit 1 have not been completed in accordance with the requirements of Items 93 and 93.1 of Minimum Rate Tariff No. 7. All of the information required by said tariff items has not been included on the documents.

With respect to the second issue, the principal or overlying carrier who is engaged by the shipper to perform the transportation is responsible for errors in documentation irrespective of whether the documentation is prepared by said carrier or by the underlying carrier (subhauler). Paragraph (b) of Item 93 provides that the carrier shall issue the shipping order and freight bill to the shipper for transportation under distance or zone rates, and paragraph (c) of Item 93.1 provides that the carrier shall issue the hourly service freight bill to the shipper for transportation under hourly rates. The reference to carrier in both paragraphs (b) and (c) is to the carrier who initiates the contract of carriage with the shipper. In the instant proceeding, the reference would be to respondent. If anyone other than the overlying carrier engaged by the shipper prepares the documentation, said overlying carrier may adopt it as its own and thereby assume the responsibility for any errors or omissions therein or, in the alternative, it must prepare its own documentation. Furthermore, by engaging a subhauler, said overlying carrier is not relieved of the obligation imposed on it by law to assess rates no lower than the applicable minimum rates established by the Commission for the transportation covered by the contract of carriage. If the documentation is incorrect or incomplete, the Commission cannot determine from a review thereof whether applicable rates have been assessed.

Paragraph (e) of Item 93.1 states that an extra copy of the document shall be prepared when the transportation is performed by an underlying carrier and provides that said carrier shall retain the completed copy for a period of three years from the date of issue. It is noted that paragraph (e) does not state who shall prepare the document. In the absence of any specific requirement to the contrary, it is irrelevant who actually prepares it. However, as stated above, the overlying carrier engaged by the shipper is liable for any errors or omissions thereon, irrespective of whether or not it prepares the document. As to the statement in Item 94 that the underlying carrier shall present a freight bill to the overlying carrier within a specified time, the reference to a freight bill therein is in connection with billing by the underlying carrier for services it has performed for the overlying carrier. Items 93 and 93.1 refer to billing by the principal carrier to the shipper.

We are here concerned with the question of whether or not respondent complied with the documentation rules that were in effect at the time the transportation covered by the documents in Exhibit 1 moved. The fact that the Commission may now have proposals before it in any other proceedings to amend the documentation rules is not relevant or material to this case.

As to the penalty to be imposed, we concur with the recommendation by the Commission staff that respondent be directed to cease and desist from further violations of the documentation requirements. The failure to comply with any directive, order or rule of the Commission is a serious matter and will not be overlooked. Respondent's operating authority also will be made subject to a one-year suspension if further violations of the documentation requirements occur during the following one-year period.

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
2. Respondent was served with Minimum Rate Tariff No. 7, together with all supplements and additions thereto.
3. Respondent is responsible for compliance with the documentation requirements of Minimum Rate Tariff No. 7, irrespective of whether the documentation is prepared by respondent or by the subhauler who performed the transportation.
4. Respondent has not properly completed and executed shipping order and freight bills as required by paragraph (b) of Item 93 of Minimum Rate Tariff No. 7 and hourly service freight bills as required by paragraph (c) of Item 93.1 of said tariff in the instances set forth in Exhibit 1.

The Commission concludes that:

1. Respondent violated Sections 3704 and 3737 of the Public Utilities Code.
2. Respondent's operating authority should be suspended, pursuant to Section 3774 of the Code, for a period of one year with execution thereof deferred during said one-year period. If, at the end of the one-year period, the Commission is satisfied that respondent is in substantial compliance with the documentation requirements in issue, the suspension will be vacated without further order of the Commission.

The staff of the Commission will make a subsequent field investigation to determine whether respondent is complying with the documentation requirements in issue. If there is reason to believe that respondent is continuing to violate said

provisions, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether the one-year suspension or any further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 19-48668 and City Carrier Permit No. 19-38858 issued to Accelerated Dump Trucks, Inc., a corporation, are hereby suspended for a period of one year; provided, however, that the execution thereof is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the date of issuance of this decision, the suspension shall be automatically vacated.

2. Respondent shall cease and desist from violating the documentation provisions of the Commission's minimum rate tariffs.

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 6th day of DECEMBER, 1966.

[Signature]
President
George T. Grover
Fredrick B. Halchiff
Augusta
William W. Bennett
Commissioners