

ORIGINALDecision No. 71788

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of PACIFIC
MOTOR TRUCKING COMPANY, a
California corporation.

Case No. 8341
(Filed January 25, 1966)

John MacDonald Smith, for respondent.
B. A. Peeters and J. B. Hannigan, for
the Commission staff.

O P I N I O N

By its order dated January 25, 1966, the Commission ordered an investigation into the operations, rates and practices of Pacific Motor Trucking Company, a California corporation.

Public hearing was held before Examiner Mooney at San Francisco on March 16, 1966.

Pacific Motor Trucking possesses several types of operating authority issued by the Commission. The investigation herein is concerned with its certificated operations only. Pacific Motor Transport is an express corporation. The transportation under investigation herein was performed under the operating authority of Pacific Motor Transport. Pacific Motor Trucking performed the actual transportation as an underlying carrier. The billing for said transportation was on bills bearing the dual heading of Pacific Motor Trucking and Pacific Motor Transport. The Commission's records show that Pacific Motor Trucking and Pacific Motor Transport are under common ownership, interest, management and control.

By Motion to Amend Order Instituting Investigation filed by counsel for the Commission staff on March 25, 1966 request was made that the Order Instituting Investigation be amended to include

Pacific Motor Transport Company, a California corporation, as a respondent herein. No reply objecting to the motion to amend the order of investigation was filed by either Pacific Motor Trucking or Pacific Motor Transport. The record in this proceeding was fully developed, and in light of the common ownership and control of the two companies, it is clear that the interests of Pacific Motor Transport have been adequately represented; no purpose would be served by instituting a new investigation of Pacific Motor Transport or by holding further public hearing in this investigation as amended. Accordingly, the staff's motion will be granted and Pacific Motor Transport will be considered a respondent herein. The motion by counsel for respondents made at the hearing to dismiss the proceeding because Pacific Motor Transport had not been named as a respondent in the Order Instituting Investigation will be denied.

On various days during January and February 1965, a representative of the Commission's field division visited the main office of respondents at San Francisco and their district offices at Oakland, Sacramento, Fresno and Los Angeles and checked their records for the period from May to October 1964. The witness testified that during said period, respondents issued approximately 120,000 freight bills each month, 70 percent of which covered intrastate transportation, and that approximately 90 percent of the intrastate transportation was less-than-truckload shipments. The representative testified that because of the number of freight bills issued during the review period, it was necessary for him to select a random sample for analysis. He explained that he examined the documents of 22 different large volume shipping accounts. The witness testified that he made true and correct photostatic copies

of 47 freight bills and supporting documents covering shipments of alcoholic liquors, lumber, scrap metal, machinery, olive oil, salad dressing, condensed milk, canned olives, broken neon tubes, toilet preparations, paint, paint thinner, shortening and margarine, and that the photostats are all included in Exhibit 2 as parts 1 through 47 thereof. He stated that respondents were cooperative and furnished him with all the information he requested.

A rate expert for the Commission staff testified that he took the set of documents in Exhibit 2 and prepared Exhibit 3, which shows the rate and charge assessed by respondents, the tariff rate and charge computed by the staff and the resulting undercharge or overcharge for the transportation covered by each part of Exhibit 2. He stated that the transportation covered by Parts 36 through 42 cannot be rated as split delivery shipments as shown on the freight bills. He explained that in each instance freight charges were paid by a consignee, whereas the tariff provides that split delivery service may not be accorded when freight charges or any part thereof are paid by a consignee. The rate expert testified that the remaining rating errors resulted from failure to comply with the documentation requirements governing split pickup and multiple lot shipments and from the incorrect application of tariff rates. He stated that the total amount of undercharges shown in Exhibit 3 is \$3,485.75 (44 parts) and the total amount of overcharges is \$38.65 (3 parts).

The traffic manager of Pacific Motor Trucking testified that for the six-month period from April through September 1964, respondents transported a total of 528,025 shipments, and that the transportation covered by Exhibit 3 accounted for only 0.009 percent

of the total transportation handled during this period (Exhibit 4).^{1/} He explained that every effort is made to avoid rate errors; that all rate personnel are qualified and experienced in rating procedures; and that each month a "Traffic and Rate Bulletin" is sent to all rate personnel pointing out tariff changes and revised rate interpretations (Exhibit 5).

The traffic manager testified that he does not agree with the staff ratings shown in Parts 36 through 42 of Exhibit 3. He stated that De Soto Chemical Coatings, the consignor shown on the freight bill for each of the seven parts, is a wholly owned subsidiary of Sears, Roebuck & Co., to whom the split delivery shipments were made; that in each instance the shipper filled in the prepaid section of the bill of lading with the notation that freight charges were to be collected from the Los Angeles office of Sears; that the consignor and the consignee were in fact one and the same; and that the tariff prohibitions regarding payment of charges by a consignee do not apply when the consignee is also the consignor. As to the remaining parts of Exhibit 3, the witness agreed with the staff ratings.

The supervisor of rates and divisions in the Oakland office of Pacific Motor Trucking testified that either he or a member of the Los Angeles office was present during the staff investigation. He stated that immediate steps were taken to remedy the rate errors disclosed thereby.

Discussion

With respect to Parts 36 through 42 of Exhibit 3, we concur with respondents that the tariff prohibitions regarding

^{1/} The record does not show the percentage of the shipments in the sample reviewed by the staff that were included in Exhibit 3.

payment of charges on a split delivery shipment by a consignee do not apply when the consignor and consignee are one and the same. The tariff provision in issue is included in the note in paragraph "u", Item 250, Western Motor Tariff Bureau Tariff No. 111 and provides as follows:

"NOTE - All charges must be prepaid, and the carrier may not collect charges of any nature from any consignee."

The consignor shown on the freight bill in each of the seven parts is De Soto Chemical Coatings, and the split deliveries were made to Sears Roebuck stores at various locations. According to the evidence De Soto Chemical Coatings is a wholly owned subsidiary of Sears Roebuck, and the bill of lading for each split delivery shipment included the notation that charges were to be prepaid by the Los Angeles office of Sears Roebuck. The record establishes, therefore, that the consignor and consignee are one and the same and that freight charges were prepaid by Sears Roebuck in its capacity as consignor. Furthermore, the purpose for adding the note to the definition of split delivery shipment was to prohibit the apportioning or prorating of any of the freight charges among the consignees, thus increasing carrier costs. We do not have this problem here.

Counsel for the Commission staff recommended that respondents be fined, pursuant to Section 2100 of the Public Utilities Code, in the amount of the undercharges established by Exhibit 3, and that in addition thereto a punitive fine, pursuant to Section 1070 of the Code, in the amount of \$500 be assessed. Counsel for the respondents argued that there is no basis for any fines in this proceeding.

The fact that the number of rate violations disclosed herein are relatively few in number when compared with the total number of shipments transported by respondents during the period covered by the staff investigation does not exonerate respondents of the responsibility imposed on them for such errors. A fine in the amount of the undercharges will be imposed. However, the facts and circumstances in this proceeding do not warrant a punitive fine.

Findings and Conclusions

The Commission finds that:

1. Pacific Motor Trucking is a highway common carrier and also holds several types of permit authority which are not involved herein.
2. Pacific Motor Transport is an express corporation.
3. Pacific Motor Trucking and Pacific Motor Transport are under common ownership, interest, management and control.
4. The Motion to Amend Order Instituting Investigation filed by the Commission staff subsequent to the hearing to include Pacific Motor Transport as a respondent in this proceeding should be granted.
5. The motion by respondents at the hearing to dismiss the investigation because Pacific Motor Transport was not named as a respondent in the Order Instituting Investigation should be denied.
6. Respondents were parties to all tariffs involved in this proceeding (Western Motor Tariff Bureau Tariffs Nos. 109, 111 and Exception Sheet 1-A and National Motor Freight Classification No. A-7) and were served with Minimum Rate Tariff No. 2 and Distance Table No. 4.
7. It has not been established that the rates and charges assessed by respondents for the transportation covered by Parts 36 through 42 of Exhibit 3 were in error.

8. Respondents charged less than the prescribed tariff rates for the transportation covered by Parts 1 through 35, 46 and 47 of Exhibit 3, resulting in undercharges in the total amount of \$3,310.58.

9. Respondents charged more than the prescribed tariff rates for the transportation covered by Parts 43 through 45 of Exhibit 3, resulting in overcharges in the total amount of \$38.65.

The Commission concludes that:

1. The motion to include Pacific Motor Transport as a respondent herein should be granted.

2. The motion to dismiss should be denied.

3. Respondents violated Section 494 of the Public Utilities Code and should pay a fine, pursuant to Section 2100 of the Public Utilities Code, in the amount of \$3,310.58.

The Commission expects that respondents will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and refund the overcharges. The staff of the Commission will make a subsequent field investigation into the measures taken by respondents and the results thereof. If there is reason to believe that respondents or their attorney have not been diligent, or have not taken all reasonable measures to refund all overcharges and collect all undercharges, or have 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. The Motion to Amend Order Instituting Investigation to include Pacific Motor Transport Company, a California corporation, as a respondent herein is granted.

2. The motion to dismiss the investigation is denied.

3. Respondents shall pay a fine of \$3,310.58 to this Commission on or before the fortieth day after the effective date of this order.

4. Respondents shall refund the overcharges and take such action, including legal action, as may be necessary to collect the undercharges found herein and shall notify the Commission in writing upon the consummation of such refunds and collections.

5. Respondents shall proceed promptly, diligently and in good faith to refund the overcharges and to pursue all reasonable measures to collect the undercharges, and in the event overcharges ordered to be refunded or undercharges ordered to be collected by paragraph 4 of this order, or any part of such overcharges or undercharges, remain unrefunded or uncollected sixty days after the effective date of this order, respondents shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the overcharges remaining to be refunded and the undercharges remaining to be collected and specifying the action taken to refund such overcharges and collect such undercharges, and the result of such action, until such overcharges have been refunded in full and such undercharges have been collected in full or until further order of the Commission.

6. Respondents shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a different amount than the applicable tariff rates and charges.

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 shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 29th day of DECEMBER, 1966.

[Signature]
President
George J. Crocker
[Signature]

Commissioners

Commissioner Frederick B. Holoboff did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.