

ORIGINAL

Decision No. 72156

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own }
motion into the rates, operations and }
practices of GREEN BROTHERS, INC. }

Case No. 8436
Filed June 8, 1966

Jack L. Green, for respondent.
David R. Larrouy and Richard Carlin,
for the Commission staff.

O P I N I O N

By its order dated June 8, 1966, the Commission instituted an investigation into the operations, rates and practices of Green Brothers, Inc., a corporation, for the purpose of determining whether in the operation of its dump truck transportation business respondent violated Sections 3704 and 3737 of the Public Utilities Code by failing to properly complete, execute and retain shipping documents in accordance with applicable documentation rules, and whether respondent violated Section 3942 of the Code by operating as a city carrier without first having obtained a city carrier permit.

Public hearing was held before Examiner Mooney on October 25, 1966, at Los Angeles.

Respondent conducts operations as a for-hire dump truck carrier pursuant to a radial highway common carrier permit. Respondent is also engaged in the demolition business. The investigation herein is limited to respondent's for-hire transportation operations.

Respondent has a terminal in Altadena. It owns and operates 16 trucks, 13 tractors and 12 trailers. It has 45 employees. Respondent's gross operating revenue from its for-hire trucking business for the year 1965 was \$127,625.69. It was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions to each.

On March 1, 3 4 and 8 and April 22, 1966, a representative of the Commission's field section visited respondent's place of business and checked its records for the months of December 1965 and January 1966. The representative testified that approximately 200 shipping documents covering transportation subject to the hourly rates in Minimum Rate Tariff No. 7 were issued during the review period; that none of the hourly service freight bills include all of the information required to be shown thereon by the documentation requirements in paragraph (c) of Item 93.1 of the tariff; and that because of the missing information, it is not possible to determine whether proper rates were assessed. The witness stated that he was informed by respondent that the majority of its hauling involves the transportation of debris. He pointed out that debris is included in the list of commodities subject to hourly rates in Item 320 of Tariff No. 7.

The representative testified that he made true and correct photostatic copies of 20 of the hourly service freight bills issued during the review period and that they are all included in Exhibit 1 as Parts 1 through 20 thereof. He stated that the transportation covered by Parts 3, 4, 5, 7 through 12, 16 and 17 was subject to the Highway Carriers' Act; that the transportation covered by Parts 14, 18, 19 and 20 was subject to the City Carriers' Act; and that because

of incomplete information regarding the point of origin or destination or both on the documents in Parts 1, 2, 6, 13 and 15, it is not possible to determine whether the transportation covered thereby is subject to either the Highway or City Carriers' Acts.

The representative testified that he has listed in Exhibit 2 the specific information required to be shown on the hourly service freight bill which, in his opinion, is missing from the documents in Exhibit 1. There are no allegations in this proceeding that respondent charged less than minimum rates or falsified its documents.

None of the documents in Exhibit 1 include the information required to be shown on the hourly service freight bill by the following subparagraphs of paragraph (c) of Item 93.1: (2) cubic capacity of equipment; (10) address of consignee; (11) type of loading at origin; (13) time and location driver reported to work; (14) running time of last trip; (15) unloading time of last trip; (16) overall time; (18) net chargeable time; (21) signature of consignor. In addition, certain of the documents do not include other information required by paragraph (c). Although time information is shown on the documents, it is not shown in the manner required by paragraph (c).

The president of respondent testified that everything respondent hauls is disposed of at a dump. He explained that respondent divides its business activities into two categories which are designated contract work and for-hire work. He stated that the contract work involves jobs in which respondent enters into a contract to demolish buildings, remove concrete or perform any other like demolition service and, in addition thereto, dispose of the debris. The witness testified that all transportation in connection with the contract work is handled by respondent. He stated that the for-hire work involves jobs in which respondent transports

debris to a dump for another demolition contractor. He testified that the disposal charge is paid by the contractor although at times respondent may have the charge added to its account in which case it is reimbursed by the contractor for the amount involved.

The witness testified that he has experienced difficulty in training employees to complete documents in accordance with the applicable tariff requirements because of the substantial turnover in respondent's personnel; that new document forms with spaces for filling in all of the required information were obtained six or seven weeks before the hearing; and that every effort is being made to have the documents completed properly. The witness stated that 99 percent of the transportation performed by respondent is by its own equipment and that it rarely engages a subhauler.

Counsel for the Commission staff asserted that the transportation of debris to a dump for disposal is subject to regulation. He pointed out that Parts 14, 18 19 and 20 of Exhibit 1 cover transportation within a city and that respondent does not have a city permit. He requested that respondent be directed to cease and desist from acting as a city carrier until it obtains a city permit. In answer thereto, respondent's president alleged that he had been informed by a staff member that respondent requires only a radial highway common carrier permit, which it has.

Discussion

The record clearly establishes that the hourly service freight bills in Exhibit 1 have not been completed in accordance with the requirements of paragraph (c) of Item 93.1 of Tariff No. 7. Certain of the information required by said item has not been shown and certain other information has not been shown correctly.

With respect to the question of whether the transportation of debris to a disposal area or dump is subject to regulation by the Commission, the general rule is that transportation of any material by a highway or city permit carrier other than on private property

is subject to regulation. The fact that the material is disposed of at a dump is irrelevant. However, transportation which is incidental to and inseparable from a primary business other than transportation is an exception to the general rule and is not subject to regulation.

The portion of respondent's business referred to as for-hire work would come within the general rule and is subject to regulation. The only function performed by respondent in connection with this work is the transportation of debris for another person or corporation from a demolition job to a disposal area.

Respondent's contract work would most likely be within the exception and not subject to regulation. If the contract includes both demolition and disposal, the transportation by respondent's own equipment would be incidental to and inseparable from its primary business of demolition. Assuming these are the facts and respondent engages someone else to perform the transportation, respondent would then be the shipper and the carrier employed by it would be a prime carrier and not a subhauler. However, if the transportation is handled by respondent under separate arrangements or contract as an independent function completely separate and apart from the demolition work, then the transportation would be subject to regulation and any other carrier engaged by respondent to assist it with the transportation would be a subhauler. While the evidence is not entirely clear on this point, it appears that the transportation performed by respondent in connection with its contract work is incidental to its primary business of demolition and removal and would, therefore, not be subject to regulation.

According to the evidence, the transportation covered by Parts 14, 18, 19 and 20 of Exhibit 1 was for-hire, intracity transportation subject to regulation. Respondent will be directed to cease and desist from performing such transportation until it obtains a city carrier permit.

Respondent's president stated that it occasionally engages subhaulers. In this regard, we have consistently pointed out in other similar proceedings that the overlying carrier engaged by the shipper is responsible for any errors or omissions in the hourly service freight bill irrespective of whether the documentation is prepared by said overlying carrier, the subhauler who performed the transportation or anyone else.

It was brought to the Commission's attention that it now has several proposals before it in Case No. 5437 to revise the documentation requirements in issue. This fact is not determinative of this case. We are here concerned with the question of whether respondent complied with the documentation rules that were in effect at the time the transportation covered by the documents in Exhibit 1 was performed.

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions to each.
3. The transportation covered by Exhibit 1 was for-hire transportation subject to regulation by the Commission.

4. The transportation covered by Parts 14, 18, 19 and 20 of Exhibit 1 was intracity transportation.

5. Respondent performed the transportation referred to in Finding 4 without the required city carrier permit.

6. Respondent has not properly completed and executed "hourly service freight bills" as required by paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7 in the instances set forth in Exhibit 1.

The Commission concludes that:

1. Respondent violated Sections 3704, 3737 and 3942 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 the 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.

3. Respondent should be directed to cease and desist from performing any for-hire, intracity transportation until it has first obtained a city carrier permit.

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. 19-54824 issued to Green Brothers, Inc., a corporation, is 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.


3. Respondent shall cease and desist from performing any for-hire intracity transportation until it has first obtained a city carrier permit from 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 14th day
of MARCH, 1967.



President


Augusta


Fred P. Morrissey

Commissioners