

ORIGINAL

Decision No. 72716

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the operations,
 rates and practices of SAMJO, INC.,
 a corporation doing business as
 SMISER FREIGHT SERVICE, and
 CALIFORNIA MEAT AND PRODUCE, INC.,
 a corporation doing business as
 CALIFORNIA PRODUCE DISTRIBUTORS.

Case No. 8471
(Filed July 12, 1966)

Donald Murchison, for respondents.

David R. Larrouy, Counsel, and Eugene E. Cahoon,
for the Commission staff.

O P I N I O N

By its order dated July 12, 1966, the Commission instituted an investigation into the rates, operations and practices of Samjo, Inc., a corporation, doing business as Smiser Freight Service (Smiser), and California Meat and Produce, Inc., a corporation, doing business as California Produce Distributors (CPD).

A public hearing was held before Examiner Mooney on November 30, 1966, at Bakersfield. The matter was submitted upon the filing of the transcript on December 13, 1966.

Smiser operates pursuant to a highway common carrier certificate authorizing it to transport general commodities between the San Diego territory, the Los Angeles Basin territory and Sacramento and between San Jose and Salinas with a ten-mile lateral along each route and between the Los Angeles Basin territory and the San Francisco territory, among other points, and pursuant to a statewide highway contract carrier permit covering general

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commodities. CPD operates pursuant to a statewide radial highway common carrier permit covering general commodities. Mr. Smiser owns 90 percent of the stock in CPD, and both he and CPD own all of the stock in Smiser. Both respondents use the same terminal facilities which are located in Bakersfield, Los Angeles and Oakland and have the same office in Bakersfield. Smiser owns and operates 7 tractors, 3 trucks, 14 semitrailers and 3 dollies, and CPD owns and operates 6 tractors, 7 trucks, 26 semitrailers and 4 dollies. Smiser and CPD had gross operating revenues for the year ending June 30, 1966 of \$357,006 and \$220,906, respectively. The Annual Reports of both respondents show that they are under common control. For the purposes of this proceeding, one is the alter ego of the other. The respondents were each served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions to each. In addition, both respondents were served with other minimum rate tariffs not involved herein. Smiser is a party to Western Motor Tariff Bureau Tariffs Nos. 100 and 111.

On various days during October and November 1965, a representative of the Commission's Field Section visited the office of the respondents and checked their records for the period April through September 1965. The representative testified that Smiser handles predominantly less-than-truckload shipments and that CPD handles predominantly truckload shipments. He stated that he made true and correct photocopies of certain of respondents' shipping documents. Summaries of the photostatic copies of the shipping documents were received in evidence as Exhibits 1 through 7. Exhibits 1 through 6 relate to transportation performed by Smiser, and Exhibit 7 relates to transportation performed by CPD. The following tabulation shows for each exhibit the number of counts,

the party for whom the transportation was performed and the commodities transported:

<u>Exhibit No.</u>	<u>Number of Parts</u>	<u>Transportation Performed for</u>	<u>Commodities Transported</u>
1	1	Bob's Plastic Tile Co.	Asphalt floor tile, cement and compound
2	1	Capco Steel Co.	Scrap Molybdenum and Ferro Silicon
3	1	Charm Industries	Toilet preparations and cleaning compounds
4	14	EKCO Products Co.	Steel lockers, bins and shelving
5	9	General Felt Prod.	Carpet or rug cushions
6	80	Smart & Final Iris	Sugar in packages
7	101	Smart & Final Iris	Sugar in packages

The representative testified that the documentation for the transportation covered by Exhibit 3 (Charm Industries) does not include a written released valuation of 50 cents per pound by the shipper for the toilet preparations and that for this reason a higher rate must be assessed (Exhibit 3-A). He stated that the master bill for the split pickup shipment covered by Part 5 of Exhibit 5 (General Felt) is dated August 13, 1965; that one of the shipper's component documents shows a handwritten date of August 12, 1965 and the other shows a handwritten date of August 13, 1965; and that since one of the shipper's component documents shows a date prior to the date on the master document, the two component parts must each be rated as a separate shipment (Exhibit 5-A). He also testified regarding the precise location of certain origins and destinations in the staff exhibits.

A rate expert for the Commission staff testified that she had prepared the summaries of shipping documents in Exhibits 1 through 7. She stated that each exhibit is a faithful summary of the documents it covers and includes all information necessary to rate the transportation. The rate expert testified that each exhibit shows the rate and charge assessed by respondents, the minimum or tariff rate and charge computed by the staff and the resulting undercharge alleged by the staff for the transportation covered by each part thereof. She explained that the transportation covered by Exhibit 2 (Capco Steel) was picked up at San Francisco and Mare Island; that San Francisco is within the area covered by Smiser's certificate and Mare Island is within the area covered by its permit; that freight picked up in a carrier's certificated area may not be consolidated for rating purposes with freight picked up in the area covered by its permit; and that for this reason it was necessary to rate both pickups as separate shipments. The witness testified that for the same reason it was necessary to rate the transportation covered by Part 7 of Exhibit 4 (EKCO Products) and other similar parts in the staff exhibits as separate shipments and that Smiser had not used the correct origin zone for the transportation covered by Part 1 of Exhibit 4 (EKCO Products).

The rate witness testified as follows regarding the 80 truckload shipments of sugar in packages from Spreckels to Vernon covered by Exhibit 6 (Smart & Final Iris): Respondents rated all of the shipments under their permit authority; Section 1063 of the Public Utilities Code provides in part that a certificated carrier may publish pickup and delivery zones within three miles of the corporate limits of any incorporated city it is authorized to serve; Item 45 of Western Motor Tariff Bureau Tariff No. 100, to which Smiser is a party, provides in part that parties to said tariff will

perform pickup and delivery or transfer service from and to points within three miles of the corporate limits of any incorporated city they are authorized to serve; Spreckels is located within three miles of the exterior boundary of Salinas, which is an incorporated city; Spreckels is, therefore, covered by Smiser's certificate; the transportation in issue must be rated as certificated shipments under Smiser's published tariff.

With respect to the balance of the staff ratings in the seven exhibits, the rate expert stated that they are self-explanatory. She testified that the total amount of the undercharges alleged by the staff in Exhibits 1 through 7 is \$10,107.95.

The president of respondents testified that it was his understanding that if freight is picked up at a point within a carrier's certificated service area and also at a point outside said area, the transportation could be rated as a split pickup shipment under the carrier's permit authority. He explained that he had rated the transportation covered by Exhibit 2 (Capco Steel), Parts 7, 8, 12 and 14 of Exhibit 4 (EKCO Products) and Parts 2, 6, 7 and 8 of Exhibit 5 (General Felt) in this manner.

The president testified as follows regarding the transportation of rug cushion from General Felt and sponge rubber cushion from Air Crest, both of which are located at the same address in Los Angeles, to Sacramento, covered by Part 5 of Exhibit 5 (General Felt): Respondents have correctly rated the transportation as a split pickup shipment; General Felt owns Air Crest; the freight bill, master document, delivery tags issued by the carrier for each component and the subdocuments issued by the shipper for each component all have the date August 13, 1965 typed on them (Exhibit 5-A); the handwritten date of August 12, 1965 at

the bottom of the shipper's subdocument for the component picked up from General Felt was incorrect and should have been August 13, 1965; all of the components were picked up on August 13, after the master documentation was issued; the shipper's subdocument for the component picked up from Air Crest Products shows the handwritten date of August 13, and this component was loaded on the truck first.

Respondents' witness testified as follows regarding the 80 sugar shipments from Spreckels to Vernon covered by Exhibit 6 (Smart & Final Iris): In its application for the certificate herein, Smiser specifically requested authority to serve Spreckels by showing Spreckels on the map of the proposed service area attached to the application; the decision which granted the certificate named Salinas as a point to be served, but did not name Spreckels;^{1/} since Spreckels was not named in the certificate, he was of the opinion that the Commission had denied Smiser authority to serve Spreckels as a certificated carrier and that Spreckels was, therefore, served under permitted authority; for this reason, the shipments in issue were rated under the sugar commodity rate in Item 740 of Minimum Rate Tariff No. 2 (50 cents per 100 pounds) which was substantially less than the class rate in Smiser's common carrier tariff; because he considered the transportation not covered by Smiser's certificate, he did not have the commodity rate published in Smiser's tariff; the staff representative pointed out to him at the time of the investigation that he did not pick up several increases in the Tariff No. 2 sugar commodity rate (54 cents per 100 pounds prior to August 1, 1965 and 55 cents per 100 pounds thereafter), but did not inform him that the shipments should have

^{1/} Decision No. 64311, dated September 25, 1962, in Application No. 45539 (unreported).

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been rated under Smiser's certificate; he does not agree with the staff that said shipments should be rated under Smiser's certificate; to avoid any further difficulties in this regard, he has had Smiser's tariff amended to include the current minimum commodity rate on sugar (57 cents per 100 pounds); no sugar company could afford to pay the class rate of 70 cents per 100 pounds on the shipments in Exhibit 6 prior to July 27, 1965 and 72 cents per 100 pounds thereafter published in Smiser's tariff as alleged by the staff and remain in business.

The president testified that in February 1965 (two months prior to the commencement of the period reviewed by the staff) he requested a local traffic consultant to check the records of both respondents. He stated that the consultant was to have made the review in March 1965, but because of other commitments did not do so. The witness explained that when he received copies of the staff rate exhibits, he immediately issued balance due bills on all undercharges with which he agreed. He stated that he then hired a different traffic consultant who audited part of both respondents' records and now has retained another consultant to complete the audit. It is the position of the respondents that the rate errors were unintentional.

The president's wife, who is the bookkeeper for both respondents, testified that she does not agree with the staff ratings of the transportation covered by Exhibit 2 (Capco Steel); Parts 7, 8, 12 and 14 of Exhibit 4 (EKCO Products); Parts 2, 6, 7 and 8 of Exhibit 5 (General Felt); and Exhibit 6 (Smart & Final Iris). She stated that balance due bills have been issued for all undercharges, including those with which she does not agree, shown in Exhibits 1 through 5 and 7; that all of the undercharges,

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amounting to \$103.97, in Exhibit 1 (Bob's Plastic), \$30.69 in Exhibit 2 (Capco Steel) and \$1,993.71 in Exhibit 7 (Smart & Final Iris) have been collected; that of the \$14.85 in undercharges shown in Exhibit 3 (Charm Industries), \$8.52 has been collected; that of the \$380.98 in undercharges shown in Exhibit 4 (EKCO Products), \$75.92 has been collected; and that of the \$196.68 in undercharges shown in Exhibit 5 (General Felt), \$82.23 has been collected. With respect to Exhibit 6 (Smart & Final Iris), she testified that in her opinion the transportation covered thereby was subject to Minimum Rate Tariff No. 2 and not Smiser's certificated tariff as alleged by the staff; that balance due bills had been issued on the basis of the applicable Tariff No. 2 sugar commodity rate; and that said balance due bills have been paid. (The undercharges based on the applicable rate in Smiser's certificated tariff as shown in Exhibit 6 total \$7,387.07; whereas, the undercharges on the transportation covered by said exhibit based on the applicable sugar commodity rate in Tariff No. 2 would be \$1,532.61.) The witness stated that as a result of the audit by the consultants engaged by respondents, numerous undercharges in addition to those shown in the staff exhibits have been disclosed and that balance due bills have been issued on said additional undercharges and most have been collected. She testified that some of the balance due bills were issued in October 1965.

By Decision No. 65683, dated July 9, 1963, in Case No. 7559, the Commission found that respondents had assessed rates below the applicable minimum or common carrier rates and imposed a penalty. Sugar shipments were involved in Case No. 7559, but the violations in said case were not similar to those involved herein. It was stipulated that respondents had complied in full with the directives in Decision No. 65683.

Discussion

We agree with the staff rating shown in Exhibit 2 (Capco Steel), Parts 7, 8, 12 and 14 of Exhibit 4 (EKCO Products) and Parts 2, 6, 7 and 8 of Exhibit 5 (General Felt). Exhibit 2 and each of the aforementioned parts of Exhibits 4 and 5 involve mixed certificated and permitted operations by Smiser. "Where a carrier holds operating authority under both the Public Utilities Act and the Highway Carriers' Act, and receives property for shipment, a portion of which has point of origin or destination not within the area covered by his common carrier certificate . . . , the property transported may not be rated as a single shipment under the split pickup or delivery provisions of his tariff, but each portion thereof must be rated separately under the applicable provisions of his filed tariff and the applicable minimum rate tariff."^{2/} Likewise, said transportation may not be rated as a single split pickup or delivery shipment under Minimum Rate Tariff No. 2 as suggested by respondents.

The staff rating of Part 1 of Exhibit 4 (EKCO Products) is correct. Smiser apparently did not use the correct Metropolitan Zone in Distance Table No. 5 for Whittier, the origin.

With respect to the transportation covered by Part 5 of Exhibit 5 (General Felt), we will accept the explanation of the president of both respondents that the date of August 12, 1965 was written at the bottom of the shipper's subdocument for the General Felt component in error and should have been August 13, 1965. The president's contention is supported by the fact that Smiser's master document and delivery tags and the shipper's master bill and

^{2/} Decision No. 61265, dated December 28, 1960, in Case No. 6186, 58 Cal.P.U.C. 407 (1960).

subdocuments all have the date August 13, 1965 typed on them (Exhibit 5-A) and his assertion that the Air Crest Products component, which has a handwritten date of August 13, 1965 at the bottom of the shipper's subdocument therefor, was loaded first. Said transportation may be rated as a split pickup shipment as contended by the president.

We do not agree with the president of respondents that because Spreckels was not specifically named as a point to be served in the certificate granted to Smiser by Decision No. 64311, supra, Smiser is prohibited from serving said point as a certificated carrier under Section 1063 of the Public Utilities Code. According to the record, Spreckels is located within three miles of Salinas, an incorporated city, which is named in the certificate. Smiser could, therefore, serve Spreckels under Section 1063, and it was not necessary to name it in the certificate. Since Smiser has published a rule in its tariff, pursuant to Section 1063, which provides it will perform pickup and delivery service from and to points within three miles of the corporate limits of any incorporated city included in its certificate, service by it from or to Spreckels would be under its certificated rights. The 80 sugar shipments from Spreckels to Vernon covered by Exhibit 6 (Smart & Final Iris) were transported by Smiser as a certificated carrier and not as a permitted carrier as contended by the president.

Had the president been aware that Spreckels was served by Smiser as a certificated carrier, he could have published the minimum commodity rate on sugar named in Minimum Rate Tariff No. 2 in Smiser's tariff. He has now done this. It is noted that the minimum commodity rates on sugar in Item 740 of Tariff No. 2, which were in effect when the transportation covered by Exhibit 6 moved

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(54 cents per 100 pounds prior to August 1, 1965 and 55 cents per 100 pounds thereafter) were found by the Commission to be reasonable minimum rates for the transportation of sugar in packages from the Spreckels Sugar Company at Spreckels, the origin of the transportation covered by Exhibit 6, to the Los Angeles Basin territory, within which the destination is located.^{3/} There is no evidence herein that Smart & Final Iris, the party responsible for the freight charges, was knowledgeable of any problem regarding the assessed rates. The record establishes, however, that the rates assessed by Smiser on the Spreckels shipments were below the level of the sugar commodity rates in Tariff No. 2 that were in effect when the transportation in issue moved. The president admitted that he had inadvertently failed to pick up several increases in the commodity rate item. According to the bookkeeper, balance due bills based on the applicable sugar commodity rates in Tariff No. 2 have been issued for the transportation covered by Exhibit 6 and said bills have been paid.

Based on a review of all the facts and circumstances surrounding the sugar shipments in Exhibit 6, it is obvious that the failure to publish the sugar commodity rate in Smiser's tariff was an inadvertent error due to a misunderstanding on the part of the president. Had the sugar commodity rate been published in Smiser's tariff, the total of the undercharges would have been \$1,532.61 (which, as stated above, the bookkeeper testified has been collected) rather than \$7,387.07 based on the published fifth class

^{3/} Decision No. 67531, Cases Nos. 5432 (Pet.Mod. 324) and 7024 (Pet.Mod.10), 63 Cal.P.U.C. 124 (1964); Decision No. 69330, Case No. 5432 (Pet.Mod.377) and Application No. 47563, 64 Cal. P.U.C. 443 (1965).

rates, and charges computed on the class rates in the circumstances here would be excessive and unreasonable.

Respondents do not dispute the undercharges alleged by the staff on the balance of the shipments in the staff exhibits.

Respondents assert that the rate errors herein were inadvertent mistakes. It is their position that the record does not support the imposition of any fines. We do not agree. Undercharges on numerous shipments have been established. This will not be tolerated irrespective of the reasons therefor.

We will include the total amount of the undercharges found herein in Exhibits 1 through 5, which total \$696.53, in the fine assessed against Smiser pursuant to Sections 2100 and 3800 of the Public Utilities Code. The undercharges found herein in Exhibit 6 will not be included in said fine. However, we have taken into account the fact that undercharges in the amount of \$1,532.61 would have existed in connection with Exhibit 6 if the applicable commodity rates on sugar had been published in Smiser's tariff in arriving at the punitive fine of \$2,250 assessed against said respondent under Sections 1070 and 3774 of the Code. A fine

in the amount of the undercharges in Exhibit 7, which amounts to \$1,993.71, pursuant to Section 3800 of the Code, and an additional fine in the amount of \$250, pursuant to Section 3774 of the Code, will be imposed on CPD.

Findings and Conclusions

The Commission finds that:

1. Smiser operates pursuant to a highway common carrier certificate and a highway contract carrier permit.
2. CPD operates pursuant to a radial highway common carrier permit.
3. Smiser was a party to all highway common carrier tariffs involved in this proceeding (Western Motor Tariff Bureau Tariff Nos. 100 and 111), and both respondents were served with Minimum Rate Tariff No. 2 and Distance Table No. 5, together with all supplements and additions to each.
4. Mr. Smiser owns 90 percent of the stock in CPD, and both he and CPD own all of the stock in Smiser. Smiser and CPD are under common control and management; hence, for the purposes of this proceeding, their separate identities should be disregarded.
5. With respect to the transportation covered by Exhibit 2 (Capco Steel), Parts 7, 8, 12 and 14 of Exhibit 4 (EKCO Products) and Parts 2, 6, 7 and 8 of Exhibit 5 (General Felt), freight picked up at or delivered to a point within Smiser's certificated area may not be combined with freight picked up at or delivered to a point beyond said area and rated as a single split pickup or delivery shipment under the permit authority of respondents. The freight picked up at or delivered to each area must be rated separately under the applicable provisions of Smiser's filed tariff and the applicable minimum rate tariff.

6. The constructive mileage computed by the staff for the transportation covered by Part 1 of Exhibit 4 (EKCO Products) is correct.

7. The date of August 12, 1965 was handwritten at the bottom of the shipper's subdocument for the General Felt component of the split pickup shipment covered by Part 5 of Exhibit 5 (General Felt) in error. Said document and all other documents for the shipment have the date August 13, 1965 which is the date all components were picked up. Said transportation may be rated as a split pickup shipment.

8. The staff rating of the transportation covered by Exhibit 1 (Bob's Plastic), Exhibit 2 (Capco Steel), Exhibit 3 (Charm Industries), Exhibit 4 (EKCO Steel), Parts 1 through 4 and 6 through 9 of Exhibit 5 (General Felt), Exhibit 6 (Smart & Final Iris) and Exhibit 7 (Smart & Final Iris) is correct.

9. Smiser charged less than the lawfully prescribed rates named in Western Motor Tariff Bureau Tariff No. 111 and Minimum Rate Tariff No. 2 in the instances set forth in Exhibit 1 (Bob's Plastic), Exhibit 2 (Capco Steel), Exhibit 3 (Charm Industries), Exhibit 4 (EKCO Products), Parts 1 through 4 and 6 through 9 of Exhibit 5 (General Felt) and Exhibit 6 (Smart & Final Iris), resulting in undercharges in the total amount of \$8,083.60, but \$5,844.46 of this amount would be an excessive and unreasonable charge on the sugar shipments in Exhibit 6 (Smart & Final Iris). ✓

10. CPD charged less than the lawfully prescribed minimum rate in Minimum Rate Tariff No. 2 in the instances set forth in Exhibit 7 (Smart & Final Iris), resulting in undercharges in the total amount of \$1,993.71.

11. Balance due bills have been issued by respondents for most of the undercharges referred to in Findings 8 and 9 and a substantial amount has been collected.

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

1. Smiser violated Sections 494, 3664 and 3737 of the Public Utilities Code and should pay a fine pursuant to Sections 2100 and 3800 of the Public Utilities Code in the amount of \$696.53, and in addition thereto Smiser should pay a fine pursuant to Sections 1070 and 3774 of the Public Utilities Code in the amount of \$2,250.

2. Charges on the sugar shipments in excess of those accruing under the sugar commodity rates should be waived.

3. CPD violated Sections 3664 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 \$1,993.71, and in addition thereto CPD should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$250.

4. A restriction should be inserted in Radial Highway Common Carrier Permit No. 15-5215 held by CPD providing that permittee shall not engage in the transportation of property over the public highways under this permit when such transportation is covered by the highway common carrier operative authority of Smiser.

The Commission expects that respondents 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 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 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. Samjo, Inc., a corporation doing business as Smiser Freight Service, shall pay a fine of \$2,946.53 to this Commission on or before the fortieth day after the effective date of this order.

2. California Meat and Produce, Inc., a corporation doing business as California Produce Distributors, shall pay a fine of \$2,243.71 to this Commission on or before the fortieth day after the effective date of this order.

3. Respondents shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, except the charges on the sugar shipments found to be excessive and unreasonable, and shall notify the Commission in writing upon the consummation of such collections. The excessive charges are hereby authorized and directed to be waived. ✓

4. Respondents 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 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, each 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 by it and specifying the action taken by it to collect such undercharges, and the results of such action, until such undercharges have been collected in full or until further order of the Commission.

5. Respondents shall, in connection with their permit operations, cease and desist from charging and collecting compensation for the transportation of property or for any

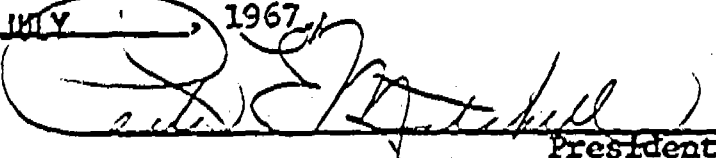
service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.


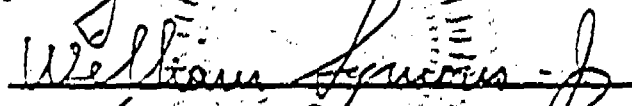

6. Samjo, Inc., a corporation doing business as Smiser Freight Service, shall, in connection with its highway common carrier operations, cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a different amount than the applicable tariff rates and charges.

7. On the effective date of this decision, the Secretary of the Commission is directed to cause to be amended Radial Highway Common Carrier Permit No. 15-5215 issued to California Meat and Produce, Inc., a corporation doing business as California Produce Distributors, by inserting therein the following restriction:

"Permittee shall not engage in the transportation of property over the public highways under this permit when such transportation is covered by the highway common carrier operative authority of Samjo, Inc., a corporation doing business as Smiser Freight Service."

The Secretary of the Commission is directed to cause personal service of this order to be made upon each respondent. The effective date of this order shall be twenty days after the completion of such service upon either respondent.

Dated at San Francisco, California, this 16th day of JULY, 1967.

President




Commissioners