

**ORIGINAL**Decision No. 73180

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates and practices of RAY )  
 TANIGUCHI and GEORGE TANIGUCHI, )  
 copartners, doing business as )  
 Taniguchi Brothers. )

Case No. 8644  
 (Filed June 9, 1967)

George Taniguchi, in propria persona.  
Clifford J. Van Duker, for Bay City Flower Co.  
 and California State Florist Assn. Transportation  
 Commission; C. B. Hobbs, for C. B. Hobbs  
 Corporation, interested parties.  
Elinore C. Morgan, Counsel, and J. B. Hannigan, for  
 the Commission staff.

O P I N I O N

By its order dated June 9, 1967, the Commission instituted an investigation into the operations, rates and practices of Ray Taniguchi and George Taniguchi, copartners doing business as Taniguchi Brothers.

A public hearing was held before Examiner O'Leary at San Francisco on August 9, 1967, on which date the matter was submitted.

Respondents presently conduct operations pursuant to Radial Highway Common Carrier Permit No. 43-4335. Respondents' office and terminal are located at San Jose. They employ six or seven drivers. Their gross operating revenue for the four quarters ending March 31, 1967 was approximately \$90,000. Copies of the appropriate tariffs and distance table were served upon respondents.

During the period May 23 to 27, 1966, a representative of the Commission's Field Section visited respondents' place of business and examined their transportation records for the period December 1965

to May 24, 1966, inclusive. The field representative reviewed approximately 1,200 shipments that were transported during said period. The underlying documents relating to 88 shipments were taken from respondents' files, photocopied and forwarded to the License and Compliance Branch of the Commission's Transportation Division. The copies of the shipping documents comprise Exhibits 1 and 2. Based upon the data taken from the documents, as well as information supplied by the field representative, rate studies were prepared and introduced in evidence as Exhibits 3 through 15. Said exhibits reflect asserted undercharges in the amount of \$4,192.02.

Exhibits 3 to 13, inclusive, pertain to shipments of various types of nursery stock. Except for the shipments covered by Exhibit 6, wherein a flat charge was assessed, the respondents assessed a third class rate on LTL shipments and a Class A rate on TL shipments pursuant to Item 71280 of the National Motor Freight Classification A-8 (Cal) which provides ratings for Tree, Shrub or Vine Roots in earth or other growing media. The staff alleges that the LTL shipments should be rated first class and the TL shipments should be rated fourth class pursuant to Item 71220 of the same classification, which provides ratings for flower roots. The commodity descriptions shown on the shipping documents include bedding plants (Exhibits 3, 6, 7, 8, 9, 10, 11 and 12), assorted nursery stock and various types of plants, including hydrangeas and poinsettias (Exhibits 4 and 12) and nursery stock in 5-gallon and 15-gallon cans (Exhibit 5). The commodities as described on the shipping documents are not specifically listed in the classification and therefore must be rated by analogy pursuant to Rule 95 of the classification which provides: "The class (rating) for any article not provided for either by its specific name or embraced in an

NOI item shall be the class (rating) provided in this classification for an article which in the carrier's judgment, is the most closely analogous. In such cases facts must be reported to the Chairman of the National Classification Board through the traffic officer of the carrier in order that the establishment of specific provisions may be considered. This rule will not apply in connection with classes (ratings) in exceptions to this classification nor rates in commodity tariffs." The staff and respondents agree that the commodity transported properly falls within the category of roots. The president and general manager of Bay City Flower Co. testified that with respect to the transportation performed for his company (Exhibit 4) he would classify hydrangeas and poinsettias as shrubs.

The staff alleges that respondents failed to obtain written instructions from the shipper and did not issue a single split delivery bill of lading for the entire shipment as required by Item 170 of Minimum Rate Tariff No. 2 for the shipments covered by Exhibit 4, Parts 7 to 13, and Exhibits 12 and 13. The staff allegation was not disputed with respect to Exhibits 12 and 13. In connection with Parts 7 to 13 of Exhibit 4, the president and general manager of Bay City Flower Co. testified that a list which shows the order of delivery is given to the carrier with each split delivery shipment so that the driver is aware of the order in which deliveries are to be made. A sample of the list referred to was received in evidence as Exhibit 19. The staff also alleges in connection with Parts 7, 8 and 9 of Exhibit 4 that respondents performed a split pickup service without first having obtained written instructions and without issuing a single shipping document for the entire shipment as required by Item 160 of Minimum Rate Tariff No. 2. The field representative testified that the

respondents informed him that Bay City Flower Co. tenders all commodities to them at Half Moon Bay, with the exception of chrysanthemums which are tendered at Sunnyvale. The president and general manager of Bay City Flower Co. testified that a bill of lading is made out for each shipment which shows the actual origin. The witness also testified that it was the common practice of his company to tender shipments consisting of chrysanthemums and other flowers at one location rather than having the carrier pick up at both Half Moon Bay and Sunnyvale.

Exhibit 6 covers three shipments wherein the respondents assessed a flat charge which resulted in charges less than the minimum. Exhibit 14 covers 28 shipments wherein respondent assessed rates less than those prescribed in Minimum Rate Tariffs Nos. 2 and 8. Respondents did not dispute the staff's allegations with respect to the shipments covered by said exhibits.

Exhibit 15 covers 36 shipments wherein the staff alleges respondents improperly consolidated shipments, provided free transportation, failed to assess charges on the gross weight of shipments and assessed improper rates. Respondents do not dispute the staff allegations with respect to Parts 1 to 21 of Exhibit 15. In connection with the transportation covered by Parts 22 to 36 of Exhibit 15 the respondents assessed a rate of 50 cents per 100 pounds. Said rate is published in Item 3035 of Western Motor Tariff Bureau Tariff No. 109 and Item 3270 of Pacific Southcoast Freight Bureau Tariff No. 294-E. The rate applies from various points located in Northern California, including Milpitas, to various points in Southern California. The field representative testified that the point of origin of the shipments was beyond the prescribed pickup and delivery limits of Milpitas. The witness for respondents testified

that he has been assured by a traffic service representative that the shipments could be rated pursuant to Item 3270 of Pacific Southcoast Freight Bureau Tariff No. 294-E. The pickup and delivery limits of Milpitas prescribed for the use of Item 3270 of Pacific Southcoast Freight Bureau Tariff No. 294-E are identical to those prescribed for Item 3035 of Western Motor Tariff Bureau No. 109.

We concur that hydrangeas and poinsettias are properly rated pursuant to Item 71280 of National Motor Freight Classification A-8 (Cal). Hydrangeas and poinsettias were transported on the shipments covered by Parts 7, 12 and 13 of Exhibit 4 and Part 1 of Exhibit 12. By rating the hydrangeas and poinsettias pursuant to Item 71280 of the classification the undercharge alleged by the staff on Part 1 of Exhibit 12 is eliminated and the alleged undercharges on Parts 7, 12 and 13 of Exhibit 4 are reduced from \$365.31, \$229.10 and \$144.59 to \$325.75, \$173.16 and \$101.60, respectively.

With respect to the contention of Bay City Flower Co. that mixed shipments of chrysanthemums and other nursery stock were picked up at one location rather than both Half Moon Bay and Sunnyvale, the bills of lading in Exhibit 1 show in connection with Part 7 of Exhibit 4 that pickups were made as alleged by the staff. The bills of lading show, in connection with Parts 8 and 9 of Exhibit 4, that pickups were made at only one location, namely Half Moon Bay as alleged by the representative of Bay City Flower Co. As a result the undercharges as alleged by the staff, on Parts 8 and 9 of Exhibit 4, are reduced from \$162.24 and \$316.85 to \$76.19 and \$298.80, respectively.

Staff counsel recommended that a fine be assessed equal to the amount of the undercharges found pursuant to Section 3800 of the Public Utilities Code and an additional punitive fine in the amount of \$500 pursuant to Section 3774 of the Public Utilities Code.

After consideration, the Commission finds that:

1. Respondents operate pursuant to Radial Highway Common Carrier Permit No. 43-4335.
2. Respondents were served with appropriate tariffs and the distance table.
3. Respondents charged less than the lawfully prescribed minimum rate in Exhibits 3 through 11 and 13 through 15, resulting in undercharges of \$3,938.04.
4. Respondents failed to assess charges on the gross weight of the shipments in connection with the transportation covered by Parts 2 and 5 through 36 of Exhibit 15.

Based upon the foregoing findings of fact, the Commission concludes that respondents violated Sections 3664, 3668 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 \$3,938.04 and that in addition thereto respondents should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$500.

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. Respondents shall pay a fine of \$4,438.04 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondents 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. 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 2 of this order, or any part of such undercharges, remain 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 undercharges remaining to be collected, 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. Respondents 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.

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 10<sup>th</sup>  
day of OCTOBER, 1967.

John E. Mitchell  
President  
Stallman G. Bennett  
Augusta Fox  
William J. Lyons, Jr.  
Neil P. Monsey  
Commissioners