

ORIGINAL

Decision No. 73666

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates, and practices of Delmar G.
Newdigate.

Case No. 8671
(Filed August 15, 1967)

D. G. Newdigate, in propria persona.
Elmer Sjostrom, Counsel, and J. B.
Hannigan, for the Commission staff.

O P I N I O N

By its order dated August 15, 1967, the Commission instituted an investigation into the operations, rates, and practices of Delmar G. Newdigate, an individual, hereinafter referred to as respondent.

A public hearing was held in San Bernardino on October 5, and December 5, 1967, before Examiner DeWolf and submitted on the latter date.

The order states the purpose of the investigation is to determine whether or not respondent has violated Sections 3701, 3705, and 3737 of the Public Utilities Code by failing to keep within this State copies of shipping orders and freight bills, distance rate notices and hourly service freight bills as required by Items 93 and 93.1 of Minimum Rate Tariff No. 7 and by failing to give to the authorized employees of the Commission access to and the right to inspect and examine all books, accounts, papers, and records pertaining to respondent's intrastate service in this State

as a highway permit carrier, and by failing to pay to underlying carriers for the transportation service of said carriers 95 percent of the charges applicable under the minimum rates prescribed in Minimum Rate Tariff No. 7, as required by Item 94 of said tariff.

Respondent previously conducted operations pursuant to Radial Highway Common Carrier Permit No. 36-3775 and operated dump trucks and employed subhaulers. Respondent had no terminal and maintained an office with employees to do rating and office work at 424 South Pampas, Rialto, California, which was removed to 189 E. Jackson Street, Rialto, California. Copies of the appropriate tariffs were served upon respondent.

Decision No. 72074 dated February 28, 1967, found that respondent had failed to properly document shipments from October 1965 to January 1966, recommended deferral of suspension of respondent's permit, and provided for further investigation.

A representative of the Commission's Field Section testified that he made numerous appointments with respondent to examine his shipping documents, the dates being March 13, 1967, March 27, 1967, April 28, 1967, November 20, 1967, November 27, 1967, and December 4, 1967. He further testified that respondent advised him that his records had been removed to Mina, Nevada, and then gave several excuses for not producing the records. He testified that the records have never been made available to the Commission staff for examination.

Two witnesses testified that they are truckers and subhaulers doing hauling for respondent; that their last accounts

with respondent were paid by checks which have been returned marked insufficient funds; that the sum of \$438.60 is due, owing and unpaid to Al Butterfield and the sum of \$329.34 is due, owing and unpaid to Kirk Sand and Gravel and that said sums due are sums owing by respondent for dump truck freight bills for hauling asphalt, sand and gravel upon behalf of respondent during December 1966, as described in Exhibits Nos. 1 and 2 in evidence.

At the hearing on October 5, 1967, respondent requested a continuance and agreed to produce his records for the year of 1966 and make them available for staff examination. The hearing was continued and respondent agreed to produce his records at San Bernardino before November 5, 1967.

At the continued hearing on December 5, 1967, the staff witness testified that respondent had not produced his records.

Respondent did not offer any evidence or testify but stated that he had not been engaged in operations under his permit since January 1, 1967, and that he had been unable to get his records in Mina, Nevada, on account of lack of funds which he said are held up in litigation and he stated that when this litigation is terminated he will be able to get his records and will then pay up all his bills.

The staff recommended that respondent should be ordered to produce his books, records, and shipping documents concerning his carrier operations and that he should be fined \$1,000.

The Commission finds that:

1. Respondent has been operating pursuant to Radial Highway Common Carrier Permit No. 36-3775.
2. Respondent was served with the appropriate tariffs.
3. Respondent has failed, refused, and neglected to give to the authorized employees of the Commission access to and the right to inspect and examine all books, accounts, and records pertaining to respondent's carrier operations.
4. Respondent has failed to keep within this State copies of shipping orders and freight bills concerning his carrier operations and has removed these records to a place outside the State of California.
5. Respondent has failed to pay underlying carriers for the transportation service of said carriers the charges applicable under minimum rates.

The Commission concludes that:

1. Respondent violated Sections 3701, 3705, and 3737 of the Public Utilities Code.
2. Respondent, Delmar G. Newdigate should be fined the sum of \$1,000 as a penalty for said violations pursuant to Section 3774 of the Public Utilities Code.
3. Respondent should be required to produce his books, records, and shipping documents within 90 days.
4. Respondent should be required to pay all unpaid transportation charges due to underlying carriers, and especially the

sum of \$438.60 to Al Butterfield and the sum of \$329.34 to Kirk Sand and Gravel.

O R D E R

IT IS ORDERED that:

1. Delmar G. Newdigate, an individual, shall pay a fine of \$1,000 to this Commission pursuant to Section 3774 of the Public Utilities Code on or before the fortieth day after the effective date of this order.

2. Delmar G. Newdigate shall produce his books, records, and shipping documents at his address in California or at the office of the Public Utilities Commission in San Bernardino within ninety days from the effective date of this order and shall give the authorized employees of the Commission access to and the right to inspect and examine all books, accounts, papers, and records pertaining to respondent's intrastate service in this State as a highway permit carrier.

3. Delmar G. Newdigate shall pay all unpaid transportation charges due to underlying carriers including the sum of \$438.60 to Al Butterfield and the sum of \$329.34 to Kirk Sand and Gravel.

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 30th day of JANUARY, 1968.

[Signature]
President

[Signature]

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Commissioners