

ORIGINALDecision No. 73690

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, charges, and practices of CALIFORNIA CANNERS AND GROWERS, a corporation; and SECURITY TRANSPORTATION COMPANY, a corporation.

Case No. 8660
(Filed August 1, 1967)

Loyd W. McCormick, for respondents.
J. T. Wright, for Continental
Can Company, interested party.
Donald W. Grant, Counsel, and
E. E. Cahoon, for the Commission
staff.

O P I N I O N

On August 1, 1967, the Commission issued an order instituting investigation into the operations, rates, charges, and practices of California Cannery and Growers, a corporation, and Security Transportation Company, a corporation, in order to determine whether respondents are in effect a single business enterprise, whether, in some cases they have charged less than the applicable tariff rate, and in some cases more, and if so, what punishment should be imposed.

Hearing was held on November 27, 1967 before Examiner Robert Barnett in San Francisco, at which time the matter was submitted.

At the hearing the respondents and staff entered into a stipulation, set forth in Finding of Fact No. 1.

The staff recommended that respondents be ordered to pay overcharges, collect undercharges, and be fined a sum equal to the amount of the undercharges. No punitive fine was requested.

A staff rate expert testified that he analyzed records of respondents and concluded that respondents had overcharged Continental Can Company \$134 and had not collected the proper charges in the following instances and amounts:

<u>Company</u>	<u>Undercharges</u>
Anchor Hocking Glass	\$ 372.94
C T Supply	282.21
Fibreboard Paper Products	1,700.89
National Steel Corp.	1,395.12
	<u>\$ 3,751.16</u>

A witness for respondents testified that the violations occurred primarily because of inexperience on the part of California Cannery and Growers; it was not aware of all of the problems connected with tariff interpretation and operating rights; it has since retained the services of a transportation consultant to advise it on rate matters. The witness stated that the overcharge has been repaid and the undercharges are almost all collected.

Findings of Fact

1. California Cannery and Growers holds Radial Common Carrier Permit No. 43-4204, Highway Contract Carrier Permit No. 43-4646, and City Carrier Permit No. 43-5054; California Cannery and Growers has been served with the appropriate minimum rate tariff and supplements thereto, and appropriate rate distance tables, its highway

contract carrier permit and radial common carrier permit have restrictions that it must not operate within the scope of Security Transportation Company's operating authority. Security Transportation Company is a highway common carrier holding a certificate of public convenience and necessity issued by Decision No. 60147, dated May 24, 1960, in Application No. 41610. Security Transportation Company is a wholly owned subsidiary of California Cannery and Growers.

2. Respondents are so united in interest, control, management, and ownership as to be in substance and effect a single business enterprise such that their separate corporate entities should be disregarded in regard to transportation of property for hire between points within California.

3. Respondent California Cannery and Growers has operated within the scope of respondent Security Transportation Company's operating authority, which operation has caused undercharges and an overcharge.

4. Respondents have overcharged Continental Can Company \$134, which has been repaid.

5. Respondents have not collected the proper tariff rates in the following instances and amounts:

<u>Company</u>	<u>Undercharges</u>
Anchor Hocking Glass	\$ 372.94
C T Supply	282.21
Fibreboard Paper Products	1,700.89
National Steel Corp.	1,395.12
	<u>\$ 3,751.16</u>

Conclusion of Law

The Commission concludes that respondents violated Sections 458, 494, 3664, and 3737 of the Public Utilities Code. Respondents should pay a fine of \$3,751.16 pursuant to Sections 2100 and 3800 of the Public Utilities Code.

O R D E R

IT IS ORDERED that:

1. Respondents shall pay a fine of \$3,751.16 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 in Finding No. 5, 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 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 violation of law.

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 6th
day of FEBRUARY, 1968.

William La Berrud President
Augustus
William Spruce
David P. Monassey Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.