

ORIGINAL

Decision No. 74340

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of MacDONALD & DORSA TRANSPORTATION COMPANY, a corporation, L. J. CIRAULO, JIM COLE, DAVID BEEBE, BURLY BARTON, and JOHN RECOTTA.

Case No. 7736

ORDER DENYING PETITION FOR MODIFICATION

Petitioner, MacDonald & Dorsa Transportation Company, respondent in Case No. 7736, requests that the fine heretofore ordered by the Commission be reduced to \$500.

By Decision No. 69084, dated May 18, 1965, the Commission concluded that respondent had violated Sections 3668, 3669 and 3737 of the Public Utilities Code and ordered that a fine of \$2,500 be paid. Subsequently rehearing was granted with the result that by Decision No. 73791, dated March 5, 1968, the Commission reaffirmed the findings, conclusions and order of Decision No. 69084, with certain amendments.

Petitioner recites three grounds in support of the reduction; the long delay in bringing this proceeding to a conclusion; the statement by staff counsel at the commencement of the proceeding that punitive damages were not being sought; that petitioner has gone out of business and forfeited its permits to engage in the operations resulting in this proceeding.

None of these grounds justify a reduction in fine. While admittedly this proceeding has consumed much time a rehearing was

C. 7736 ds

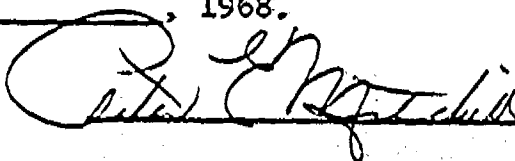
involved as well as change of staff counsel. If mere passage of time became a proper ground for a reduction in fines levied by the Commission parties would be encouraged to delay proceedings deliberately. Nor can staff counsel's statement at the hearing justify a reduction since the Commission is in no way bound by the statements of its staff. Finally, the fact that the petitioner has ceased operations does not alter the fact that it operated in violation of the applicable tariff provisions.

Based upon the foregoing considerations,

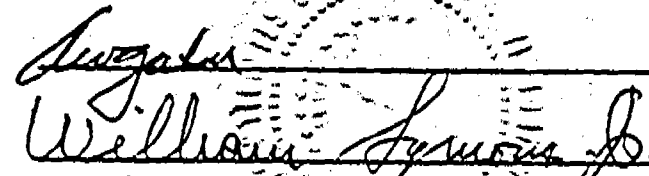
IT IS ORDERED that said petition be and it is hereby denied.

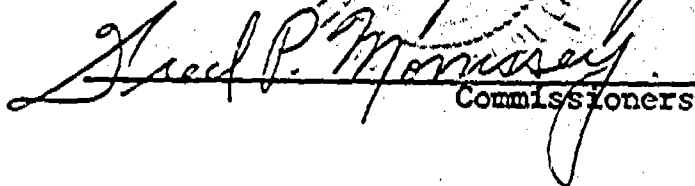
Dated at San Francisco, California, this

7th day of JULY, 1968.



President






Commissioners

C. 7736

WILLIAM M. BENNETT, Dissenting Opinion

I dissent to today's order. It penalizes the carrier selectively for an industry practice. It reflects upon the inability of this Commission to conduct its business with dispatch and despite the fact that the delay was caused by the Commission in some way the respondent is penalized for this. It is particularly difficult to understand the action of the Commission in view of the recommendation of staff counsel that no penalty be imposed. This respondent is suffering from the exercise of power arbitrarily used.

/s/ WILLIAM M. BENNETT


WILLIAM M. BENNETT
Commissioner

Dated: San Francisco, California
July 2, 1968