

ORIGINAL

Decision No. 75126

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of PREMIER)
TRANSPORT, a corporation.)

Case No. 7762

Allan A. Sigel, for respondent.
John C. Gilman, Counsel, and E. E. Cahoon,
for the Commission staff.

O P I N I O N

By its Order to Show Cause, dated July 6, 1967, the Commission ordered Premier Limestone Products, Inc. and Premier Marble Products, Inc., to show cause why they or either of them should not be ordered to pay subhaulers the amounts named in ordering paragraph 4 of Decision No. 68344.

In Finding No. 3 of said decision, the Commission found that "There exists such unity of ownership, interest and control between Premier Marble and Premier Limestone as shippers, and respondent, as carrier, to warrant disregard of their separate entities for the purpose of enforcing the rates prescribed by the Commission."

A public hearing was held before Examiner Porter on August 6 and 7, 1968, in Los Angeles and the matter was submitted subject to briefs to be filed. Briefs having been filed the matter is ready for decision.

On October 29, 1963, an order was made by the Commission instituting an investigation into the operations, rates and practices of Premier Transport, a corporation ("Transport" herein), a carrier

possessing a radial highway common carrier permit. On December 15, 1964, the Commission issued Decision No. 68344, ordering Transport to pay to certain subhaulers previously engaged by Transport, certain sums which it had retained out of the applicable rates paid to Transport by Premier Marble Products and Premier Limestone Products. Transport has not complied with said order.

At the hearing on August 6, 1968, Premier Marble Products made a motion for an order modifying the Commission's order in Decision No. 68344 by deleting therefrom ordering paragraph 4 requiring payment of certain sums to subhaulers; a motion to dismiss the order to show cause as to Premier Marble Products (the sole and surviving corporation, Premier Limestone Products having been merged into Premier Marble Products), and also filed a Petition for Proposed Report.

On March 31, 1966, Transport, being unable to continue in business due to financial losses, discontinued all business operations and shortly thereafter voluntarily surrendered its permit.

During the interim between the Commission's order against Transport, and the present Order to Show Cause, substantial changes occurred with respect to the subhaulers (held by the Commission in Decision No. 68344 to be prime carriers): Estero Corporation went out of business, Doyle D. Halbrosk filed a petition in bankruptcy and discontinued business and John C. Turner discontinued operations and apparently moved to Oregon.

Transport had paid the fine to the Commission assessed in Decision No. 68344.

Premier Marble Products at the hearing also claimed offsets as to the amounts owed to the carriers.

The Order to Show Cause was issued more than two years after Transport had terminated retentions from subhaulers in accordance with the Commission's order; more than three and one-half years after the institution of investigation as to Transport, in Case No. 7762; and more than five years after some of the transportation complained of had been provided by Transport.

In view of the facts that: (1) Transport has gone out of business; (2) Premier Limestone has ceased to exist; (3) Transport has paid to the Commission the fine assessed in Decision No. 68344; (4) some of the carriers involved have ceased doing business or gone bankrupt; and (5) the length of time this matter has been before the Commission, the Commission finds that no useful purpose will be served by prolonging the matter or in deciding important legal issues under circumstances that would be academic rather than serve to enforce the rules and regulations of this Commission.

The Commission concludes that the Order to Show Cause should be set aside and vacated. The request for a proposed report is denied. Decision No. 68344 shall remain in full force and effect.

O R D E R

IT IS ORDERED that the Order to Show Cause in Case No. 7762 is set aside and vacated.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Premier Marble Products.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 20th day of DECEMBER, 1968.

William J. Sproule, Jr.
President

Shel P. Moussey
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.