HW

ORIGINAL

Decision No. 76055

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 KELLY TRUCKING COMPANY, a corporation.	Case No. 8305 (Filed May 14, 1968)

Woolley, Collins and Ward, by Frederick B. Holoboff, for respondent.
Janice E. Kerr, Counsel, and J. B. Hannigan, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the rates, operations and practices of Kelly Trucking Company, a corporation, for the purpose of determining whether respondent violated Section 3737 of the Public Utilities Code by failing to pay purported subhaulers 100 percent of the applicable minimum rates and charges for transportation performed for Kel-Tez Corporation as required by a restriction in respondent's permits and by failing to pay subhaulers within the period required by Item 94 of Minimum Rate Tariff No. 7.

Public hearing was held before Examiner Mooney in San Diego on August 7 and 8, 1968. The matter was submitted upon the filing of concurrent briefs on October 31, 1968.

Respondent operates pursuant to Radial Highway Common Carrier Permit No. 37-4954.[1/] Said permit authorizes the transportation of commodities for which rates are provided in Minimum Rate

---

1/ At the time of the investigation herein, respondent also held a city carrier permit subject to the same restrictions as those included in its radial highway common carrier permit. The City Carriers' Act was repealed in 1968, and Section 3511 of the Highway Carriers' Act was concurrently amended to remove the restriction prohibiting highway carriers, including radial highway common carriers, from performing operations entirely within the limits of a single city or city and county.

Tariffs Nos. 7 and 17 in dump truck equipment within a radius of 50 miles from point of operation. The following restriction is included in paragraph 11 of the permit (Exhibit 4):

> "Whenever permittee engages other carriers for the transportation of property of Kel-Tez Corporation or customers or suppliers of said corporation, permittee shall not pay such carriers less than 100 percent of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such other carriers."

Respondent has a terminal in San Diego. During the staff investigation, it employed nine drivers, three maintenance personnel and one office employee and owned nine tractors, 22 sets of bottom dump trailers and four pickup trucks. Respondent's gross operating revenue for the year ending March 31, 1968 was $829,858. A copy of Minimum Rate Tariff No. 7, together with supplements and additions thereto, has been served on respondent.

On February 19 through 23, 1968, a representative of the Commission's Compliance Section visited respondent's place of business and checked its records for the period September through December, 1967, covering the transportation of earth for Kel-Tez by the 27 subhaulers regularly employed by respondent during said period. The representative stated that he excluded transportation performed by occasionally employed subhaulers from his investigation. He testified that he made true and correct photostatic copies of the subhaul statements prepared by respondent and its check stubs evidencing payment to the subhaulers and also of respondent's billing to Kel-Tez for the transportation included in his investigation and that said copies are included in Exhibits 1 and 2, respectively. The witness pointed out that all charges shown on the billing to Kel-Tez in Exhibit 2 were based on applicable minimum rates; that the "net payable" shown on the individual subhaul statements in Exhibit 1 for the 27 subhaulers is

based on the applicable minimum rates less certain deductions; that the deductions, though not the same on every statement, include transportation taxes, trailer rental, fuel and the like; and that the check stubs in Exhibit 1 show that five percent was deducted from the "net payable" shown on each statement. He asserted that said five percent deduction violates the restriction in respondent's permit which requires it to pay 100 percent of the applicable minimum charge to other carriers engaged by it to transport property for Kel-Tez. The representative stated that the permit restriction resulted from a questionnaire mailed to all carriers by the division of the Commission responsible for maintaining permit records. He explained that the questionnaire was mailed in March, 1966; that it requested information as to whether the carrier had an affiliation with any shippers by reason of common ownership, control and management; that respondent returned said questionnaire promptly with the notation that it had such a relationship with Kel-Tez; and that after an exchange of correspondence, respondent's permit authority was amended on August 16, 1966, to include said restriction. He testified that he was informed by the president of respondent that he controlled and managed both respondent and Kel-Tez. The witness stated that respondent also engaged subhaulers in connection with transportation it performed for other shippers during the period in question and that the permit restriction did not apply in connection therewith.

The representative testified that he was informed by respondent that at the initial pre-employment interview of each subhauler engaged by respondent, the subhauler was requested to sign a two page "Sub Hauling Contract" and an attached one page document entitled "Memorandum" (Exhibit 3). In addition to provisions setting forth the rights and liabilities of the parties, paragraphs 6, 10 and 15 of the

"Sub Hauling Contract", provide in essence that respondent may deduct from any money it owes the subhauler the cost of any taxes, repairs or maintenance, fuel, oil, labor, tires or merchandise paid on behalf of or furnished to the subhauler as well as any other monetary claims respondent has against the subhauler. Paragraph 6 of the contract also provides that respondent will furnish shipping documents and perform billing and collecting. Paragraph 8 thereof provides that respondent will pay the subhauler 95 percent of the applicable minimum rates for the transportation performed unless other arrangements are agreed to in writing between the parties. The "Memorandum" states that respondent makes available to its subhaulers certain auxiliary services which the average subhauler cannot economically maintain for himself and that the services are listed in the contract and include a charge for administrative expense. Boxes are provided at the bottom of the document for the subhauler to check if he does not wish to avail himself of said services, or if he does, whether he elects to pay a fixed rate which is $150 per month or a flexible rate which is five percent of the monthly gross earned by the subhauler.

The representative stated that all subhaulers except Cowan Trucking had signed both the contract and memorandum and had elected the flexible five percent charge; that Cowan Trucking had signed the contract only; that according to respondent, the five percent deduction also included, in addition to the service enumerated in the contract, the right to park equipment in space provided by respondent and the use of respondent's shop facilities; and that he contacted 14 of the subhaulers between February and June, 1968, and was informed by each that the five percent deduction was a job buying device and no benefit was either anticipated or in fact received for said deduction.

The representative pointed out that the documents in Exhibit 1 show that in certain instances respondent did not pay subhaulers within the credit period set forth in Item 94 of MRT No. 7 which requires payment to be made to the subhauler within 20 days following the end of the month in which the transportation was performed. He explained that a hand tag or document including all information necessary to pay the subhauler was turned in by the subhauler at the end of each day or the next morning.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits 1 and 2, together with the supplemental information testified to by the representative, and formulated Exhibit 5, which shows the minimum charge for all transportation for Kel-Tez performed by each of the 27 subhaulers during the period investigated, a five percent deduction from said amount and the resulting alleged underpayment. The total of the alleged underpayments shown in Exhibit 5 is $1,952.21. The rate expert stated that respondent may charge a subhauler the reasonable value of any service rendered to the subhauler provided it is handled as a separate transaction or billing and is not deducted from any amount owed to the subhauler for transportation services. He testified that there were 362 days of hauling listed in Exhibit 1 wherein subhaulers were not paid within the 20 day credit rule in MRT No. 7. He explained that in each instance, payment was within 30 days after the termination date of the credit period. It is noted from a review of Exhibit 1 that in excess of 1,100 days of hauling are listed therein.

The 14 subhaulers who were contacted by the representative were subpoenaed by the staff. The owner of Cowan Trucking testified that he has two tractors, 11 sets of trailers and one truck and

trailer and is primarily an overlying carrier; that although he is a competitor of respondent, he occasionally subhauls for it; that he did not sign the memorandum on the advice of his lawyer; that respondent prepared the subhaul statements; that he was told by respondent the five percent was a service charge, but the only services he received were being called to subhaul and supplied with the necessary hauling documents; that he does not have any restrictions in his permits similar to the one in respondent's authority; that he holds out the five percent authorized by the tariff when he hires subhaulers; that the five percent does not cover all of his costs in connection therewith; and that respondent needs this five percent in order to operate.

Following is a summary of the testimony of the remaining 13 subpoenaed witnesses: Seven own a tractor only and lease a set of trailers from respondent for which they pay 25 percent of the gross amount earned; five own a tractor and set of trailers; one owns two tractors and a set of trailers; each was employed by respondent as a subhauler during the review period and transported Kel-Tez shipments; some also subhauled shipments for other customers of respondent; most continue to operate as an exclusive subhauler for respondent; the majority understood the five percent deduction in issue to be a commission charge by respondent; several were of the opinion that this charge was justified; respondent furnished all necessary subhaul documents without charge and prepared all freight bill compilations, monthly subhaul statements and billings to shippers; some purchased fuel from respondent; the price charged by respondent for fuel was below the retail cost but above the wholesale price; several purchased liability insurance through respondent's broker at a lower price than they could obtain elsewhere; some occasionally used respondent's repair facilities and grease, borrowed tools and spare tires, were

given advice or assistance with repairs and were not charged for any of said services; respondent provided free message and telephone service, including toll calls; respondent has a seniority system for its sub-haulers in assigning jobs and does all of the dispatching of equipment; most do not regularly park their equipment at respondent's facilities; the tractor operators are not charged for parking; no parking fee was charged the full unit truck and trailer operators until it became necessary for respondent to lease additional space across the street from its yard; after the additional space was leased, the full unit operators desiring parking privileges were required to park there and were charged ten dollars a month for this.

The president of respondent testified that he is the sole owner of respondent and is also the president of Kel-Tez which holds a Class A Contract Permit and is engaged primarily in grading, excavating and compacting. He stated that prior to January, 1968, he held a 51 percent interest in Kel-Tez and the remaining 49 percent interest was held by a Mr. Fuentez and that subsequent thereto, he has acquired all of the stock in said corporation. The witness explained that respondent and Kel-Tez have the same office and full time office employee; that Kel-Tez pays office rent and part of the cost of utilities and said employee's salary to respondent; that both he and his wife are in the office part of the time; that both companies also have their own employees; and that separate books are maintained for each company. The president testified that Mr. Fuentez owned some heavy equipment, including bulldozers, graders and water trucks; that to assure work for both parties, Kel-Tez was formed to bid on loading, hauling, grading and compacting for both public works and private projects; that respondent handles all of the hauling for Kel-Tez and is paid minimum rates for this. A financial statement for Kel-Tez for the fiscal year ending October 31, 1967, shows a net loss of $63,700.54

for said period (Exhibit 8). The witness stated that approximately 50 percent of respondent's business is for other customers.

The president testified that respondent regularly hires 13 tractor owners to pull 13 extra sets of trailers owned by it and eight full unit operators. He stated that from 20 to 40 additional subhaulers might be hired from time to time during the month depending on the amount of work respondent had. He asserted that respondent does use its own equipment on Kel-Tez jobs, if available.

Both the president and his wife testified that the five percent withheld by respondent from the gross amount earned by the subhaulers is to cover the cost of documents furnished free to the subhaulers and also the cost of clerical, dispatch and foreman services provided for the subhaulers at no charge. In addition, they stated, respondent makes available to its subhaulers fuel at a savings of 4.9 cents per gallon below the retail price; fleet discounts on tires, tubes and insurance; parking facilities in a locked and lighted lot at no charge to tractor operators and at a nominal charge to full unit operators; storage facilities for tires and tubes at no charge; mechanic services on the job and after work to render advice and assistance; and repair parts at cost. Respondent's Late Filed Exhibit 9 lists approximately 40 items of materials and services either furnished or made available to its subhaulers free or at cost. Both witnesses stated that although they had not made a study to determine the cost of providing the aforementioned services for the subhaulers, they do entail a cost outlay on the part of respondent. They pointed out that if the services were not available, the subhaulers would have to provide them and pay for them. The president stated that if respondent is required to refrain from withholding the five percent, it will attempt to use all of its own equipment and tractor operators

only on Kel-Tez jobs and will increase the trailer rental charged the tractor operators from 25 to 30 percent of the amount they earn. He stated that he was not certain whether the "Memorandum" agreement attached to the subhaul contracts had been used prior to the insertion of the restriction in respondent's operating authority.

With respect to respondent's procedure in paying all of its subhaulers, the president explained that for work performed between the 21st of one month and the 20th of the next month, payment would be made between the 15th and 20th of the following month. For example, if work were performed between the 21st of January and the 20th of February, payment would be between the 15th and 20th of March. As a result, for any work performed after the 20th of a month, payment would not be within the credit period in Item 94 of MRT No. 7, but would be within 30 days of said period. The president testified that this situation is unavoidable. He pointed out that 80 to 90 percent of respondent's business involves hauling in connection with federal aid freeway and other public work projects; that respondent does not receive payment for such work performed after the 20th of the month in time to remit payment to the subhaulers within the credit period but does so immediately upon receipt thereof; and that respondent does not have sufficient available funds to pay the subhaulers before it is paid. He stated that respondent is contemplating applying to the Commission for whatever relief might be necessary from the credit rule.

Discussion

The evidence clearly establishes that respondent did not comply with the restriction in paragraph 11 of its permit which requires the payment of 100 percent of the applicable minimum rates to other carriers engaged by it to transport property for or on behalf of

Kel-Tez. Said restriction was based on information furnished to the Commission in reply to a questionnaire sent to respondent and all other carriers with similar operating authority in 1966. Respondent's reply stated that it was affiliated with Kel-Tez by reason of common ownership, control and management. The record clearly establishes this to be a fact. During the period investigated and at all times subsequent thereto, both companies have had the same president, office and office employee, and the president has been the sole owner of respondent. From its incorporation in 1966, the president has owned a 51 percent interest in Kel-Tez and in January, 1968, acquired a 100 percent interest. His wife is an officer in both companies, a director of respondent and since January, 1968, has been a director of Kel-Tez. We have consistently held that where such a relationship exists, the affiliated companies are, for the purpose of minimum rate regulation, one and the same and ostensible subhaulers engaged by the affiliated carrier to transport the property of the affiliated shipper or its customers or suppliers are in fact prime carriers and should be paid 100 percent of the applicable minimum rates and charges for such transportation. To hold otherwise would allow the shipper through its affiliated carrier to obtain transportation at less than minimum rates.

Respondent in its brief alleged that the procedure employed by the Commission to amend respondent's operating authority to include the paragraph 11 restriction was unconstitutional. We do not agree. Specifically, respondent argued that it was a denial of due process in that respondent was not afforded an opportunity to be heard before the restriction was inserted. Respondent had been furnished with excerpts of certain Commission decisions which held that in circumstances similar to those herein, ostensible subhaulers must be paid 100 percent

of the applicable minimum rates and charges.[1/] Had respondent wished to take exception to the permit restriction, it could have requested a public hearing on the matter either before or at the time the restriction was imposed. This it did not do. Respondent also asserts that the decisions referred to involved transportation of general commodities subject to MRT No. 2; whereas, herein we are concerned with dump truck transportation subject to MRT No. 7. This is irrelevant. The purpose of this type of restriction is to assure that not less than the applicable minimum rates shall be paid to the ostensible subhaulers for the transportation of property of the affiliated shipper, irrespective of what commodities or minimum rate tariffs might be involved. Even assuming arguendo that there had been no restriction in respondent's operating authority, the evidence herein supports a finding that the separate identity of respondent and Kel-Tez should be disregarded for the purposes of this proceeding, and the ostensible subhaulers transporting the property of Kel-Tez should be paid the full minimum rates and charges for such transportation.

A review of MRT No. 7 discloses that although said tariff does include special provisions which authorize a prime carrier to pay 95 percent of the applicable minimum rates and charges to subhaulers and to make certain deductions therefrom, there are no similar provisions therein authorizing the payment of anything less than 100 percent of the applicable minimum to prime carriers.[2/] As stated

---

1/ Investigation of J & V Trucking Co., 59 Cal. P.U.C. 337 (1962); Investigation of Heron Mills, Inc., 59 Cal. P.U.C. 507 (1962); and Investigation of Trans.-Arrow, Inc., 61 Cal. P.U.C. 304 (1963).

2/ Item 94 of MRT No. 7 provides that payments by an overlying carrier (prime carrier) to an underlying carrier (subhauler) shall not be less than 95 percent of the applicable minimum rates provided in said tariff less gross revenue taxes payable to the Board of Equalization and the Commission, and that liquidated amounts owed by the underlying carrier and authorized by said carrier in writing may be deducted from said payment provided such deductions are itemized and copies thereof are maintained for Commission inspection.

above, the other carriers when transporting Kel-Tez shipments are prime carriers. Respondent is, therefore, prohibited not only by the restriction in its operating authority but also by the tariff from taking the five percent deduction or any other deductions including those listed in the subhaul contract for taxes, fuel, merchandise and the like, from the minimum amount it is obligated to pay the other carriers for said transportation. Our holding herein in no way curtails respondent's right to recover the value of any goods or services it has furnished to or on behalf of the other carriers. As pointed out by the staff rate expert, any legitimate amount owed to respondent may be billed to and collected from the other carriers as an independent transaction separate and apart from the payment of transportation charges.

It is noted that on the subhaul statements for the tractor operators in Exhibit 1, respondent has deducted trailer rental based on 25 percent of the gross minimum amount earned by them. For the reason hereinabove stated, this may not be done in connection with Kel-Tez shipments. Such trailer rentals must likewise be handled as separate transactions. Respondent's president stated that if respondent is directed to cease its practice of withholding the five percent it will use only its own equipment and tractor operators on Kel-Tez jobs and will increase the trailer rental for other jobs from 25 to 30 percent. Respondent is cautioned that if it takes such action and it is not fully justified it could result in further investigation by the Commission. We have heretofore held a trailer rental charge based on 33-1/3 percent of the minimum charge to be unreasonable.[3/] There is no basis on this record, however, to find that any particular amount

---

3/ Investigation of MacDonald and Dorsa Transportation Co., 64 Cal. P.U.C. 340 (1965).

charged by respondent or basis used by it for computing trailer rentals is or is not reasonable. As a matter of information, the Commission has before it a proceeding involving the issue of trailer rentals in connection with dump truck transportation.[4/]

Regarding the staff's allegation that respondent at times failed to pay the other carriers within the credit period specified in MRT No. 7 both in connection with transportation for Kel-Tez and for other shippers, respondent's president candidly admitted this to be true. He explained that this is unavoidable and is due to delays respondent has experienced in obtaining payment from customers for whom respondent or Kel-Tez has performed services. He asserted that respondent will attempt to remedy this situation and, if necessary, will seek relief from the applicable tariff provisions. Having concluded that when the other carriers are transporting Kel-Tez shipments they are in fact prime carriers, it is recognized that the primary responsibility for late collection of transportation charges in connection with such shipments rests with them and not with respondent in its capacity as a shipper. However, because respondent is a permitted carrier, we do have jurisdiction over it and can require it to make payments to the other carriers within the requisite credit period. It is to be noted that the credit rule in Item 45 of the tariff applies to the Kel-Tez shipments and not the rule in Item 94 which applies to the shipments for other customers.[5/]

4/ Petition 112 in Case No. 5437.

5/ Item 45 provides that a prime carrier may extend credit "not to exceed the 15th day following the last day of the calendar month in which the transportation was performed"; whereas, Item 94 provides that the overlying (prime) carrier shall pay the underlying carrier (subhauler) within "twenty days following the last day of the calendar month in which the transportation was performed."

We come next to the penalty, if any, which should be imposed. We concur with the staff that respondent should be directed to pay the other carriers transporting Kel-Tez shipments the difference between 100 percent of the applicable minimum rates and charges and the amounts heretofore paid by respondent for said transportation. Our direction will include all transportation listed in the staff's Exhibit 5 (rate exhibit) and all Kel-Tez transportation performed by the other carriers subsequent thereto. The record establishes that respondent has furnished certain goods and services to the other carriers and has paid certain taxes on their behalf. As hereinabove stated, respondent is not precluded by the restriction in its permit from charging the other carriers transporting Kel-Tez shipments the fair value or cost of any goods, services or taxes attributable to such transportation, which it can establish were in fact furnished to or paid on behalf of such other carriers provided such charges are handled as a separate transaction and not deducted from transportation charges. Respondent is placed on notice it should maintain sufficient records to support any such separate transactions which relate to Kel-Tez shipments to avoid the possibility that they may be considered a device to circumvent the permit restriction and that it may not include in such billing the value of any goods or services it makes available to the other carriers but which are not used.

As to a punitive fine, we are of the opinion, based on a review of the entire record, that such a fine in the amount of $500 should be imposed on respondent. It has been clearly established herein that respondent has disregarded the restriction in its permit. The contracts and agreements between respondent and the other carriers were an attempt on its part to avoid the restriction. In this

connection, a carrier cannot by contract or agreement with another carrier, shipper or other party rescind or otherwise alter a restriction placed in its operating authority by the Commission.

Findings and Conclusions

The Commission finds that:

1. Respondent holds permitted authority duly issued by this Commission and has been served with Minimum Rate Tariff No. 7, and all supplements and additions thereto.

2. Kel-Tez holds a Class A Contract Permit and is engaged in the business of grading, excavating and compacting in connection with road construction and other construction projects.

3. Respondent and Kel-Tez are under common ownership, management and control. The president of respondent is also the president of Kel-Tez. He is a director of both corporations. Said president owns all of the stock of respondent corporation and since January, 1968, has owned all of the stock of Kel-Tez. Prior thereto he owned the controlling interest (51 percent of the stock) in Kel-Tez. The president's wife is an officer in both corporations, a director of respondent and since January, 1968, has been a director of Kel-Tez. Both companies have the same office and office employee.

4. For the purposes of this proceeding, respondent is the alter ego of Kel-Tez. The services of the purported subhaulers when engaged by respondent to transport the property of Kel-Tez are in reality those of prime carriers, and in such circumstances, respondent is acting in its capacity as a shipper. MRT No. 7 contains no provision authorizing a shipper to make any deduction from the applicable minimum rates and charges for transportation performed for it, irrespective of whether or not the deduction is reasonable.

5. The permit authority held by respondent was amended by the Commission on August 16, 1966, to include the restriction quoted hereinabove which provides that other carriers engaged by respondent to transport property for or on behalf of Kel-Tez shall not be paid less than 100 percent of the applicable minimum rates and charges for such transportation.

6. The manner in which the permit restriction referred to in Finding 5 was imposed did not result in a denial of due process to respondent. Said restriction resulted from a questionnaire sent by the Commission to respondent and to all other permitted carriers in the same class. Respondent had the right to request a hearing on the matter either before or immediately after the restriction was inserted on August 16, 1966. This it did not do.

7. Respondent hired other carriers to transport shipments of Kel-Tez and made certain deductions from the applicable minimum rates and charges payable to the other carriers for such transportation in the instances set forth in Exhibit 5, resulting in underpayments to said other carriers in the amount of $1,952.21.

8. Respondent may not by contract or agreement with any other carrier or party avoid the restriction in its permit authority referred to in Finding 5. Said restriction does not prohibit respondent from charging other carriers engaged by it the fair value or cost of any goods, services or taxes it can establish were in fact furnished to or paid on behalf of said other carriers in connection with Kel-Tez shipments provided such charges are billed as a separate transaction and not deducted from minimum transportation charges.

9. Respondent did not at times pay other carriers engaged by it as prime carriers to transport Kel-Tez shipments or as subhaulers to transport freight of other shippers within the applicable credit

periods set forth in MRT No. 7. Said delays in payment were occasioned by delays experienced by respondent or Kel-Tez in obtaining payment from other companies for whom the work was performed. MRT No. 7 makes no provision for such delays.

The Commission concludes that:

1. Respondent violated Section 3737 of the Public Utilities Code.

2. Respondent should pay a fine, pursuant to Section 3774 of the Public Utilities Code, in the amount of $500.

3. Respondent was not denied due process by the inclusion of the restriction in issue in its permit on August 16, 1966.

The order which follows will direct respondent to review its records relating to all transportation, including the transportation referred to herein, performed in behalf of Kel-Tez, or the customers or suppliers of Kel-Tez, wherein respondent employed other carriers to effect such transportation between September 21, 1967 and the effective date of this order, and to promptly pay to such other carriers the difference between 100 percent of the lawful minimum rates and charges applicable to such transportation and the amount previously paid to such other carriers. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent to comply with this directive and the results thereof. If there is reason to believe that respondent has not been diligent, or has not taken all reasonable measures to comply with this directive; or has 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. Respondent shall pay a fine of $500 to this Commission on or before the fortieth day after the effective date of this order.

2. Respondent shall review its records of all transportation performed for Kel-Tez Corporation wherein purported subhaulers were used to perform the actual transportation between September 21, 1967, and the effective date of this order. Respondent shall then pay to such furnishers of transportation the difference between 100 percent of the lawful minimum rate and charge applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.

3. Within ninety days after the effective date of this order, respondent shall complete the examination of records required by paragraph 2 of this order and shall file with the Commission a report setting forth the names of the purported subhaulers used to perform transportation for Kel-Tez Corporation and the amount originally paid to each, the further amount found due to each, and any amount subsequently paid to each.

4. In the event any payments to be made, as provided in paragraphs 2 and 3 of this order, remain unpaid one hundred twenty days after the effective date of this order, respondent shall file with the Commission on the first Monday of each month thereafter a report setting forth the action taken to pay the actual furnishers of transportation and the result of such action until payments have been made in full or until further order of the Commission.

5. Respondent shall cease and desist from further violation of the restriction in its operating authority which prohibits it whenever it engages other carriers in connection with the transportation of property for Kel-Tez Corporation or the customers or suppliers of Kel-Tez Corporation from paying such other carriers less than 100 percent of the applicable minimum rates established by the Commission.

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 19th day of AUGUST, 1969.

William Symons Jr.
President

Commissioners