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Decision No. 76183

ORIGINAL

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)
 J. M. TRUCK CO., INC., doing)
 business as J. M. TRUCKING COMPANY,)
 a California corporation; L. B.)
 FOSTER CO.; MARWAIS STEEL CO.;)
 MAYCO-SALVAGE CO., INC.; and)
 STATE PIPE & SUPPLY CO.)

Case No. 8925
(Filed June 17, 1969)

Robert M. Falconer, for J. M. Truck Co.,
 Inc., respondent.
Gordon A. Johnson, Counsel, and
E. E. Cahoon, 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 J. M. Truck Co., Inc., doing business as J. M. Trucking Company (J. M. Trucking), for the purpose of determining whether J. M. Trucking violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging less than applicable minimum rates in Minimum Rate Tariff No. 2 (MRT No. 2) for transportation performed for L. B. Foster Company (Foster), Marwais Steel Co. (Marwais), Mayco Salvage Co. (Mayco) and State Pipe & Supply Co. (State Pipe), and whether J. M. Trucking performed C.O.D. (Collect on Delivery) service without having the required C.O.D. bond on file with the Commission.

Public hearing was held before Examiner Mooney in Los Angeles on August 6, 1969, on which date the matter was submitted.

J. M. Trucking operates pursuant to radial highway common carrier and highway contract carrier permits. It does not have a

C. 8925 hjh

C.O.D. bond on file with the Commission. At the time of the staff investigation referred to hereinafter, J. M. Trucking had two terminals, one in Union City and one in Downey; employed seven drivers, two office personnel, a dispatcher and a bookkeeper; and operated seven tractors, 13 flat rack semitrailers and a converter gear. It had a gross operating revenue of \$294,516 for the year 1968, and was served with appropriate minimum rate tariffs and distance tables, together with supplements and additions thereto.

On July 11, 12 and 17 and August 2, 1968, a representative of the Commission's Compliance Section visited J. M. Trucking's terminal in Downey and examined its records for the period March 15, 1968 through June 15, 1968. It transports primarily iron or steel products and most of this is pipe. Approximately 350 freight bills were issued by said respondent during the review period. The representative testified that he made true and correct photocopies of freight bills which appeared to contain rate errors and the supporting underlying documents relating to transportation performed for Foster (13 counts), Marweis (2 counts), Mayco (1 count) and State Pipe (1 count) and that all of the photocopies are included in Exhibit 1. The witness stated that any necessary clarifying information regarding the documents in Exhibit 1 was furnished to him by J. M. Trucking's dispatcher. He asserted that he personally determined whether the origins and destinations of the transportation in issue were or were not rail-head locations. He pointed out that said carrier respondent transported a C.O.D. shipment without having the required bond on file. In this connection, paragraph 2 of General Order No. 34-F and paragraph 2 of Item 180 of MRT No. 2 each provide in part that no highway permit carrier "shall handle C.O.D. shipments unless and

until it has on file with the Commission a good and sufficient bond in such form as the Commission may deem proper, in the sum of not less than Two Thousand Dollars (\$2,000)". The representative explained that subsequent to his field investigation, he developed additional information which established that there was no undercharge in connection with the transportation covered by the documents in Part 5 of Exhibit 1 relating to Foster.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibit 1, together with the supplemental information testified to by the representative, and formulated Exhibits 2, 3, 4 and 5 which show the rates and charges assessed by respondent, the rates and charges computed by the staff and the alleged undercharges for the transportation performed for Foster, Marwais, Mayco and State Pipe, respectively. The witness asserted that the undercharges resulted from the application of incorrect rates and charges; failure to comply with the documentation and time requirements of the multiple lot, split pickup and split delivery rules in MRT No. 2; failure to assess off-rail charges; the use of an incorrect weight; and failure to assess a C.O.D. charge. The rate expert stated that, excluding Part 5 of Exhibit 2 (Foster), the total amount of undercharges shown in each of the rate exhibits and the total for the four were as follows:

<u>Exhibit No.</u>	<u>Consignee</u>	<u>Amount of Undercharge</u>
2	Foster	\$1,006.25
3	Marwais	266.41
4	Mayco	160.49
5	State Pipe	<u>58.83</u>
	Total	\$1,491.98

The dispatcher for J. M. Trucking testified that all of the transportation covered by Part 2 of Exhibit 2 (Foster) was picked up in one day and that all of the transportation covered by

Part 12 of said exhibit was delivered to a single destination. The supporting documents in Exhibit 1 show otherwise. The staff rate expert stated that if this were true, the undercharges of \$24.55 and \$122.47 shown in Parts 2 and 12, respectively, would be eliminated. J. M. Trucking did not take exception to the other ratings by the staff.

The dispatcher further testified as follows: During the period covered by the staff review, he performed all of the rating; he is not too familiar with tariffs; any errors that did exist were inadvertent and unintentional; to assure that errors will not occur in the future, J. M. Trucking has now retained a traffic consultant firm to prepare all of its documents and to do its rating and billing.

We will accept the explanation by the dispatcher regarding the manner in which the shipments covered by Parts 2 and 12 of Exhibit 2 (Foster) were physically handled. In the circumstances, no undercharge exists in either of said parts. However, J. M. Trucking is placed on notice that it is expected to show clearly and concisely on both its freight bill and supporting documents all information necessary to rate a shipment and that deviations from this requirement in the future will not be tolerated.

We concur with the staff recommendation that J. M. Trucking should be fined in the amount of the undercharges found herein; that since said respondent has no prior record with the Commission, no punitive fine should be imposed; and that said respondent should be ordered to cease and desist from handling C.O.D. shipments until it has the required bond on file with the Commission. J. M. Trucking did not voice any objection to the staff recommendations.

The Commission finds that:

1. J. M. Trucking operates pursuant to radial highway common carrier and highway contract carrier permits.
2. J. M. Trucking was served with applicable minimum rate tariffs and distance tables, together with all supplements and additions thereto.
3. All of the transportation covered by Part 2 of Exhibit 2 (Foster) was picked up in one day, and all of the transportation covered by Part 12 of said exhibit was delivered to a single destination.
4. There are no undercharges in connection with the transportation covered by Parts 2, 5 and 12 of Exhibit 2 (Foster).
5. Except for the three parts of Exhibit 2 listed in Finding 4, J. M. Trucking charged less than the lawfully prescribed minimum rates in the instances set forth in the staff rate exhibits resulting in undercharges as follows:

<u>Exhibit No.</u>	<u>Consignee</u>	<u>Amount of Undercharge</u>
2	Foster	\$859.23
3	Marwais	266.41
4	Mayco	160.49
5	State Pipe	58.83

6. The total of the undercharges in the four staff rate exhibits is \$1,344.96.

The Commission concludes that J. M. Trucking violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$1,344.96.

The Commission expects that J. M. Trucking will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. The staff of the Commission

will make a subsequent field investigation into the measures taken by said respondent and the results thereof. If there is reason to believe that either said respondent or its attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges, 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. J. M. Truck Co., Inc., doing business as J. M. Trucking Company, shall pay a fine of \$1,344.96 to this Commission on or before the fortieth day after the effective date of this order.

2. Said respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

3. Said respondent 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, said respondent 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 taken 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. Said respondent shall cease and desist from performing C.O.D. (Collect on Delivery) service until it has filed the required bond with this Commission and from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

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 16th day of SEPTEMBER, 1969.

William S. Quinn-Jones
President

Richard J. ...

Thomas ...

Samuel L. Stinson
Commissioners