

Decision No. 76280

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 STEEL TRANSPORT, INC., a California corporation, and KAISER STEEL CORP., a California corporation.

Case No. 8869  
(Filed December 3, 1968)

Karl K. Roos, for Steel Transport, Inc.,  
respondent.  
Alfred W. Miller, B. F. Maddux, and  
James H. Mullen, for Kaiser Steel  
Corporation, respondent.  
William J. McNertney, Counsel, and  
J. B. Hannigan, for the Commission  
staff.

O P I N I O N

By its order dated December 3, 1968, the Commission instituted an investigation into the operations, rates, charges and practices of Steel Transport, Inc., to determine whether respondent has violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code by charging or collecting a lesser compensation, for the transportation of property over the public highways of this state or services in connection therewith for Kaiser Steel Corporation, than that established by the Commission in Minimum Rate Tariff No. 2, by assessing an incorrect rate and by failing to charge for storage, loading and unloading services in connection with said transportation, and to ascertain whether penalties or fines should be imposed pursuant to Sections 3774 and 3800 of the Public Utilities Code.

A public hearing was held in San Bernardino, California, on February 26, 1969 before Examiner DeWolf, and the matter was submitted on the same date, subject to filing of briefs which have been filed.

At all times in this proceeding Steel Transport, Inc. (Steel) held, and presently conducts operations pursuant to, Radial Highway Common Carrier Permit No. 36-3927 and Contract Carrier Permit No. 36-3928, both issued August 20, 1963. Steel has been duly served with copies of Minimum Rate Tariffs Nos. 2, 1-B, 5, 8, 9-B and 10, and has received all current supplements of these tariffs and distance tables.

Steel owns and operates 6 tractors and 20 trailers and employs 6 drivers, 2 maintenance men and 2 office help. The gross operations for the last quarter of 1967 and the first three quarters of the year ending 1968 totaled \$255,201.00.

A Commission Compliance Section representative examined various records of the respondent on or about July 9, 1968, and made copies of certain records, such as freight bills, back charge statements, truck orders and tag numbers, and copies were introduced in evidence as Exhibit No. 1. This exhibit contains 21 numbered parts and an Attachment B, concerning freight movements by respondent. Exhibit No. 2 is a summary of the shipping data in Exhibit No. 1 prepared and verified by a staff rate expert, showing rate and charge assessed by the carrier, and a minimum rate and undercharge constructed by the rate expert for each of the shipments represented in Exhibit No. 1, and alleged to be correct by the staff rate expert.

Exhibits Nos. 3, 4 and 5 are copies of statements and vouchers showing payment by Kaiser Steel Corporation of unloading

charges of respondent. A rate expert for the Commission staff, testified that he audited the shipments and that there are undercharges which amount to the sum of \$8,088.81. The steel was shipped from Kaiser Steel Corporation, Fontana, California, Shipper, to KSC (Kaiser Steel Corp.) Fab. C/O Lindys, 7301 Telegraph Road, Los Angeles, California, for which single shipping documents were issued. The billing of Steel was made at alternative rail rates. Exhibit No. 1 shows that certain of the loads were taken to the carrier's yard and unloaded by power-fork lift at its terminal and later reloaded and transported to consignee and that these loads were identified by a statement marked "Tag Number" and signed by the truck driver. These are the shipments which are re-rated by the Commission staff as two shipments from Kaiser, Fontana, to the carrier's terminal, and from the terminal to consignee, at Montebello, without benefit of the alternative rail rate, and the unloading charge was added thereto and designated storage resulting in the claimed undercharges.

The staff investigator testified that Steel's manager told him that all of the shipments included in Exhibit No. 2, which were unloaded by carrier and held at carrier's yard, were unloaded and held at request of and because of the operating requirements of the consignor-consignee group, Kaiser Steel and Kaiser Fab. The Commission rate expert testified that the unloading of the steel at the carrier's yard was a delivery at a destination point, in effect a delivery to the carrier itself as agent of the shipper, and that the steel was then stored in the carrier's yard and re-shipped to the consignee

and that this is the theory and basis for the undercharges described in Exhibit No. 2; that the unloading of the shipment at the carrier's yard is a point of destination, and when transported again is a second shipment. He further testified that there are no storage-in-transit provisions applicable to the transportation in issue in Minimum Rate Tariff No. 2. Part 1 of Exhibit No. 2 shows the method of arriving at all of the undercharges and is set forth as follows:

Part 1

STEEL TRANSPORT, INC.

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NO. OF FREIGHT BILL	-	2809
DATE OF FREIGHT BILL	-	January 4, 1968
NAME OF CONSIGNOR	-	Kaiser Steel
POINT OF ORIGIN	-	Kaiser
NAME OF CONSIGNEE	-	Kaiser Steel
POINT OF DESTINATION	-	Montebello

RATE AND CHARGE ASSESSED

<u>COMMODITY</u>	<u>WEIGHT IN POUNDS</u>	<u>RATE IN CENTS PER 100 POUNDS</u>	<u>CHARGE</u>
Coils	240,750	12½	\$300.94
stored	160,650	10	160.65
			<u>\$461.59</u>

MINIMUM RATE AND CHARGE

shipped direct	80,100	(1) 12½	\$ 100.12
into storage	160,650	(2) 19	305.24
unloading and loading	160,650	10	160.65
from storage	160,650	(3) 30	481.95
			<u>\$1,047.97</u>
	Undercharge		\$ 586.38

The Commission rate expert also testified as to the minimum rate tariffs regarding accessorial services; that the carrier must assess a charge not less than the cost applicable to the use of a power forklift when furnished at request of shipper for loading or unloading, for failure to do this would constitute a remission of transportation charges in violation of Section 494 or Section 3667 of the Public Utilities Code because the rates do not include furnishing of power equipment by the carrier (Item No. 120 of MRT No. 2). The rate expert also testified that the shipping documents in all cases show storage of the steel at the carrier's yard for varying periods of time.

The traffic manager for Kaiser Steel Corporation at Fontana testified that the policy of the company is to do business with all their carriers on a legal basis; that the company maintains a rate auditor and department in which all bills from more than 300 carriers are audited and corrected; that these are raised or lowered to the correct legal rates when necessary and many of them are raised. The traffic manager described the steel plant operation, in the mill, on a large order. The carrier having the contract is notified when the mill will start rolling, which may be 12:00 to 8:00 A.M., with 20 loads to move out. The carrier then has to move this steel as there is little or no room at the mill for it. The witness testified that none of the contract carriers hauling steel has a rail spur at his yard. The only requirement the Kaiser Company has, is to get the steel out of the mill when it is rolled so there is no delay, and if the carrier wants to unload it

in his yard that is his concern and not a concern of Kaiser, and any subsequent delay in shipping is between the carrier and the customer at delivery.

The assistant to the general traffic manager for Kaiser Steel Corporation, Oakland, California, testified that it is its position that the rates and charges as assessed by Steel Transport, Inc. on the freight bills in question are correct; that the Commission staff erred in converting the billing of the single shipments picked up by Steel Transport, Inc., at the Kaiser Mill for delivery to Montebello into two separate shipments; that there was no intent by Kaiser Steel Corporation that any of the shipments be delayed in any manner or stored at any location other than at the facility of the consignee at the destination point; and that Kaiser Steel at Montebello because of fabricating problems at destination found it necessary to slow delivery of shipments. This witness testified that Item No. 240 of MRT No. 2 makes provision for accessorial services not included in the common carrier rate and charge, which would require a carrier to assess a 10-cents per hundred-weight loading and unloading charge where the shipments are off-loaded and reloaded at the carrier's terminal, 5 cents for off-loading and 5 cents for reloading, and that this payment was made by shipper for its convenience. Item No. 240 applies only to the rail rates.

The manager and president of respondent carrier testified as to the carrier's method of handling the steel loads, from the beginning, when the carrier had to run a shuttle from the mill to its yard and unload some of the steel or to hire sub-haulers to

keep up with the production of the order at the steel mill at Fontana; and that later the customer, Kaiser Fab., had difficulties with their loader and could not receive the loads; and also later, heavy rains prevented trucks from coming into its yard; that these and other fabricating problems caused the customer to request that deliveries be slowed down; the only expense that the carrier had was for the power equipment which cost them at their first estimate \$6.00 per load and later figured at 10-cents per hundred weight, as the steel was unloaded on the ground in an open area of the yard. No changes were made in routing or destinations from the original billings. The witness further testified that Kaiser required the hauling to be done at the lowest legal minimum rate and that sometimes the shipments were unloaded at the convenience of the carrier, because of the production at the mill which sometimes averages 40 loads a day for two weeks. Various customers receive shipments at different times, some at night, and the carrier does not wish to allow loads to remain on the trailers all day. It did not store the steel, but unloaded at convenience of the consignee. The carrier's witness testified that when the carrier was short of equipment to make pickups, or Kaiser Fab. at Montebello could not accept delivery, the steel was unloaded on the ground, and later delivered to Kaiser Fab. at Montebello when equipment was available. The witness testified that rarely did they unload because Kaiser Fab. could not take the loads. Kaiser Fab. was billed for loads which required reloading but could not be delivered when equipment became available. It was a convenience to the carrier to have the steel on the ground available for delivery when equipment was also available.

In other words, the loads were unloaded at the carrier's convenience, but Kaiser was charged when the carrier could not make the deliveries because of requested delays. Steel was hauled to the carrier's yard at night, the trucks and the trailers were unloaded and the equipment used during the day for this or other accounts. Some of the steel was in the yards for up to two months. The carrier has 6 acres of grape vineyard available for use of storage without cost.

The evidence shows that respondent contracted with Kaiser for the transportation of large orders of steel and that a substantial portion of this was moved in a shuttle operation to the carrier's yard or terminal a short distance from Kaiser and unloaded on the ground in the open in order to conserve carrier equipment, and later when equipment was available the steel was reloaded and the shipment completed, the carrier charging 10 cents per 100 when the consignee requested delay of these shipments, and the shipper knew and expected that this delay would be requested. The transportation in issue in this proceeding concerned the latter type of movement. Kaiser Mill's traffic manager at Kaiser, in this regard, testified that his company is not in the practice of paying any charge for the convenience of the carrier and did not do so here.

The Commission staff contends there are two shipments and that alternate rail rates do not apply, because the carrier does not have a rail spur at his yard, and thus the minimum rate and charge should be billed as set forth in Exhibit No. 2, with resulting undercharges.



Analyzing the 21 parts of the Staff Exhibit No. 2, it is noted that all parts are similar to part No. 1 set forth above. The rate and charge assessed by the respondent is itemized on the two lines, the first item being the alternate rail rate of 12-1/2 cents per 100 pounds and the second item being 10 cents per 100 pounds which is marked "stored". The respondent did not put this item in as storage but claimed it was a charge for loading and unloading in its yard, and as being an accessorial service to the consignee, rather than storage. Regardless of the label, the record here clearly establishes that storage services were performed. Next on part 1 of Exhibit No. 2, the staff sets forth its claimed correct minimum rate and charge showing the rates for the direct shipments at 12-1/2 cents per 100 pounds, the shipments from Kaiser into storage at the respondent's yard at 19 cents per 100 pounds and from storage to Montebello at 30 cents per 100 pounds, and an item of 10 cents per 100 pounds marked "unloading" and "loading".

This last item of 10 cents is included in each of parts 1 through 21 of Exhibit No. 2 in the minimum rate and charge of the staff rates and the same amount of 10 cents per hundred pounds is shown as storage paid to the carrier in the rate and charge assessed.

The Commission staff in its Brief contends that the 10 cents per 100 pounds is inadequate for all the accessorial services provided, but that it is willing to give the carrier the benefit of using its charges for the proper rating for these accessorial services. The case must be decided as it was tried. We therefore expressly refrain from making any determination whether the 10 cents per 100 pounds charge

for the accessorial services was reasonable and will allow it to stand. We will not, however, permit Steel to deduct this charge from the transportation charges for to hold otherwise would be to sanction a situation which would indirectly result in the remission of the tariff charges and a violation within the meaning of Sections 3667 and 3668 of the Public Utilities Code.

The Commission staff recommended that respondent be required to collect the undercharges and that said amount be assessed as a fine under Public Utilities Code, Section 3800, and that a punitive fine of \$500 is reasonable and should be imposed upon respondent carrier.

After consideration the Commission finds that:

1. Respondent Steel Transport operates pursuant to Radial Highway Common Carrier Permit No. 36-3927 and Contract Carrier Permit No. 36-3928.
2. Respondent was served with the appropriate tariff and distance table prior to the time the violations found herein occurred.
3. Respondent provided certain accessorial services for the shipper, respondent Kaiser, in the form of unloading, storage, and later reloading and delivery of shipments when the consignee was ready and/or able to receive shipments in connection with the

services set forth in Exhibits Nos. 1 and 2, and all of these accessorial services were performed for the convenience of the shipper.

4. Respondent Steel Transport did not, during the period of the shipments involved in Exhibits Nos. 1 and 2, have any rail facilities.

5. During the period of the shipments involved in Exhibits Nos. 1 and 2, Lindy's facilities at Montebello were served with an Atchison, Topeka & Santa Fe Rail spur.

6. As to the shipments in Parts 1 through 21 in Exhibit No. 2, the portion of the movement, in each part, from Kaiser Steel in Fontana to respondent Steel Transport's yard for storage was one shipment, and the portion of the movement, in each part, out of storage at respondent Steel Transport's yard for delivery to the consignee in Montebello was a separate shipment; they should have been rated accordingly, and the Commission staff's rating of them as such in Exhibit No. 2 is proper and correct.

7. The portion of the movements shown in Parts 10, 12, 13 and 18 of Exhibit No. 2 where the Commission staff has shown the addition of a switching charge and different rating in the applicable Western Motor Tariff Bureau tariff due to a minimum weight classification has been properly and correctly rated by the Commission staff in said Exhibit No. 2.

8. The transportation services performed by respondent Steel Transport for respondent Kaiser during the period of December 1, 1967 to March 1, 1968, have been properly documented in Exhibit No. 1, and have been properly and correctly rated by the Commission staff in Exhibit No. 2, resulting in undercharges totaling \$8,088.81.

Based upon the foregoing findings of fact, the Commission concludes that:

Respondent Steel Transport, Inc., a corporation, has violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code resulting in the undercharges set forth in Exhibit No. 2, totaling \$8,083.81, that it should be ordered to collect said undercharges and a fine should be levied upon respondent in the amount of said undercharges pursuant to Section 3800 of the Public Utilities Code, and that in addition thereto a punitive fine of \$500 should be levied against respondent pursuant to Section 3774 of the Public Utilities Code.

The Commission expects that Steel Transport, Inc. 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 respondent and the results thereof. If there is reason to believe that either respondent or his 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. Steel Transport, Inc. shall pay a fine of \$8,588.81 to this Commission on or before the fortieth day after the effective date of this order.

2. Steel Transport, Inc. 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. Steel Transport, Inc. 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, Steel Transport, Inc. 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. Steel Transport, Inc. shall cease and desist 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 upon any one of the respondents.

Dated at San Francisco, California, this 15th day of OCTOBER, 1969.

William J. Quinn, Jr.  
President

W. J. Quinn, Jr.

[Signature]

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. VUKASIN, JR.

Present but not participating.