

MJC

Decision No. 7651.7

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)
LA MIRADA TRUCKING, INC., a)
California corporation, and)
ALTFILLISCH-FULTON CO., a)
California corporation.)

Case No. 8868
(Filed November 19, 1968)

H. Randall Stoke, for La Mirada
Trucking, Inc. respondent.
Richard E. Brown, for Associated
Independent Owners & Operators, Inc.,
interested party.
William J. McNertney, Counsel, and
J. B. Hammigan, 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 La Mirada Trucking, Inc., a California corporation (La Mirada), for the purpose of determining whether La Mirada violated Sections 3575, 3664, 3667, 3705, 3706 and 3737 of the Public Utilities Code by charging and collecting less than the minimum rates and charges provided in Minimum Rate Tariff No. 7 (MRT No. 7) for transportation and services performed for Altfillisch-Fulton Co., a California corporation (Altfillisch), by failing to pay subhaulers 95 percent of said minimum rates and charges in connection with any of said transportation or services in violation of Item 94 of MRT No. 7, by failing to pay subhaulers within the credit period specified in MRT No. 7; by engaging subhaulers without having a current and effective bond on file with the Commission as required by General Order 102-C, and by failing or refusing to grant Commission representatives access to inspect certain of its records.

Public hearing was held before Examiner Mooney in the City of La Mirada on March 20, 1969. At the hearing, testimony and exhibits were presented by two representatives and a rate expert of the Commission staff and a written stipulation by La Mirada and the staff was received in evidence as Exhibit 5. Submission was made subject to the receipt of certain late filed exhibits. The last of said exhibits, a stipulation by La Mirada and the staff which resolved the remaining controversial issues, was received for filing as Late Filed Exhibit 8 on October 22, 1969. The matter is now ready for decision.

The undisputed evidence, including the written stipulations in Exhibit 5 and Late Filed Exhibit 8, establish and we find as follows:

1. La Mirada operates pursuant to Radial Highway Common Carrier Permit No. 19-56950. Said permit authorizes the transportation of commodities named in MRT Nos. 7 and 17 in dump truck equipment within a radius of 50 miles of base of operation.
2. La Mirada was served with copies of MRT Nos. 7 and 17 and Directory No. 1, together with all supplements and additions to each.
3. At various times during January, February, April, October and December 1968, staff representatives conducted an investigation of La Mirada's operation. During the time covered by the staff investigation, La Mirada had an office in the City of La Mirada and a terminal in La Palma; it operated eight tractors and 27 sets of bottom dump trailers; it regularly employed eight drivers, one mechanic and two office employees; and on the average, it engaged 19 subhaulers who operated their own tractors and rented trailers from it. La Mirada's gross operating revenue for the year 1968 was \$1,319,248.

4. La Mirada engaged subhaulers to transport dirt for Altfillisch from Emery Pit, Rosecrans Avenue and Beach Boulevard, Buena Park to a freeway construction site in the vicinity of 183rd Street and Carmenita Avenue, Ceritos during the latter part of 1967 and early 1968.

5. Members of the Commission staff conducted an on the spot observation of the transportation described in Finding 4 on January 17, 18 and 19, 1968, and determined that La Mirada was incorrectly computing time to be used in connection with the hourly rates in MRT No. 7.

6. For the transportation described in Finding 4, La Mirada charged less than the lawfully prescribed minimum rates, resulting in undercharges in the amount of \$219.05 for the period January 17, 18 and 19, 1968 (Exhibit 4) and \$2,217.15 for the transportation not included in said dates (Late Filed Exhibit 8). The total amount of the undercharges for the entire job was \$2,436.20.

7. 95 percent of the total of \$2,436.20 in undercharges referred to in Finding 5 is due and owing from La Mirada to the subhaulers who performed the transportation. The amount due and owing to the subhaulers is \$2,314.39.

8. La Mirada failed to pay 14 subhaulers all money due and owing to them for services performed by them during January 1968 within the credit period specified in MRT No. 7.

9. La Mirada employed subhaulers during the period September 1, 1968 through October 23, 1968 without having a current and effective bond on file with the Commission as required by General Order 102-C.

10. During the staff investigation referred to in Finding 3, there was a lack of cooperation by La Mirada in furnishing records requested by the staff representatives.

11. It is the intent of La Mirada to modify its method of determining time to be used in connection with hourly rates so as to comply with the applicable provisions of MRT No. 7 and to be cooperative with Commission investigators in the future.

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

1. La Mirada violated Sections 3575, 3664, 3667, 3705, 3706 and 3737 of the Public Utilities Code.
2. La Mirada should be directed to remit \$2,314.39 in underpayments to the subhaulers who performed the transportation in issue.
3. La Mirada should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$121.81 (the amount of undercharges found herein less the underpayments due subhaulers), and in addition thereto, La Mirada should pay a fine pursuant to Section 3774 of said Code in the amount of \$500.

The Commission expects that La Mirada will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges referred to in Finding 6 and to remit to the subhaulers who performed the transportation in issue the amount of the underpayments referred to in Finding 7. The staff of the Commission will make a subsequent field investigation into the measures taken by La Mirada and the results thereof. If there is reason to believe that La Mirada, or its attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges and pay the amount due the subhaulers, 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. La Mirada Trucking, Inc., a California corporation, shall pay a fine of \$621.81 to this Commission on or before the fortieth day after the effective date of this order.

2. La Mirada Trucking, Inc., shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall pay to the subhaulers who performed the transportation in issue the amount of the underpayments set forth herein. La Mirada Trucking, Inc., shall notify the Commission in writing upon the consummation of such collections and payments.

3. La Mirada Trucking, Inc., shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and make the payments to the subhaulers, and in the event undercharges ordered to be collected or payments ordered to be made by paragraph 2 of this order, or any part of such undercharges or payments, remain uncollected or unpaid sixty days after the effective date of this order, La Mirada Trucking, 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 and the amount of payment remaining to be made specifying the action taken to collect such undercharges and make such payments, and the result of such action, until such

undercharges have been collected in full and such payments have been made in full or until further order of the Commission.

4. La Mirada Trucking, 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 the Commission; from paying subhaulers engaged by it to transport property subject to Minimum Rate Tariff No. 7 a lesser amount than specified in said tariff; and from violating any provisions of the Public Utilities Code or rules established by the 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 9th day of DECEMBER, 1969.

Augustin

President

J. B. [unclear]

Thomas [unclear]

Yvonne L. [unclear]

Commissioners

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