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ORIGINAL

Decision No. 76549

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of HOWARD CHILD and SIDNEY RAINE, doing business as 8 BALL LINE; and CERTAIN-TEED PRODUCTS CORPORATION.	)	Case No. 8837

Berol, Loughran & Geernaert, by Frank Loughran, for 8-Ball Line, respondent.
Pillsbury, Madison & Sutro, by Noel Dyer, for Certain-teed Products Corporation, respondent.
William D. Figg-Hoblyn, Counsel, and J. B. Hannigan, for the Commission staff.

O P I N I O N

By its order dated August 27, 1968, the Commission instituted an investigation into the operations, rates and practices of Howard Child and Sidney Raine, doing business as 8-Ball Line (Eight-Ball) for the purpose of determining whether Eight-Ball has violated Sections 3664 and 3667 of the Public Utilities Code by charging, demanding or receiving a lesser compensation for transportation and services than that established by the Commission in Minimum Rate Tariff No. 2 (MRT 2). Certain-teed Products Corporation (Certain-teed), the shipper involved in these transactions, was also named as a respondent.

A duly noticed public hearing was held before Examiner Foley on March 26, 27, April 2, and 3, 1969, in San Francisco. Concurrent briefs were filed on May 29, 1969.

It was stipulated that Eight-Ball operates as a radial highway common carrier under Permit No. 7-2987; as a contract carrier under Permit No. 7-3521; and as a petroleum contract

carrier within a 100 mile radius of Richmond under Permit No. 7-3060. It was also stipulated that at all times pertinent to the staff's investigation Eight-Ball was served with the appropriate Commission tariffs.

The transportation we are concerned with here was undertaken during the period of September-December, 1967. It involves shipments of roofing materials, consisting of roofing cement, coatings, felt, asphalt and shingles, by Certain-teed to eight consignees at eleven different points of destination (Exhibit No. 4, Parts 1-11).

The staff's investigation was initiated by a field representative, who inspected the shipping documents set forth in Exhibit No. 1. The witness noticed that all of Certain-teed's shipping orders were stamped with the following language:

> "If Applicable Weight-Wise This Shipment Meets Requirements of Item 292 C.P.C. M.R.T. No. 2 - Volume Incentive Service Requested."

He noticed that a second stamp also appeared on most of the shipping orders. This stamp reads as follows:

> "This Shipment Loaded and Unloaded With Power Equipment Furnished Without Carrier Expense As Per Note 1(b) (2)(a) In Item 240 C.P.C. M.R.T. No. 2."

Further examination of these documents was made by the Commission's transportation rate experts. The staff concluded that the first stamp set forth above (i.e., the Item 292 stamp) constituted a binding certification and request for volume incentive service under Item 292 of MRT 2 (Exhibit No. 5), except with regard to six shipments to the Sorenson Roofing Co. These six shipments were rated under other provisions of MRT 2; they will be discussed later. The staff concluded that undercharges exist

in the amount of $3,687.62 because the carrier applied the lower common carrier rates to all the shipping orders on which the Item 240 stamp appeared. As far as the latter stamp is concerned, the staff maintains that it is meaningless and that it cannot be considered as a valid request for the lower alternate rail rates. There is also a subsidiary dispute as to whether two points of destination are on or off-rail. The staff does not recommend the imposition of a punitive fine.

Respondents, on the other hand, argue that the request for volume incentive rates is conditional and revocable because the words "If Applicable Weight-Wise" appear on the stamp. They urge that the application of the lower alternate rail rates was proper because the request for volume incentive rates was effectively amended or revoked by the placement of the Item 240 stamp on the shipping orders.

Certain-teed's traffic manager testified that at times in the past its shipping personnel had failed to request volume incentive service when it was applicable. This failure had resulted in excess shipping charges of $3,000 over a four month period (Tr. 402). To assure the receipt of the lowest rate, the Item 292 stamp was redesigned as set forth above, and all the shipping orders were stamped with it in advance (Tr. 390-1). The witness stated that the phrase "If Applicable Weight-Wise" was intended to make the request conditional and to encompass at least two separate situations - a shipment of less than 45,000 pounds, e.g. 42,000 pounds, for which the minimum volume incentive rate would be less than the regular class rate under MRT 2, and those shipments involving 45,000 pounds and over (Tr. 391).

The witness explained that if the destination of a particular shipment was determined to be on-rail the Item 240 stamp was placed on the shipping order before actual movement of the shipment occurred (Tr. 390). He further stated that the intent of the Item 240 stamp was to request the rail rate (Tr. 392), and that the Item 240 stamp informed Eight-Ball that the destination was on-rail (Tr. 401). Certain-teed maintains that in this manner its request for volume incentive rates under the Item 292 stamp was amended or revoked before each shipping order was delivered to Eight-Ball and before actual movement occurred.

Insofar as pertinent to the issues presented here, Item 292 provides as follows:

"SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)

EXCEPTION TO GOVERNING CLASSIFICATION AND SECTION NO. 2 OF THE EXCEPTION RATINGS TARIFF

VOLUME INCENTIVE SERVICE
APPLICATION OF RATES

(Applies only when reference is made)

(a) Rates in this item shall apply only on prepaid shipments when the shipping document is annotated by shipper certifying that the shipment meets the requirements of this item and requesting volume incentive service.

* * * *

(b) The charge for service under the provisions of this item shall be determined and applied as follows:

1. Determine the applicable classification truckload rating as provided in the Governing Classification for the shipment; and

2. Multiply the actual weight of the shipment (but not less than 45,000 pounds per unit of carrier's equipment used) by the applicable rate provided for the next lower rating. (See Exception).
EXCEPTION: Rate shall also apply to a shipment weighing less than 45,000 pounds provided the charges are computed on a weight of not less than 45,000 pounds per unit of carrier's equipment.

* * * *

(c) Rates provided in this item do not alternate with other rates and charges in this tariff, and rates provided in this item may not be used in combination with any other rates." (Exh. No. 5)

There are two requirements for a shipper to comply with Item 292; he must certify that the shipment meets the requirements of this Item, and he must request volume incentive service. In addition, subsection (b)2 establishes a minimum charge for shipments of less than 45,000 pounds. This charge is computed on the basis of 45,000 pounds per unit of equipment. Nevertheless, this subsection does not proscribe shipments of less than 45,000 pounds; it permits a shipment of any weight.

With regard to the effect of the Item 292 stamp, the Commission accepts the staff's position that it constitutes a valid request and certification. The requirement of a request is met by the language "Volume Incentive Service Requested". This language appears after the phrase dealing with certification and is unconditional. If the request was meant to be conditional, the stamp should read "This shipment meets requirements of Item 292 MRT No. 2 and, if applicable weight-wise, volume incentive service requested." Since the words "If Applicable Weight-Wise" appear in the phrase dealing with certification of the shipment, and not in the phrase requesting volume incentive service, it is reasonable to conclude that these words modify only the certification.

Turning to the question presented by the phrase "If Applicable Weight-Wise", respondents argue that it should be interpreted as directing that volume incentive rates be applied only if the shipment weighs 45,000 pounds or more. They contend that this interpretation is reasonable. Their view is based on the proposition that no sensible shipper would direct that a shipment of substantially less than 45,000 pounds be transported at the minimum charge; and that this charge effectively operates as a minimum weight requirement.

Standing alone, this phrase appears to refer to some non-existent weight limitation in Item 292. We agree with the staff, however, that Item 292 does not contain a minimum weight requirement. While it is doubtful that a shipper would request volume incentive rates for a shipment of substantially less than 45,000 pounds, Item 292 does not prescribe any minimum shipment weight. It does prescribe a minimum charge calculated at a certain weight, but a shipper may move a lesser amount and pay volume incentive rates.

If the phrase was intended to mean "don't ship these goods under Item 292 unless they weigh 45,000 pounds or more", it does not clearly state such an intent. If this was the intent of these words it should have been more definitely stated in view of the fact that shipments under 45,000 pounds are permissible. Significantly, such an intent is contradictory to the testimony of Certain-teed's witness that shipments slightly less than 45,000 pounds, which might be subject to a lower rate under Item 292 than under the regular rates of MRT 2, were intended to be covered.

We conclude that Certain-teed's interpretation reads far more into these words than actually present, and that since Item 292 does not contain a definite minimum weight requirement, the phrase

is too ambiguous to be acceptable. Effective minimum rate enforcement requires that such an ambiguity be resolved against its drafter, Certain-teed.

While we accept the staff's interpretation regarding the Item 292 stamp, we do not agree with its position concerning the meaning and effect of the Item 240 stamp. The unrebutted evidence shows that the shipper placed this second stamp on the shipping orders after determining that the destination was on-rail, and before the shipping order was delivered to Eight-Ball. When a shipping order was stamped with the Item 240 stamp Eight-Ball would have its driver check to see if the destination was on-rail (Tr. 409). If the driver's report was positive, the rail rate was applied. We can only conclude that this second stamp constitutes the last instruction to the carrier, and that under these circumstances the Item 292 stamp should be disregarded.

The staff argues that the Item 240 stamp cannot be considered as a request for common carrier rail rates (Tr. 415, 431). Its argument is based on the failure of the stamp to request literally that the common carrier rates be applied. It points to the fact that only the Item 292 stamp expressly requests a certain rating.

This argument is not persuasive. It ignores the fact that the Item 240 stamp was placed on the shipping order after the document was prepared with the particular shipment in mind and after the on-rail status of the destination was determined. Furthermore, Item 200 of MRT 2 clearly provides that common carrier rates may be applied in lieu of the motor carrier rates set forth in MRT 2 when the former result in a lower aggregate charge.

Item 240 of MRT 2 expressly mentions Item 200, as follows:

"Accessorial Services Not Included in Common Carrier Rates
(Items Nos. 240 and 241*)

In the event under the provisions of Items Nos. 200 to 230, inclusive, a rate of a common carrier is used in constructing a rate for highway transportation, and such rate does not include accessorial services performed by the highway carrier the following charges for such accessorial services shall be added ... :" (MRT 2, Item 200)

The above language is clear on its face. The title and first sentence of Item 240 expressly refer to shipments to which the common carrier rates have been applied. Therefore, the Item 240 stamp can refer only to the application of common carrier rail rates. This was conceded by the staff's primary witness:

"Q. Under the tariff is there a requirement that such a stamp (i.e., the Item 240 stamp) be placed on a bill of lading for any particular purpose?

"A. Yes, this would apply when a request has been made for use of rail rates. No such request was made here.

"Q. So that the only reason for putting that stamp on this bill of lading was to make possible the rating of this shipment under the alternative rail rates? That would be the only purpose of a shipper in putting that stamp on the bill of lading, isn't that true, rate-wise, speaking as a rate man?

"A. Yes, that is true."
(Tr. 145-6)

Since neither Item 200 or 240 require an express request by the shipper for common carrier rates, the absence of a written request for rail rates is immaterial. This request is implicit in

the presence of the Item 240 stamp on the shipping order, and when the presence of this stamp is considered in combination with the fact that it was placed on the shipping orders only after the on-rail status of the point of destination had been checked by the shipper, it is reasonable to conclude that the request for volume incentive service was revoked in favor of a request for rail rates. In reaching this conclusion we place considerable weight on the timing involved: that the Item 292 stamp was indiscriminately placed on all the shipping orders before they were used, while the Item 240 stamp was discriminately placed on a shipping order for a particular shipment after checking the destination point.

The staff cites Central Coast Truck Service, Decision No. 73090 in Case No. 8633, dated September 19, 1967; and Informal Ruling No. 133-A in support of its position (Staff brief, p. 13). We do not find either controlling. Central Coast holds that the shipper's written instructions must be followed by the carrier. Eight-Ball did so here by rating in accordance with the stamp placed last on the shipping orders. Informal Ruling No. 133-A deals with post-movement changes or corrections in shipping orders. No such activity is involved in this proceeding.

The staff also relies on Item 292(c). It argues that once volume incentive rates are requested the lower rail rates cannot be requested because subsection (c) provides that Item 292 rates "do not alternate with other rates and charges in this tariff".

This argument is without merit. Item 292(c) proscribes alternation with rates in this tariff, i.e., MRT 2. The rail rates are not set forth in MRT 2. If all other rates were meant to be included the words "in this tariff" should have been replaced with

the words "any other rates". The staff's interpretation would be correct if the shipping document was stamped only with the request for volume incentive rates. Then the carrier is bound by the shipper's directions. But, there is no doubt that a shipper can revoke a request for volume incentive rates before the shipping order is delivered or movement occurs and request a different rate.

If Certain-teed's shipping personnel had stricken out the Item 292 stamp, the revocation of the volume incentive request would be clear. We recognize that detailed evidence of shipping transactions is often within the control of the parties and difficult for the staff to uncover. Nevertheless, there is no convincing evidence in the record that the failure to strike out the Item 292 stamp was intentional in order to achieve ratings always at the lowest possible rate. Likewise, there is no evidence that Eight-Ball placed the Item 240 stamp on the shipping orders. Moreover, Item 292 does not expressly state that an election under its provisions is irrevocable; nor does Item 200 require an express request for rail rates. Under these circumstances Certain-teed has made only a technical error in documentation. This careless documentation should not occur henceforth. If future investigations show that Certain-teed has continued to double-stamp documents the Commission may conclude otherwise as to the purpose of such activity.

There are six shipments to the Sorenson Roofing Co. (Exh. No. 4, Part 1) to which the staff did not apply volume incentive rates because they did not meet the requirements set forth in Item 292. The staff rates these shipments under other provisions of MRT 2. Since the Item 240 stamp also appears on these six shipping orders, the rating by Eight-Ball is correct if the destination is on-rail.

Having determined that Eight-Ball's application of the rail rates was not erroneous, the Commission must resolve the dispute concerning whether two points of destination, the Sorenson Roofing Co. in Oakland (Sorenson) and the Copeland Lumber Yard (Copeland), in Visalia are in fact on or off-rail. The staff maintains that they are off-rail; the respondents disagree.

Sorenson's facilities are rented from Industrial Property Associates (Associates). These facilities are located in a triangular-shaped complex adjacent to the Nimitz Freeway on one side; to a short public street (22nd Avenue), which deadends into the freeway, on another side; and to a rail track on the third side. Industrial facilities are rented by Associates to at least three other tenants.

Sorenson's facilities consist of one building adjacent to the deadend public street, 22nd Avenue. North of Sorenson's building and also adjacent to 22nd Avenue is a building leased by the Jessup Door Co. A driveway providing access to and from 22nd Avenue is located between the buildings. The driveway permits access to an area which is utilized as a common parking lot and unloading area for all the tenants in the complex. It also permits access to the Sorenson facility immediately on the left of the driveway.

There is a spur track on the opposite (east) side of 22nd Avenue which, like the street, deadends at the freeway. This spur is no more than forty feet from the Sorenson facility. At Associates' request, a second spur track was constructed on the street in 1965 (Exh. No. 7). This spur leaves the east side spur, cuts across the street in front of Sorenson's facility so that in front of the Jessup Door Co. building it is on the side of the street (the western side) closest to the Jessup facility (Exh. No. 8). At the location of the driveway between the Sorenson and

Jessup facilities, this spur is in the middle of the street approximately 15 feet from the driveway. Within 50 feet of the driveway the spur is on the west side of the street adjacent to the Jessup facility.

One of the owners of Associates testified that it arranged to have this spur built to serve both Jessup and Sorenson (Tr. 219-20). He stated that this spur was built at Associates' cost and is owned by it (Tr. 212). The spur was not built adjacent to the Sorenson building in order to save money, but it was understood that Sorenson could use it (Tr. 219). Associates also had a loading dock constructed from the Jessup Door Co. building to the track. The owner testified that Sorenson had access to this dock, or if it was being used, the track across the street could be utilized (Tr. 220). Finally, he stated that the spur is located in the public street, and not on Associates' property (Tr. 212).

There is another spur track which enters Associates' complex from the northwest and terminates across the common parking area at a point some 250 feet from Sorenson's premises (Exh. No. 8). Sorenson has actually received two rail shipments on this spur (Exhs. Nos. 12 and 13).

The Commission's definition of "point of destination" states that:

> "All points within a single industrial plant or receiving area of one consignee shall be considered as one point of destination. An industrial plant or receiving area of one consignee shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare." (Item 11, MRT 2)

The issue is whether Sorenson's receiving area can reasonably be held to include the spur track located on 22nd Avenue. There is no spur track physically located on Sorenson's leased premises within the complex. But these premises are adjacent to 22nd Avenue, in which a spur track is located and is accessible at two different places, one directly across the street from Sorenson's building and the closer one near the driveway and adjacent to the Jessup Door Co. The distance from these spur locations to Sorenson's premises is no more than 90 feet in each instance. Passage through or on the leased premises of another party is not required to reach a rail car. The contiguous property on which the spur is located is a public street which deadends into a freeway. Therefore, the street cannot carry through traffic.

On these facts, the Commission concludes that Sorenson is on-rail because the spur can be considered as within the reasonable receiving area of Sorenson. If the consignee's property is adjacent to a spur track from which loading and unloading can be done in the normal manner, the consignee is on-rail even though the spur track does not run into property owned or leased by the consignee. (Investigation of Robert H. Sell, 56 Cal. P.U.C. 277 (1958); Investigation of Anderson Trucking, 57 Cal. P.U.C. 225 (1959).)

The staff relies on several decisions dealing with the situation where a consignee-tenant has by agreement the right to utilize a spur track on or adjacent to another tenant's premises. In these decisions, we held the nonadjacent consignee to be off-rail. They involved significantly different factual situations than present here, however. In Terminal Transportation Co., 65 Cal. P.U.C. 131 (1965), the consignee's premises were located on a private road and entirely surrounded by a fence. A spur track which served some industries farther away, was adjacent to the

consignee, but any loading or unloading had to be done over the fence. In Guerin Transportation Co., 55 Cal. P.U.C. 228 (1956), a drill track was separated from the consignee's property by a fence; and a spur track on another tenant's property was separated from the consignee by four different intervening lumber companies. Similarly, in Smith Trucking Co., 66 Cal. P.U.C. 343 (1966), two intervening parcels of the lessor separated the consignee-tenant and the track; and in North Coast Transport, Inc., 66 Cal. P.U.C. 387 (1966), the distance between the consignee and track measured almost one mile, including a ditch and two public streets. And finally, Winans Brothers, 62 Cal. P.U.C. 748 (1964), did not involve a consignee-tenant who had access to the spur track of a tenant of the same landowner.

The parties also disagree regarding the on-rail status of the Copeland Lumber Yard in Visalia. The nearest track to Copeland is located on the opposite side of Oak Street, a public street carrying through traffic which is adjacent to this consignee. This track is not a spur track, however. From it a spur track serves the Coors Brewery in the next block. The owner of the track, Southern Pacific Co., does not list Copeland on its roster of on-rail destinations. While a rail car could be placed on the Coors spur only 30 feet from Copeland's property line, it would be over half a block from the gate into its storage area. More significant, Copeland does not have access to this spur track. Any rail car shipment to Copeland would have to be spotted at the public team track, which is located at the Southern Pacific Depot in the block across Oak Street. This team track is at least half a block from Copeland's gate.

Respondents did not present any witnesses or evidence in opposition to the staff's position other than showing that Santa Fe listed the destination on-rail. The tracks near Copeland are owned by Southern Pacific, however. The Commission concludes, therefore, that Copeland is off-rail. As a result, the Item 240 stamp on the shipping order is ineffective, and the staff's determination of undercharges in the amount of $72.29 as set forth in Exhibit 4, Part 9 is correct.

The Commission has held that the Item 240 stamp supersedes the earlier request for volume incentive rates. There are, however, four shipping orders which lack this stamp. Therefore, with regard to these shipments the alternate rail rates were not requested by the shipper (see Exh. No. 4, Part 2, Freight Bill No. 7558; Parts 4, 5, and 10). Since these shipping orders bear the Item 292 stamp, the staff has rated them at the volume incentive rate and determined that undercharges exist.

The respondents maintain that these shipments cannot be rated under volume incentive service because they are mixed shipments falling within Item 90 of MRT 2. Item 90 shipments are expressly excluded by Item 292 from qualifying for volume incentive rates (Item 292(a)4). We must resolve which interpretation is correct.

The staff's position is based upon the fact that Item 292 refers to the Governing Classification in which the various roofing items involved in these shipments all have the same classification rating. The staff then relies upon Informal Ruling No. 117, dated February 3, 1964, which states that when a shipment includes different commodities subject to the same classification rating Item 90 is inapplicable. Therefore, volume incentive rates would apply.

While we agree with respondents that Informal Rulings are tentative and provisional, we conclude that the staff's position is correct. Item 292 refers to the Governing Classification. The various commodities take the same classification rating under the Governing Classification. Once the rate is determined, Item 292 requires that it be multiplied by the weight of the shipment, or 45,000 pounds, whichever is greater. Item 90 refers to commodities which take separate or different rates (Tr. 127). The rating involved here under the Governing Classification is the same. Since different ratings are not involved, the respondents failed to rate these four shipments properly.

Along with the undercharges from the Copeland shipment (Exh. No. 4, Part 9), the total undercharges amount to $184.87. The staff does not recommend any punitive fine. None will be ordered.

After consideration the Commission makes the following findings of fact:

1. Respondents Howard Child and Sidney Raine, doing business as Eight-Ball Line, operate under permits issued by this Commission as previously stated.

2. Respondent Eight-Ball was served with the appropriate tariffs and distance tables.

3. Respondent Certain-teed stamped all its shipping orders with the Item 292 stamp. This stamp is a valid and effective request for volume incentive rates under MRT 2. With regard to those shipments set forth by the staff in Exhibit No. 1, Part 2, Freight Bill No. 7558; and Parts 4, 5, and 10, only this stamp appears on these shipping orders. Therefore, the staff's determination of undercharges for these shipments is correct as set forth in Exhibit No. 4.

4. Under the provisions of Item 292 of MRT 2, a request for volume incentive rates is not irrevocable.

5. With regard to the remainder of the shipments set forth by the staff in Exhibit No. 4, Parts 1-11, respondent Certain-teed placed the Item 240 stamp on the shipping orders after determining that the particular destinations were on-rail, and before delivery of the orders and actual movement of the shipments occurred. At the same time, respondent Certain-teed failed to strike out the Item 292 stamp.

6. The Item 240 stamp is the last statement of directions to respondent Eight-Ball. The reasonable interpretation of the Item 240 stamp is that alternate rail rates were requested since a specific request for rail rates is not required by Item 200 of MRT 2. This request for rail rates occurred subsequently to the request for volume incentive rates. Therefore, the latter request was effectively cancelled.

7. The Sorenson Roofing Company, the consignee of the shipments set forth in Exhibit No. 4, Part 1, is located at 945 - 22nd Avenue, Oakland. Sorenson's facilities are adjacent to 22nd Avenue, which is a deadend street without through traffic. There is a spur rail track on the side of 22nd Avenue nearest to Sorenson's building, and adjacent to the next door building, operated by the Jessup Door Co. This track is in the street, and does not enter upon the premises of the Jessup Door Co. The Sorenson and Jessup facilities are owned by the same company, and this spur track was constructed by it to serve these two tenants. This spur track is no more than 90 feet from the gate to Sorenson's facility, and it is separated from it by only a driveway between the Sorenson and Jessup facilities. Therefore, Sorenson's facilities at this location are on-rail.

8. The Copeland Lumber Yard is located on Oak Street in Visalia. Oak Street is a through street on which normal traffic can reasonably be expected. There is a rail track on the side of Oak Street opposite to Copeland's gate. This track is owned by the Southern Pacific Company and it leads to a spur track which serves another business in the next block. Southern Pacific does not list Copeland as being on-rail. Copeland does not have access to the spur track in the next block. Therefore, Copeland is not an on-rail consignee. The undercharges set forth by staff in Exhibit No. 4, Part 9, are correct.

9. The undercharges set forth by the staff in Exhibit No. 4, Part 2, Freight Bill No. 7558, and Parts 4, 5, 9, and 10 are correct and result in undercharges in the amount of $184.87.

Based upon the foregoing findings of fact, the Commission concludes that Howard Child and Sidney Raine, doing business as Eight-Ball Line, have violated Sections 3664 and 3667 of the Public Utilities Code.

The Commission expects that respondent Eight-Ball 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 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. Respondent Eight-Ball shall henceforth refuse to accept any shipping orders from respondent Certain-teed which contain conflicting directions for rating the shipments. Such shipping orders will be returned to respondent Certain-teed for clarification of the rating instructions.

2. Respondent Eight-Ball 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 law and the regulations of this Commission.

3. Respondent Eight-Ball 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.

4. Respondent Eight-Ball 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 3 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent Eight-Ball shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and 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.

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The Secretary of the Commission is directed to cause personal service of this order to be made upon the respondents herein. The effective date of this order as to each respondent shall be twenty days after the completion of service upon such respondent.

Dated at San Francisco, California, this 16th day of DECEMBER, 1969.

William Symons Jr.
President

Commissioners