

Decision No. 76660

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 CHARLES A. CIAPUSCI, an individual, doing business as CHARLES A. CIAPUSCI TRUCKING CO.; BRAGATO PAVING CO., a California corporation; GEORGE GONSALVES and MARIE GONSALVES, individuals, doing business as G & M TRUCKING; HAROLD McQUILLIAMS, an individual, doing business as McQUILLIAMS TRUCKING; WILLIAM CAPLES, an individual; FRANK E. CUNNINGHAM, an individual; FRANK SANTOS, an individual, doing business as FRANK SANTOS TRUCKING; ANASTACIA P. PANARTES, an individual, doing business as P. F. TRANSPORTATION; ROY CONFIOTTI, an individual, doing business as HAUL RITE TRUCKING; DONALD R. DAVI, an individual, doing business as DON DAVI TRUCKING; BLASI TRANSPORTATION, a California corporation; LEONARD J. WROBEL, an individual, doing business as SONOMA READY MIX; DON R. SMITH, an individual, doing business as SMITH'S TRUCKING; JOHN MATZEN, an individual, doing business as JOHN MATZEN, WATER SERVICE; GLENALON ZAVORAL, an individual; NICHOLAS SUTSOS, an individual; KENNETH W. CUNNINGHAM and BEATRICE S. CUNNINGHAM, individuals, doing business as K & B TRUCKING; RALPH SILVERIA, an individual; PAUL DE MARTINI, JR., an individual, doing business as DE MARTINI TRUCKING; FRANK J. GUTIERREZ, JR., an individual; JOHN H. NICHOLLS, an individual, doing business as JACK NICHOLLS TRUCKING; and CHARLES DOTY, an individual, doing business as DOTY and SONS.

Case No. 8931
(Filed July 1, 1969)

Charles Antone Ciapusci, Ray Confiotti,
Marie V. Gonsalves, Harold McQuilliams,
Anastacia D. Panartes, and Don R. Smith.
in propria personae, respondents.
William J. McNertney, Counsel, and E. E.
Cahoon, for the Commission staff.

O P I N I O N

Public hearing was held before Examiner O'Leary at Santa Rosa on September 23, 1969 on which date the matter was submitted.

Respondent Charles A. Ciapusci, doing business as Charles A. Ciapusci Trucking Co. (Ciapusci), operates pursuant to a radial highway common carrier permit. Respondent Bragato Paving Co. (Bragato) is the party for whom the transportation, which is the subject of this investigation, was performed. The remainder of the respondents are highway carriers who were employed as subhaulers by respondent Ciapusci. At the time the transportation involved herein took place, all of said subhaulers held either a highway contract carrier permit or a radial highway common carrier permit with the exception of Frank Santos, doing business as Frank Santos Trucking (Santos), and Charles Doty, doing business as Doty and Sons (Doty), who did not hold any operating authority. All respondents, with the exceptions of Bragato, Santos and Doty were served with Minimum Rate Tariff No. 7 and all supplements thereto.

Respondent Ciapusci operates from his home in Santa Rosa. His gross revenue for the four quarters ending June 30, 1969 was \$123,102.00. Ciapusci does not operate any power equipment and does not have any employees. All transportation is performed through the use of subhaulers.

This investigation pertains to the transportation of shale, transported in dump trucks, from a point in Sonoma County known as Marshall Pit to a highway construction site also in Sonoma County.

A transportation representative testified that on October 8, 1968 he followed one of the trucks performing the transportation from point of origin to the point of destination and return and found that it took the truck one hour to complete the round trip which was a distance of 31.6 miles. Approximately October 20, 1968 the representative requested Ciapusci to furnish his records pertaining to the transportation at which time the representative was informed that the records were being worked on by his bookkeeper. On December 2, 1968 Ciapusci brought the records to the Commission's office in Santa Rosa. A review of the records by the transportation representative disclosed that the records were incomplete. On February 20, 1969 the complete set of records was furnished to the representative. Photostats of the records were received in evidence as Exhibits 1, 2 and 4. There is also included in Exhibit 1 a map, prepared by the transportation representative, showing the route over which the transportation took place. Exhibit 1 also includes a bill from Ciapusci to Bragato in the amount of \$20,475.50, which was the charge for transporting 31,500.76 tons at a rate of 65 cents per ton. The transportation representative testified that \$15.84 of the billed amount was for transportation not connected with this proceeding and that the total amount billed for the involved transportation was \$20,459.66. The records in Exhibit 1 disclose that Bragato paid Ciapusci \$1,196.69 less than the amount billed.

The minimum rates for the transportation involved herein are set forth in Minimum Rate Tariff No. 7. The tariff contains distance and hourly rates for the type of transportation involved herein. The distance rates can be utilized only when the

point of origin is a commercial producing plant, as defined in Item 10 of the tariff, or when a distance rate notice as specified in Item 93 of the tariff has been executed. The transportation representative testified that the point of origin was not a commercial producing plant and that Ciapusci advised him that no distance rate notice was executed.

Exhibit 2 contains photostat copies of the documents prepared by the subhaulers at the time the transportation took place and copies of hauling statements prepared by Ciapusci showing the amount earned by each subhauler. The hauling statements disclose that the subhaulers were paid on the basis of \$16.22 per hour. The evidence discloses that the number of hours used to arrive at each subhauler's compensation were not the actual hours worked but were arrived at through a conversion formula. The documents prepared by the subhaulers do not show the actual hours worked by them. Since the actual hours worked could not be determined from the documents prepared by the subhaulers the transportation representative utilized the weighmasters' certificates which show the time each truck passed over the scales at the point of origin to reconstruct the hours worked. Photostat copies of the weighmasters' certificates are contained in Exhibit 1. The reconstructed times were arrived at by computing the elapsed time from the time each truck first passed over the scale to the time each truck last passed over the scale, minus deductible time where applicable; to that was added one hour, which figure was the time the representative observed it took to complete a round trip. This increment was added because Item 300 of Minimum Rate Tariff No. 7 provides that time shall be computed

from the time reporting for work to start of last trip plus unloading time of last load.

A rate expert from the Commission's Rate Analysis Unit testified that he took the information contained in Exhibits 1 and 2 and compiled Exhibit 3 which is a summary of the data contained in Exhibits 1 and 2, together with his opinion of the minimum rates applicable to the transportation performed. The exhibit discloses undercharges totaling \$4,123.09 which figure includes the underpayment heretofore mentioned. The exhibit also discloses that subhaulers were paid \$2,319.82 less than the amount due them as required by Item 94 of Minimum Rate Tariff No. 7.

No evidence was presented by any of the respondents.

After consideration the Commission finds that:

1. All respondents, except Bragato Paving Co., Frank Santos, doing business as Frank Santos Trucking, and Charles Doty, doing business as Doty and Sons, held radial highway common carrier permits and/or highway contract carrier permits at the time the transportation involved herein took place and were served with Minimum Rate Tariff No. 7.
2. Respondent Charles A. Ciapusci, doing business as Charles A. Ciapusci Trucking Co., assessed charges for the transportation covered by Exhibits 1 and 2 at the rate of 65 cents per ton.
3. The hours shown on the documents contained in Exhibit 2 were not the actual hours worked but were arrived at by a conversion formula.
4. The reconstructed time computed by the staff is the minimum time the equipment could have operated to perform the transportation covered by Exhibits 1 and 2.

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5. Respondent Charles A. Ciapusci, doing business as Charles A. Ciapusci Trucking Co., billed Bragato Paving Co. \$2,926.40 less than the lawfully prescribed minimum rates for the transportation covered by Exhibits 1 and 2.

6. Respondent Bragato Paving Co. paid Charles A. Ciapusci, doing business as Charles A. Ciapusci Trucking Co., \$1,196.69 less than the billed amount, resulting in undercharges in the amount of \$4,123.09.

7. Subhaulers were paid \$2,319.82 less than the amount due them as required by Item 94 of Minimum Rate Tariff No. 7 as follows:

<u>Respondent Subhauler</u>	<u>Amount</u>
George Gonsalves & Marie Gonsalves	\$124.42
Harold McQuilliams	10.06
William Caples	111.85
Frank E. Cunningham	62.26
Frank Santos	57.93
Anastacia Panartes	246.80
Roy Confiotti	119.21
Donald R. Davi	39.24
Leonard J. Wrobel	176.38
Don R. Smith	159.37
John Matzen	153.02
Glenalon Zavoral	60.98
Nicholas Sutsos	168.01
Kenneth W. Cunningham & Beatrice S. Cunningham	114.65
Ralph Silveria	110.23
Paul De Martini, Jr.	258.88
Frank J. Gutierrez, Jr.	38.63
John H. Nicholls	167.30
Charles Doty	140.60

8. All carrier respondents, except Donald R. Davi, failed to prepare shipping documents to conform to the requirements of Items 93.1 and/or 93.2 of Minimum Rate Tariff No. 7.

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

1. Charles A. Ciapusci 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 \$1,803.27 and in addition thereto should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$1,000.

2. Charles A. Ciapusci should collect the undercharges from Bragato Paving Co. and should remit to the subhaulers the amounts set forth in Finding 7.

3. Respondents George Gonsalves and Marie Gonsalves, doing business as G & M Trucking; Harold McQuilliams, doing business as McQuilliams Trucking; William Caples; Frank E. Cunningham; Frank Santos, doing business as Frank Santos Trucking; Anastacia P. Panartes, doing business as P. F. Transportation; Roy Gonfiotti, doing business as Haul Rite Trucking; Blasi Transportation; Leonard J. Wrobel, doing business as Sonoma Ready Mix; Don R. Smith, doing business as Smith's Trucking; John Matzen, doing business as John Matzen Water Service; Glenalon Zavoral; Nicholas Sutsos; Kenneth W. Cunningham and Beatrice S. Cunningham, doing business as K & B Trucking; Ralph Silveria; Paul De Martini, Jr., doing business as De Martini Trucking; Frank J. Gutierrez, Jr.; John H. Nicholls, doing business as Jack Nicholls Trucking; and Charles Doty, doing business as Doty and Sons, violated Section 3737 of the Public Utilities Code by failing to prepare documents in accordance with Items 93.1 and 93.2 of Minimum Rate Tariff No. 7, and should be ordered to cease and desist from said violations.

The Commission expects that Charles A. Ciapusci will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges. The Commission also expects that Charles A. Ciapusci will promptly pay the subhaulers the amounts above mentioned in Finding 7. The staff

of the Commission will make a subsequent field investigation into the measures taken by Charles A. Ciapusci and the results thereof. If there is reason to believe that Charles A. Ciapusci or his attorney has not been diligent, or has not taken all reasonable measures to collect all undercharges and pay the subhaulers the differences or has not acted in good faith, the Commission may reopen this proceeding for the purpose of determining whether further sanctions should be imposed.

While punitive action will not be taken at this time against respondent subhaulers, they are placed on notice that future documentation failures will not be tolerated and any such failures will be dealt with severely.

O R D E R

IT IS ORDERED that:

1. Respondent Charles A. Ciapusci shall pay a fine of \$2,803.27 to this Commission on or before the twentieth day after the effective date of this order.
2. Respondent Charles A. Ciapusci shall take such action, including legal action, as may be necessary to collect the undercharges and pay the differences to the subhaulers set forth herein and shall notify the Commission in writing upon the consummation of such collections and payments.
3. Respondents George Gonsalves and Marie Gonsalves, doing business as G & M Trucking; Harold McQuilliams, doing business as McQuilliams Trucking; William Caples; Frank E. Cunningham; Frank Santos, doing business as Frank Santos Trucking; Anastacia P. Panartes, doing business as P. F. Transportation; Roy Confiotti,

doing business as Haul Rite Trucking; Blasi Transportation; Leonard J. Wrobel, doing business as Sonoma Ready Mix; Don R. Smith, doing business as Smith's Trucking; John Matzen, doing business as John Matzen Water Service; Glenalon Zavoral; Nicholas Sutsos; Kenneth W. Cunningham and Beatrice S. Cunningham, doing business as K & B Trucking; Ralph Silveria; Paul De Martini, Jr., doing business as De Martini Trucking; Frank J. Gutierrez, Jr.; John H. Nicholls, doing business as Jack Nicholls Trucking; and Charles Doty, doing business as Doty and Sons, shall cease and desist from preparing shipping documents that do not contain the information set forth in Items 93.1 and 93.2 of Minimum Rate Tariff No. 7.

4. Respondents George Gonsalves and Marie Gonsalves, doing business as G & M Trucking; Harold McQuilliams, doing business as McQuilliams Trucking; William Caples; Frank E. Cunningham; Frank Santos, doing business as Frank Santos Trucking; Anastacia P. Panartes, doing business as P. F. Transportation; Roy Gonfiotti, doing business as Haul Rite Trucking; Donald R. Davi, doing business as Don Davi Trucking; Leonard J. Wrobel, doing business as Sonoma Ready Mix; Don R. Smith, doing business as Smith's Trucking; John Matzen, doing business as John Matzen Water Service; Glenalon Zavoral; Nicholas Sutsos; Kenneth W. Cunningham and Beatrice S. Cunningham, doing business as K & B Trucking; Ralph Silveria; Paul De Martini, Jr., doing business as De Martini Trucking; Frank J. Gutierrez, Jr.; John H. Nicholls, doing business as Jack Nicholls Trucking; and Charles Doty, doing business as Doty and Sons, shall take such action, including legal action, as may be necessary to collect the underpayments set forth herein and shall notify the Commission in writing upon the consummation of such collections.

5. Respondents shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and underpayments and in the event undercharges or underpayments ordered to be collected by paragraphs 2 and 4 of this order or any part of such undercharges or underpayments remain uncollected sixty days after the effective date of this order, respondents shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the undercharges or underpayments remaining to be collected, specifying the action taken to collect such undercharges or underpayments and the result of such action, until such undercharges or underpayments have been collected in full or until further order of 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, as to each respondent, shall be twenty days after the completion of such service upon such respondent.

Dated at San Francisco, California, this 13th day of JANUARY, 1970.

William J. ...
President

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Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.