

Decision No. 76972

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of LANDIS MORGAN, an individual, doing business as LANDIS MORGAN TRANSPORTATION; MARGUART-WOLFE LUMBER COMPANY, INC., a California corporation; REID & WRIGHT, INC., a California corporation; ALLSTATE PLYWOOD, INC., a California corporation; TWIN HARBORS LUMBER COMPANY, INC., a Washington corporation; F. M. CRAWFORD LUMBER, INC., a California corporation; JIM RICHARDSON, an individual, doing business as JIM RICHARDSON LUMBER COMPANY; ROY FOREST PRODUCTS, a California corporation; and E. L. REITZ COMPANY, a California corporation.

Case No. 8852  
(Filed October 15, 1968)

Marvin J. Colangelo, Attorney, and B. B. Garcia, Consultant, for Landis Morgan, respondent.  
William J. McNertney, Counsel, and E. H. Hjelt, 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 Landis Morgan Leasing Company, Inc., doing business as Landis Morgan Transportation (Morgan)<sup>1/</sup>, for the purpose of determining whether said respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting less than applicable minimum rates in connection with transportation performed for the eight respondent shippers named in the above caption.

1/ The highway carrier operating authority and property involved in the investigation herein was transferred from Landis Morgan, an individual, to Landis Morgan Leasing Co., Inc. All of the stock in said corporation is held by Landis Morgan and his wife. By resolution dated December 9, 1968, the Board of Directors of Landis Morgan Leasing Co., Inc., approved the substitution of the corporation as respondent herein in place of Landis Morgan, an individual (Exhibit E).

Public hearing was held before Examiner Mooney in Ukiah on January 28 and 29, 1969. The matter was submitted on the latter date.

Morgan operates pursuant to Radial Highway Common Carrier Permit No. 23-1285. At the time of the staff investigation referred to hereinafter, Morgan had a terminal in Ukiah, operated 38 power units and 46 trailers, and had 47 employees. It had a gross operating revenue of \$1,010,820 for the year 1968, and was served with appropriate minimum rate tariffs and distance tables, together with all supplements and additions to each.

On various days during February and March, 1968, a representative of the Commission staff visited Morgan's place of business and examined its records covering the transportation of lumber and plywood during the period June 1 through November 30, 1967. The representative testified that Morgan issued approximately 1,900 freight bills during the period reviewed and that his investigation disclosed that 95 were apparently rated incorrectly. He stated that he made true and correct photostatic copies of the 95 freight bills and underlying documents relating thereto; that said documents covered transportation performed for the eight respondent shippers; and that all of the photocopies are included in Exhibits A-1 through A-9. The witness testified that Mr. Morgan furnished him with any information which had not been clearly shown on or was missing from the documents which were photocopied. He stated that Mr. Morgan and his staff had been cooperative during the investigation; that all of the respondent carrier's records were in good condition; and that it maintained a file on all of the many shippers and consignees with whom it does business which showed whether they were served by rail facilities.

The representative pointed out that the documents in Exhibit A-2 relate to transportation performed by Morgan for Reid & Wright, Inc. He testified that the majority of the shipments included in said exhibit were either delivered to or originated at property leased by said shipper from the Bracut Lumber Co. at Bracut (near Eureka). The leased property is approximately three acres in size. The witness stated that he visited the leased premises and observed that there were no rail facilities thereon. He explained that a spur track of the Northwestern Pacific Railroad crossed adjacent property used by the lessor and adjacent property of Simonson Lumber Co. Said track, he stated, is approximately 120 feet from the leased parcel of land. The representative asserted that since the rail spur does not serve the leased premises, it is not a railhead location.

Exhibits B and C introduced in evidence by the staff include information regarding the precise location of many of the origins and destinations of the transportation involved herein together with information as to whether said origins and destinations are railhead locations. With the exception of information in Exhibit B regarding the leased premises of Reid & Wright at Bracut, Morgan stipulated that the data in Exhibits B and C are true and correct.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits A-1 through A-9, together with the supplemental information testified to by the representative and that included in Exhibits B and C, and formulated the rate statements in Exhibits D-1 through D-10. Each of the rate exhibits shows the rate and charge assessed by Morgan, the rate and charge computed by the staff and the amount of undercharge alleged by the staff for transportation performed by Morgan for a particular shipper respondent.

The expert pointed out that Exhibits D-8, D-9 and D-10 all relate to transportation performed for E. L. Reitz Company and that the other eight rate exhibits each relate to transportation performed for a separate shipper respondent. He explained that Exhibits D-9 and D-10 both cover the identical transportation; that Morgan had applied rail milling-in-transit principles in his rating of said transportation; that the pertinent provisions of the rules governing milling-in-transit, including the requirements regarding documentation and records, are set forth on pages 1, 2 and 3 of Exhibit D-9; and that said documentation and record requirements were not complied with by either Morgan or Reitz. The witness stated that for comparative purposes, he applied milling-in-transit principles to his ratings in Exhibit D-9 but did not do so in Exhibit D-10. The amount of undercharge shown in Exhibit D-10 is substantially higher than that shown in Exhibit D-9. The rate expert recommended that Morgan be directed to collect the undercharge amount shown in Exhibit D-9 and be admonished to comply with all requirements of the transit rules in connection with any transportation he rates in this manner in the future. It is noted that Exhibit D-8 covers other transportation performed by Morgan for Reitz and does not involve milling-in-transit.

The rate expert testified that the rate errors by Morgan shown in Exhibits D-1 to D-9 resulted from assessing incorrect rates, failure to assess off-rail charges in connection with alternatively applied common carrier rail rates, combining separate shipments as multiple pickup or delivery shipments in instances where applicable tariff requirements had not been complied with and failure to correctly apply milling-in-transit rules. The amount of the undercharge shown in each of the nine exhibits, the shipper involved and the total of the undercharges in said exhibits are as follows:

<u>Exhibit No.</u>	<u>Shipper</u>	<u>Amount of Undercharges</u>
D-1	Marquart-Wolfe Lumber Co., Inc.	\$ 962.35
D-2	Reid & Wright, Inc.	513.69
D-3	Allstate Plywood, Inc.	679.24
D-4	Twin Harbors Lumber Co., Inc.	701.66
D-5	F. M. Lumber, Inc.	273.06
D-6	Jim Richardson Lumber Co.	209.87
D-7	Roy Forest Products, Inc.	133.69
D-8	E. L. Reitz Co., Inc.	278.65
D-9	E. L. Reitz Co., Inc.	<u>210.20</u>
	Total of Undercharges	\$3,962.41

The president of Morgan testified that he has been continuously in business since 1941, first as an individual and now as a corporation. With respect to the shipments in the staff exhibits which Morgan had consolidated as split pickup or split delivery shipments and which the staff had rated individually, the president explained that in each instance instructions had been received from the shipper by telephone; that the telephone instructions were confirmed in writing by Morgan on a special form designed for this purpose (Exhibit M); and that he was of the opinion that said written confirmation satisfied the requirement that the instructions from the shipper be in writing. He asserted that the telephone confirmation form is used only when there is not sufficient time to obtain written instruction from the shipper prior to pickup. He stated that in such circumstances, if Morgan did not accept telephone instruction, it would lose the shipper's account.

The president testified that all Reid & Wright shipments which were shown on the documents in the staff's Exhibit A-2 as consigned to or originating at Bracut were in fact unloaded or loaded by the Simonson Lumber Co. on its property which is served by rail facilities. He explained that there is an agreement between said companies covering this and other services performed by Simonson.

for Reid & Wright (Exhibit J); that the property leased by Reid & Wright has no employees at said location; and that Simonson moves the lumber between its property and the adjoining premises leased by Reid & Wright by forklift. In the circumstances, he stated, no off-rail charge need be assessed at Bracut on said shipments.

The president stated that when a rate error is discovered, Morgan immediately rebills the shipper for any balance due; that balance due bills have been issued for some of the rate errors alleged by the staff herein and part have been collected; that some of the errors during the period investigated were due to a new, inexperienced employee; that Morgan attempts to keep its file showing the presence or absence of rail facilities at the various shippers and consignees it serves current and correct; that said file includes such information on approximately 6,000 separate locations; and that any rate errors that did occur were inadvertent and unintentional.

A transportation consultant, who specializes primarily in traffic matters involving the transportation of lumber and forest products, testified on behalf of Morgan. He stated that he had reviewed all of the documents and rate statements placed in evidence by the staff and that he did not agree with the staff ratings in Exhibit D-2 (Reid & Wright) or D-9 (E. L. Reitz). He asserted that a number of the rating errors shown in the other rate exhibits were technical in nature.

The consultant pointed out that the first 25 of the 26 parts of Exhibit D-2 cover transportation for Reid & Wright to or from Bracut. He stated that based on the testimony of the president of Morgan that if all of the shipments included in said 25 parts were actually delivered to or originated at the premises of Simonson Lumber

Co., Bracut, which is railhead location, the undercharges in Parts 1 through 24 would be eliminated and the undercharge in Part 25 would be reduced to \$115.12. The staff agreed that if the Bracut shipments had in fact terminated or originated at the Simonson Lumber Co. the consultant's ratings of Parts 1 through 25 would be correct. As to Part 26, the consultant asserted that the carrier's rating was correct and no undercharge existed. The staff rate expert testified on rebuttal that Part 26 covers two separate shipments which Morgan had consolidated for rating purposes as a single multiple delivery shipment. The rate expert pointed out that Part 26 could not be rated in this manner because of the lack of proper documentation.

The consultant stated that he did not entirely agree with the staff rating of all of the milling-in-transit shipments in Exhibit 9 (E. L. Reitz). The differences between the consultant and the staff were not significant and resulted primarily from the method each had used in determining the transit tonnage credits and weight of the outbound shipments.

We concur with the staff ratings in Exhibits D-1 and D-3 through D-9. With respect to Exhibit D-9 (E. L. Reitz), the evidence clearly establishes that compliance with applicable milling-in-transit rules was extremely lax. In this connection, we will direct Morgan to cease and desist according milling-in-transit privileges unless there has been reasonable compliance with applicable transit rules.

We will accept the explanation by Morgan's president and traffic consultant that all Reid & Wright shipments in Parts 1 through 25 of Exhibit D-2 from or to Bracut either terminated or originated at Simonson Lumber Co. which was a railhead location. We do not agree, however, that Morgan correctly rated the transportation

covered by Part 26 of said exhibit. As pointed out by the staff rate expert and as the photocopies in Part 26 of Exhibit A-2 disclose, no documentation whatsoever was issued by the shipper requesting or authorizing the consolidation of the two separate shipments covered by said part. In the circumstances, the only undercharges remaining in Exhibit D-2 are \$115.12 in Part 25 and \$133.16 in Part 26. The total of said undercharges is \$248.28.

Based on a review of the evidence, we are of the opinion that Morgan should be directed to collect the undercharges found herein and that a fine in the amount of said undercharges plus a punitive fine of \$750 should be imposed on said respondent.

The Commission finds that:

1. Morgan operates pursuant to Radial Highway Common Carrier Permit No. 23-1285.
2. Morgan was served with applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.
3. All Reid & Wright shipments in Parts 1 through 25 of Exhibit D-2 to and from Bracut were either delivered to or originated at Simonson Lumber Co., Bracut, which was a railhead location.
4. Morgan did not charge less than applicable minimum rates for the transportation covered by Parts 1 through 24 of Exhibit D-2. The remaining undercharges in Parts 25 and 26 of said exhibit are \$115.12 and \$133.16, respectively, and the total thereof is \$248.28.
5. Except to the extent Exhibit D-2 is amended by Finding 4, Morgan charged less than the lawfully prescribed minimum rates in the instances set forth in the staff's Exhibits D-1 through D-9, resulting in undercharges in the total amount of \$2,697.00.
6. Morgan has issued rebilling for some of the undercharges shown in the staff rate exhibits and has collected part thereof.



7. Although transit privileges were accorded the transportation covered by Exhibit D-9 (E. L. Reitz), compliance with applicable milling-in-transit rules in connection with said transportation was extremely lax.

8. Morgan was previously a respondent before the Commission in Case No. 8060. Decision No. 71155 in that proceeding found undercharges of \$2,106.48 on shipments of lumber and assessed a fine in that amount plus a punitive fine of \$750.

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

1. Morgan violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

2. Morgan should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$3,697, and in addition thereto, should pay a fine pursuant to Section 3774 of said Code in the amount of \$750.

The Commission expects that Morgan 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. Landis Morgan Leasing Company, Inc., doing business as Landis Morgan Transportation, shall pay a fine of \$4,447 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 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.
5. Said respondent shall cease and desist from according milling-in-transit privileges to any transportation it handles unless

there has been reasonable compliance with all applicable milling-in-transit rules by all parties concerned.

The Secretary of the Commission is directed to cause personal service of this order to be made upon Landis Morgan Leasing Company, Inc., doing business as Landis Morgan Transportation. The effective date of this order, as to this respondent, shall be twenty days after completion of personal service. The Secretary is further directed to cause service by mail of this order to be made upon all other respondents. The effective date of this order, as to these respondents, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 20th  
day of MARCH, 1970.

William J. Snow, Jr.  
President

[Signature]

[Signature]

Yuan L. Sturgeon  
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.