

ORIGINAL

Decision No. 77110

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of JOHN L. CLEM, doing business as GARY TRANSPORTATION; KAISER GYPSUM CO., INC., a corporation, and DUNCAN CERAMIC PRODUCTS, INC., a corporation.

Case No. 8965

Frank Loughran, for John L. Clem; Loren D. Olsen, for Kaiser Gypsum Co., Inc.; and Jack M. Tipton, for Duncan Ceramic Products, Inc., respondents.  
William D. Figg-Hoblyn, Counsel, and E. H. Hjelt, for the Commission staff.

O P I N I O N

By its order dated September 16, 1969, the Commission instituted an investigation into the operations, rates, charges and practices of John L. Clem, doing business as Gary Transportation; Kaiser Gypsum Co., Inc., a corporation; and Duncan Ceramic Products, Inc., a corporation.

Public hearing was held before Examiner Porter on January 28, 1970, at San Francisco.

The facts of the case were stipulated. Involved were documentation failures and the application of a rail rate when not applicable.

Undercharges amounted to \$5,768.96.

John L. Clem has a radial highway common carrier permit. Carrier employs five truck drivers and has five tractors and seven semitrailers. The gross operating revenues for the fourth quarter of 1968 and the first three quarters of 1969 amounted to \$155,453.00.

The staff of the Commission recommended no punitive fine.

The Commission finds that:

1. Respondent operates pursuant to a radial highway common carrier permit.
2. Respondent was served with Minimum Rate Tariff No. 2.
3. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibit No. 1, Appendices A and B, which resulted in undercharges in the amount of \$5,768.96.

The Commission concludes that respondent violated Sections 3664 and 3667 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$5,768.96 (the amount of the undercharges shown in Exhibit No. 1, Appendices A and B).

The Commission expects that respondent 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, 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 John L. Clem shall pay a fine of \$5,768.96 to this Commission on or before the fortieth day after the effective date of this order.

2. Respondent John L. Clem shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein (Exhibit No. 1, Appendices A and B) and shall notify the Commission in writing upon the consummation of such collections.

3. Respondent John L. Clem 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, respondent shall file with the Commission, on the first Monday of each month after the end of sixty days, 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.

4. Respondent John L. Clem shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith, including the apportionment of freight charges, 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 on respondent John L. Clem.

Dated at San Francisco, California, this 21st day of APRIL, 1970.

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President  
[Signature]  
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[Signature]  
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John L. Sturgeon  
Commissioners