

Decision No. 77330

ORIGINAL

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)
D & F Trucking Company, Inc., a)
California corporation, and)
Alpha Beta Markets, Certified)
Grocers, and Stokely-Van Camp,)
Inc.)

Case No. 9037
(Filed March 24, 1970)

Wayne E. Thompson, Thompson and Miller, for
D & F Trucking Company, Inc.; J. L. Galbreath,
for Stokely-Van Camp, Inc.; Ed Richardson, for
Certified Grocers of California; Albert I.
Reyher, for Alpha Beta Markets; respondents.
R. G. Thayer, Counsel, and Ed 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 D & F Trucking Company, Inc., a California corporation (D & F), for the purpose of determining whether said respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging less than applicable minimum rates and charges and by failing to comply with applicable tariff rules in connection with transportation performed for Alpha Beta Markets, a California corporation (Alpha Beta), Certified Grocers, a California corporation (Certified), and Stokely-Van Camp, Inc., a California corporation (Stokely).

Public hearing was held before Examiner Mooney in Los Angeles on April 28, 1970, on which date the matter was submitted.

D & F operates pursuant to radial highway common carrier and highway contract carrier permits. It has a terminal in Norwalk. During the staff investigation referred to hereinafter, it employed

three drivers and three office employees, operated five trucks and was served with copies of all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each. Its gross operating revenue for the year 1969 was \$890,819.

On various days during August and September 1969, a representative of the Commission's Compliance Section visited D & F's place of business and examined its records relating to the transportation of dried raisins and canned goods for Alpha Beta, Certified and Stokely during the period May, June and July 1969. He testified that he made true and correct photostatic copies of freight bills and supporting documents for certain transportation during the review period which D & F had rated as consolidated shipments without complying with applicable time limitations and documentation requirements in Minimum Rate Tariff No. 2 and that all of said copies are included in Exhibit 2. He stated that he was informed by the dispatcher of D & F that no written instructions were received from the shipper for the transportation covered by Part 3 of the section of Exhibit 2 relating to Alpha Beta and that the dispatcher furnished him with all other necessary information regarding pickup dates and documentation for the transportation covered by various other parts of said exhibit.

A rate expert for the Commission staff testified that he took the set of documents in Exhibit 2, together with the supplemental information testified to by the representative, and formulated Exhibits 6 (Alpha Beta), 7 (Certified) and 8 (Stokely) which show the rates and charges assessed by D & F, the rates and charges computed by the staff and the undercharges alleged by the staff for the transportation included in Exhibit 2. He pointed out that the rate and charge assessed by D & F for the transportation covered by

Part 2 of Exhibit 8 (Stokely) was not below the applicable minimum charge for said transportation and that, in the circumstances, Part 2 should be stricken from said exhibit. He stated that the total amount of undercharge shown in each of the rate exhibits and the total for the three exhibits were as follows:

<u>Exhibit No.</u>	<u>Consignee</u>	<u>Amount of Undercharges</u>
6	Alpha Beta	\$ 279.35
7	Certified	1,066.73
8	Stokely	<u>173.60*</u>
	Total	\$1,519.68

* Does not include Part 2 which was stricken.

Respondents stipulated to the correctness of the staff ratings except those shown in Parts 2 and 3 of Exhibit 6 (Alpha Beta) and in Part 3 of Exhibit 7 (Certified).

We concur with the staff ratings of Part 2 of Exhibit 6 (Alpha Beta) and Part 3 of Exhibit 7 (Certified). In each instance, there was a lack of compliance with applicable tariff provisions, and for this reason, neither of said parts could be rated in the manner shown on D & F's documents.

We will accept D & F's rating of Part 3 of Exhibit 6 (Alpha Beta). Based on documentary evidence presented by the traffic manager of Alpha Beta at the hearing, it is apparent that there was, at the least, substantial compliance with all applicable documentation requirements which must be adhered to in order to rate the transportation covered by said part in the manner advocated by D & F. Both D & F and Alpha Beta are placed on notice that in the future we will require strict compliance with any and all applicable documentation provisions and that any deviation therefrom will not be tolerated.

D & F was placed on Official Notice by a representative of the Commission staff on March 1, 1968 for alleged documentation violations (Exhibit 4) and was issued an undercharge letter by the staff on April 19, 1968 (Exhibit 3).

Based on a review of the evidence, we are of the opinion that D & F should be directed to collect the undercharges found herein

and pay a fine in the amount thereof, and that in addition thereto, a punitive fine in the amount of \$500 should be imposed on said respondent.

The Commission finds that:

1. D & F operates pursuant to radial highway common carrier and highway contract carrier permits.

2. D & F was served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.

3. We will accept D & F's rating of Part 3 of Exhibit 6 (Alpha Beta).

4. As pointed out by the staff there is no undercharge in Part 2 of Exhibit 8 (Stokely). Said part is stricken from Exhibit 8.

5. Except as provided in Findings 3 and 4, D & F charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 6 (Alpha Beta), 7 (Certified) and 8 (Stokely) resulting in undercharges in the amount of \$160.61, \$1,066.73 and \$173.60, respectively. The total amount of the undercharges in the three exhibits is \$1,400.94.

The Commission concludes that D & F violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of said code in the amount of \$1,400.94, and in addition thereto should pay a fine pursuant to Section 3774 thereof in the amount of \$500.

The Commission expects that D & F 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. D & F Trucking Company, Inc., a California corporation, shall pay a fine of \$1,900.94 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 violating applicable tariff rules and 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon D & F Trucking Company, Inc. 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 9th day of JUNE, 1970.

William J. Lyons, Jr.
President
Augusta
J. P. McKinnon
John P. McKinnon
Vernon L. Sturgeon
Commissioners