

ORIGINAL

Decision No. 78614

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 J.I.M.
CORPORATION, a California corporation;
HEDLUND LUMBER SALES, INC., a California
corporation; NORTH VALLEY LUMBER SALES,
INC., a California corporation; and
STATE BOX COMPANY, a California corpora-
tion.

Case No. 9084
(Filed June 23, 1970)

Murchison & Davis, by Donald R. Murchison,
Attorney at Law, for J.I.M. Corporation,
respondent.
William J. McNertney, Attorney at Law, and
James L. Asman, for the Commission staff.

O P I N I O N

By its order dated June 23, 1970, the Commission instituted an investigation into the operations, rates, charges and practices of J.I.M. Corporation (J.I.M.), Hedlund Lumber Sales, Inc. (Hedlund), North Valley Lumber Sales, Inc. (North Valley), and State Box Company (State Box).

A public hearing was held before Examiner O'Leary at Los Angeles on December 16 and 17, 1970. The matter was submitted on the latter date.

J.I.M. conducts operations pursuant to highway contract and radial highway common carrier permits. The applicable minimum rate tariffs and distance table have been served on J.I.M.

J.I.M. has an office and terminal located in El Monte. It employs 15 drivers, 3 shop men and 2 office personnel. Its

operating equipment consists of 13 tractors, 14 sets of flat bed trailers and 2 sets of hopper trailers. Its gross operating revenue as reported to the Commission for the four quarters ended June 30, 1970 was \$844,761.

A representative from the Commission staff testified that during the period July 14 to September 24, 1969 he investigated the operations of J.I.M. He testified that with respect to transportation performed for respondent State Box the investigation covered the period May 16, 1969 to August 16, 1969. Photostat copies of documents pertaining to 16 shipments for respondent State Box were received in evidence as Exhibit 1. Exhibit 2 is a summary which shows, for each of the shipments in Exhibit 1, the charge collected by J.I.M., the minimum charge computed by the staff and the resulting undercharge. It was stipulated that the ratings and conclusions as to the undercharges set in Exhibit 2 are true and correct. It was further stipulated that the undercharges shown in Exhibit 2 which total \$271.66 were collected from State Box.

The representative also testified that he investigated certain buy and sell transactions between J.I.M., on the one hand, and Hedlund and North Valley, on the other hand, for the period December 17, 1968 and September 4, 1969. Photocopies of the documents covering said buy and sell transactions were received in evidence as Exhibits 3 and 5. Exhibits 4 and 6 are summaries which show for each of the transactions in Exhibits 3 and 5, respectively, the difference between the sale price received by J.I.M. and the purchase price paid by J.I.M., the minimum charge computed by the staff and the resulting undercharge. In order to limit the issue

with respect to Exhibits 3, 4, 5 and 6 as to whether or not there existed a bona fide buy and sell operation, it was stipulated that undercharges set forth in Exhibits 4 and 6 are true and correct.

Testimony was also given by two lumber brokers, a representative from a lumber retail sales outlet and the president of J.I.M. Corporation.

The evidence adduced discloses that J.I.M. possessed a dealer's license for the purpose of engaging in buy and sell operations. J.I.M. performed all of the transportation involved in the transactions contained in Exhibits 3 and 5. J.I.M. did not advertise that it was in the business of buying and selling lumber. All lumber sales were negotiated by lumber brokers working on a commission basis; said lumber brokers did not work exclusively for J.I.M. The broker who negotiated most of the sales involved herein testified that he took orders from customers and would check with various distributors up north to fill the orders. He first became aware that J.I.M. was involved in the lumber business when he was informed by the distributors that the invoicing would be performed by J.I.M. The customers who were invoiced by J.I.M. did not know they were dealing with J.I.M. at the time they placed their order with the broker. The purpose of entering into the buy and sell arrangement was to obtain revenue for the return movement of J.I.M.'s equipment.

After consideration the Commission finds that:

1. J.I.M. operates pursuant to radial highway common and highway contract carrier permits.
2. J.I.M. was served with the applicable tariff and distance table.

3. J.I.M. charged less than the lawfully prescribed minimum rate in the instances set forth in Exhibit 2 resulting in undercharges in the amount of \$271.66.

4. The undercharges set forth in finding 3 have been collected from State Box.

5. J.I.M. possessed a dealer's license for the purpose of buying and selling lumber.

6. The only services performed by J.I.M. in connection with its buy and sell operation was transportation, invoicing, collecting money from customers and paying suppliers.

7. J.I.M. did not advertise that it was in the lumber business.

8. Independent brokers negotiated the purchase from the supplier and sale to the ultimate consumer.

9. The purpose of the buy and sell operation was to obtain revenue for the return movement of J.I.M.'s equipment.

10. The hereinabove buy and sell transactions are devices within the meaning of Section 3668 of the Public Utilities Code since the only real service performed by J.I.M. was transportation.

11. Respondent charged less than the lawfully prescribed minimum rates in the instances set forth in Exhibits 4 and 6 resulting in undercharges in the amounts of \$3,225.44 and \$573.40, respectively.

Based upon the foregoing findings of fact, the Commission concludes that J.I.M. violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code; should collect the undercharges not previously collected and should pay a fine pursuant to Section 3800

of the Public Utilities Code in the amount of \$4,070.50 and in addition thereto should pay a fine, pursuant to Section 3774 of the Public Utilities Code, in the amount of \$500.

The Commission expects that J.I.M. 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 J.I.M. and the results thereof. If there is reason to believe that J.I.M. 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. J.I.M. Corporation shall pay a fine of \$4,570.50 to this Commission on or before the fortieth day after the effective date of this order.
2. J.I.M. Corporation 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. J.I.M. Corporation 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,

J.I.M. Corporation 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. J.I.M. Corporation 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.

The Secretary of the Commission is directed to cause personal service of this order to be made upon J.I.M. Corporation. The effective date of this order shall be twenty days after the completion of such service on J.I.M. Corporation. The Secretary is further directed to cause service by mail of this order to be made upon all other respondents.

Dated at Los Angeles, California, this 27th day of APRIL, 1971.

Chairman
William J. ...

[Signature]

[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.