

ORIGINAL

Decision No. 78808

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
 motion into the operations, rates and)
 practices of Larry L. Quigley, a sole)
 proprietorship, Forest Products Mar-)
 keting, Inc., a corporation, and)
 Chester Dailey, Jr. and Lee Hazel,)
 doing business as Debco, a partnership.)

Case No. 9197
 (Filed March 9, 1971)

John C. Schroder, Jr., Attorney at Law, for
 Larry L. Quigley, respondent.
Sergius M. Boikan, Attorney at Law, and Eugene E.
Cahoon, 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 Larry L. Quigley, a sole proprietorship, 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 in connection with transportation performed for Forest Marketing Products, Inc., a California corporation, and Chester Dailey, Jr. and Lee Hazel, doing business as Debco, a partnership.

Public hearing was held before Examiner Mooney in Oroville on May 13, 1971, on which date the matter was submitted.

Quigley operates pursuant to a radial highway common carrier permit. He has a terminal and an office in Oroville. At the time of the staff investigation referred to hereinafter, Quigley employed eight drivers, two mechanics and a dispatcher; he used the services of a rate consultant and an accountant; and he operated five trucks, three tractors, six full trailers and three semitrailers. Quigley

was served with all applicable minimum rate tariffs and distance tables. His gross operating revenue for the year 1970 was \$478,342.

Testimony and exhibits were presented by a representative and a rate expert for the Commission staff. Counsel for Quigley stipulated that the evidence presented by the staff witnesses was correct. According to said evidence, an investigation of Quigley's transportation business was conducted by the staff during the weeks of May 19 and September 1, 1970; the investigation covered the period December 1, 1969 through May 31, 1970; during said period, Quigley charged less than applicable minimum rates in the amount of \$1,683.71 in connection with 94 shipments of lumber for Forest Products Marketing and in the amount of \$2,199.12 in connection with the transportation of 17 shipments of composition roofing for Debco.

Quigley testified that he had done most of the rating himself; that any errors that did occur were inadvertent and unintentional; that steps have been taken to assure that such errors do not occur in the future; and that he was cooperative with the staff during the investigation and furnished all documents and information requested.

A fine has heretofore been imposed on Quigley by Decision No. 75635 dated May 2, 1969, in Case No. 8842 for undercharging and furnishing free sales and telephone services.

Based on a review of the evidence, we are of the opinion that Quigley should be directed to collect the undercharges found herein and that a fine in the amount of said undercharges plus a punitive fine of \$500 should be imposed on said respondent.

The Commission finds that:

1. Quigley operates pursuant to a radial highway common carrier permit.

2. Quigley was served with all appropriate minimum rate tariffs and distance tables, together with all supplements and additions thereto.

3. The rates and charges computed by the staff in Exhibit 6 relating to transportation performed for Forest Products Marketing and Exhibit 7 relating to transportation performed for Debco are correct.

4. Quigley charged less than lawfully prescribed minimum rates in the instances set forth in Exhibits 6 (Forest Marketing Products) and 7 (Debco) resulting in undercharges in the amounts of \$1,683.71 and \$2,199.12, respectively. The total amount of the undercharges in both exhibits is \$3,882.83.

The Commission concludes that Quigley 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 \$3,882.83 and in addition thereto should pay a fine pursuant to Section 3774 thereof in the amount of \$500.

The Commission expects that Quigley 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 his 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. Larry L. Quigley, a sole proprietorship, shall pay a fine of \$4,382.83 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 Larry L. Quigley. 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 27th day of JUNE, 1971.

[Signature]
Chairman
William J. [Signature]
[Signature]
Vernon L. Sturgeon
[Signature]
Commissioners