

Decision No. 78834

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 Sand Transportation Ser-)
 vice, Inc., a California corporation;)
 Hillsdale Rock Co., Inc.; Dan Caputo)
 Construction Company; R. L. Chaides)
 Construction; Concrete Service Company;)
 Bill Evans Construction; Herwig of)
 California Construction; Holm & Elliot,)
 Inc.; Howsons, Inc.; Jasper Construc-)
 tion Company; Don Knoll Company, Inc.;)
 Peninsula Paving; Powell Paving; W. P.)
 Russ, Inc.; and W. D. Smith, Inc.)

Case No. 9179
 (Filed January 19, 1971)

Geno A. Carrera, for Sand Transportation Service, Inc.; W. R. Howson, for Howson's, Inc.; William P. Rus, for Wm. P. Russ, Inc., respondents.
Elmer Sjostrom, Attorney at Law, and J. Asman, 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 Sand Transportation Service, Inc., a California corporation (Sand Transportation), for the purpose of determining whether said respondent violated Sections 3667 and 3737 of the Public Utilities Code by charging and collecting less than applicable minimum rates provided in Minimum Rate Tariff 7 (MRT 7) and by failing to comply with other provisions of said tariff regarding collection of charges and shipping documents in connection with for-hire transportation performed for the shipper respondents named in the above caption.

Public hearing was held before Examiner Mooney in San Francisco on April 22, 1971, on which date the matter was submitted.

Sand Transportation operates pursuant to dump truck carrier and radial highway common carrier permits. It has a terminal in San Jose. During the staff investigation referred to hereinafter, it employed a supervisor, who is also the president, a dispatcher, a bookkeeper and an additional employee, who performed office and other duties; it did not employ any drivers; it operated 20 sets of hopper bottom trailers and seven transfer trailers; it hired subhaulers to pull its trailers and had the required subhaul bond on file with the Commission; and it had received a copy of MRT 7, together with all supplements and additions thereto. Its gross operating revenue for the year 1970 was \$724,099.

On various days during July, August and September 1970, a representative of the Commission staff visited Sand Transportation's place of business and examined its records for the period February through July 1970. The representative testified that he made true and correct photostatic copies of certain of the carrier's documents and that all of the photocopies are included in Exhibits 1, 2 and 3.

The representative stated that the documents in Exhibit 1 cover interplant transportation of sand and gravel from a plant near Los Gatos and a plant at Coyote to an asphalt plant at San Carlos. The witness testified as follows regarding said exhibit: The transportation was performed pursuant to the hourly rates in MRT 7; Sand Transportation based its charges on a round trip time of one and three-quarter hours for each and every load hauled from either origin; the carrier's president informed him that either he or the dispatcher had placed the chargeable time on the freight bills and that said time was accurate; he interviewed several subhaulers employed by Sand Transportation on this job and was told by them that the average round trip time was at least two hours; with the assistance of other

staff members, he developed through observations of actual on the job running times an average round trip time for loads transported from each origin during various parts of the day; the average times so developed ranged between one and three-quarter hours and two hours depending on the time of day and the origin.

The representative testified that the documents in Exhibit 2 relate to the transportation of sand, gravel and earth to various construction jobs for various contractors. He explained that Sand Transportation had applied distance tonnage rates for all of said transportation; that no Distance Rate Notices were issued by any of the shippers for the transportation in issue; that Item 93 of MRT 7 requires the issuance of said notice as a condition precedent to the use of distance tonnage rates for such transportation; and that in the absence of said notice, minimum hourly rates apply.

The representative testified that Exhibit 3 includes examples of instances wherein Sand Transportation did not collect freight charges within the credit period specified in MRT 7 and examples of instances wherein said respondent did not include on its freight bills all information required by the tariff.

A rate expert for the Commission staff testified that he took the sets of documents in Exhibits 1 and 2, together with the supplemental information testified to by the representative and formulated the rate statements in Exhibits 4 through 17. Each of the rate exhibits shows the rate and charge assessed by Sand Transportation, the rate and charge computed by the staff and the amount of undercharge alleged by the staff for the transportation performed by Sand Transportation for a particular respondent shipper. The total of the undercharges in said exhibits is \$2,051.04.

The president of Sand Transportation testified that the round trips for the interplant transportation covered by Exhibit 1 could be performed within the time shown on the documents by newer power equipment; that some of the subhaulers engaged for this transportation had older power equipment; and that if any additional time had been taken for any of the trips, it was because of the older power equipment which is less efficient. As to the construction job hauling covered by Exhibit 2, he stated that the failure to obtain Distance Rate Notices from the shippers was an inadvertent oversight; that although Sand Transportation did handle the billing, 11 of the loads covered by said exhibit were arranged for and transported by a subhauler with Sand Transportation's trailers without his knowledge or authority during a slack period; and that said subhauler is no longer employed by him. With respect to the late collection of charges and incomplete freight bills covered by Exhibit 3, the president asserted that every effort is made to collect transportation charges within the authorized credit period and to avoid errors in the preparation of documents; that because of their payment procedures, some customers do not pay within the required time; and that the frequency in the turnover of subhaulers creates difficulties in instructing them regarding information that is required to be shown on shipping documents.

We concur with the staff ratings and undercharges shown in the rate exhibits. The fact that newer equipment might possibly be able to perform the interplant transportation covered by Exhibit 1 in less time than the older equipment which had been used is irrelevant. Item 300 of MRT 7 makes no distinction between the use of older or newer, more efficient equipment in the determination of chargeable time. Said item specifically provides that chargeable

time shall be based on the overall time, calculated in accordance with the formula therein, which is required to perform the transportation by the equipment used, less certain authorized deductions. As to the 11 loads in Exhibit 2 which were arranged for by a sub-hauler, Sand Transportation in billing them as its own transportation assumed the responsibility for assessing not less than applicable minimum rates and charges for said transportation. Regarding the credit period within which transportation charges must be collected and data to be shown on documentation, the requirements in MRT 7 relating thereto are specific and no deviations may be made therefrom without first obtaining authority from the Commission.

Based on a review of the evidence, we are of the opinion that Sand Transportation 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. Sand Transportation operates pursuant to dump truck carrier and radial highway common carrier permits.
2. Sand Transportation had received a copy of MRT 7, together with all supplements and additions thereto.
3. The rates and charges computed by the staff in Exhibits 4 through 17 are correct.
4. Sand Transportation charged less than lawfully prescribed minimum rates in the instances set forth in Exhibits 4 through 17. The shipper and amount of undercharges shown in each of said exhibits and the total of the undercharges are as follows:

<u>Exhibit No.</u>	<u>Shipper</u>	<u>Amount of Undercharges</u>
4	Hillsdale Rock Co.	\$ 605.81
5	Dan Caputo Construction Co.	55.09
6	R. L. Chaides Construction	187.82
7	Concrete Service Co.	98.13
8	Bill Evans Construction	72.39
9	Herwig of Calif. Construction	9.34
10	Holm & Elliot, Inc.	177.13
11	Howsons, Inc.	120.15
12	Jasper Construction Co.	11.93
13	Peninsula Paving	70.46
14	Powell Paving	85.76
15	Don Knoll Co.	29.51
16	W. P. Russ, Inc.	105.20
17	W. D. Smith, Inc.	<u>422.32</u>
	Total of Undercharges	\$2,051.04

5. Sand Transportation did not collect certain transportation charges within the credit period set forth in MRT 7.

6. Sand Transportation did not complete all transportation documents in accordance with the applicable rules in MRT 7.

The Commission concludes that Sand Transportation violated Sections 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of said code in the amount of \$2,051.04 and in addition thereto should pay a fine pursuant to Section 3774 thereof in the amount of \$500.

The Commission expects that Sand Transportation 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. Sand Transportation Service, Inc., a California corporation, shall pay a fine of \$2,551.04 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 Sand Transportation Service, 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 22nd day of JUNE, 1971.

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