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ORIGINAL

Decision No. 80817

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  
FRED M. WERT, an individual doing  
business as F. M. WERT TRUCKING;  
and GREENE'S READY-MIXED CONCRETE  
CO., a California corporation.

Case No. 9038

(Petition filed October 19, 1972)

ORDER MODIFYING DECISION

In Decision No. 78637 dated May 4, 1971 in Case No. 9038, the Commission issued its order that Fred M. Wert, an individual doing business as F. M. Wert-Trucking (Wert) should pay a fine of \$2,000 and should collect from Greene's Ready-Mixed Concrete Co. (Greene) the sum of \$22,262, which had been found to be a rebate. Upon the collection of the \$22,262, Wert was to pay a fine in that amount to the Commission as provided by Section 3800 of the Public Utilities Code. By Decision No. 79125 dated September 8, 1971 the amount of \$22,262 was reduced to \$15,000, which Wert began paying in installments.

On October 19, 1972 Wert petitioned the Commission to reduce the \$8,600 unpaid balance of the fine to one final payment of \$2,200. The Commission staff has investigated this request and has found that Wert has paid the \$2,000 punitive fine and \$6,400 of the \$15,000 rebate fine. The staff says that the requested reduction of \$6,400 equals that portion of trailer rental paid by Wert to Greene and found to be unreasonable. In Decision No. 78637 that trailer rental payment was found to be a rebate and was required to be collected and paid to the Commission as a fine.

The staff asserts that the minimum rate tariffs covering dump truck operations which were violated by Wert are expected to be changed in the near future so that much of the activity that caused Wert to be penalized would no longer be a problem. The staff has no objection to granting Wert's request.

Our independent review of Decision No. 78537, the subsequent modifications of that decision, and this Petition for Modification leads us to conclude that the petition should be granted in part. Based on the record and the staff evaluation we conclude that the interests of justice would be served if the balance due on the fine were reduced to \$4,600, payable by a prompt payment of \$2,200 plus six monthly payments of \$400 each.

IT IS ORDERED that the balance of the fine imposed by Decision No. 78537 is further reduced by \$4,000 on condition that the remaining balance of \$4,600 shall be paid as follows: \$2,200 on or before January 2, 1973, and \$2,400 in monthly installments of \$400 or more beginning February 1, 1973 until paid.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 12<sup>th</sup> day  
of DECEMBER, 1972.

Yaron L. Sturgeon  
President  
William J. Quors-J.  
[Signature]  
[Signature]  
Commissioners

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