

Decision No. 81127

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
PETE J. KOOYMAN, an individual,
doing business as PETE KOOYMAN
TRUCKING; HALL PACIFIC STEEL FAB
INC., a California corporation;
PACIFIC CORRUGATED CULVERT CO.,
INC., a California corporation;
and STELEX OF CALIFORNIA INC., a
California corporation.

Case No. 9422
(Filed August 15, 1972)

Handler, Baker, & Greene, by Marvin Handler,
Attorney at Law, for Pete Kooyman, respondent.
Lionel B. Wilson, Attorney at Law, and Edward H.
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 Pete J. Kooyman, an individual doing business as Pete Kooyman Trucking (Kooyman), for the purpose of determining whether he violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting less than applicable minimum rates in connection with transportation performed for Hall Pacific Steel Fab Inc., a California corporation (Hall), Pacific Corrugated Culvert Co., Inc., a California corporation (Pacific), and Stelex of California, Inc., a California corporation (Stelex).

Public hearing was held before Examiner Mooney in San Francisco on October 25, 1972, on which date the matter was submitted.

Kooyman operates pursuant to radial highway common carrier and dump truck carrier permits. He has a terminal in Lodi. During the period covered by the staff investigation referred to hereinafter, he

employed 19 drivers, 7 office personnel, and 2 shop mechanics; operated 19 tractors and 62 trailers; and had been served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each. His gross operating revenue for the year 1971 was \$1,871,468 and for the first half of 1972 was \$748,431.

On various days during January and February 1972, a representative of the Commission's staff visited Kooyman's place of business in Lodi and examined his records for the period June 31, 1971 through December 31, 1971. It was stipulated by Kooyman and the staff that the representative made true and correct photostatic copies of freight bills and supporting documents covering the transportation of iron or steel articles for Stelex, Hall, and Pacific during the review period, and that the photocopies are included in Exhibits 2, 3, and 4, respectively. The representative testified that he had personally observed the premises of Redding Steel & Supply Co. located on South Highway 99 near Redding and the premises of American Steel & Supply, Inc. at 2305 Radio Lane near Redding, the destinations of certain shipments in Exhibit 2 (Stelex), and determined that they are not served by rail facilities; that the owner of Redding Steel and Supply had informed him that rail shipments to his company are delivered to a nearby railhead location from which they are transferred on his own equipment to his plant; that the owner did not know whether the truck shipments in issue were delivered to the nearby railhead location or the plant; and that he was informed by Kooyman's rate clerk and his dispatcher and one of his drivers that all truck shipments to Redding Steel & Supply Co. are delivered directly to the plant.

Kooyman and the staff further stipulated as follows: The rate statements in Exhibits 5, 6, and 7 were prepared by a staff rate expert and relate to Exhibits 2 (Stelex), 3 (Hall), and 4 (Pacific), respectively; each of the rate exhibits shows the rate and charge assessed by Kooyman, the rate and charge computed by the staff, and the amount of undercharge alleged by the staff for the

transportation in issue; and that the amount of the alleged undercharges shown in Exhibits 5 (Stelex), 6 (Hall), and 7 (Pacific) are \$9,028.86, \$1,859.76, and \$1,170.41, respectively, and the total thereof is \$12,059.03. It is the staff position that the asserted undercharges resulted from assessing incorrect rates, failure to assess off-rail rates, and improper consolidation of shipments. Kooyman's attorney stated that the documents for the transportation under investigation were referred by his client to a traffic consultant firm for audit, and that there were no significant variations between the rates and charges developed by the consultant and the staff for the transportation.

Kooyman testified that at the time of the investigation he was in the dairy, farming, and trucking businesses; that he is no longer in the dairy business; that prior to 1970, all of his trucking business was for the United States Government or produce hauling to canneries which was not subject to rate regulation; that he now primarily hauls government freight and steel products; that most of his steel hauling is for U. S. Steel; and that Stelex has never been a major customer and now gives him very little freight. He stated that U. S. Steel furnishes him with all the rates for the transportation he performs for it; that he does not understand rates; that at the time the transportation herein moved, he had a new rate clerk who is no longer with him; that he now has an experienced rate clerk and has retained the services of a traffic consultant firm to audit his bills; and that none of the rate errors were intentional. The witness stated that he does not have any funds available to pay any fine in the amount of the undercharges that might be assessed and requested that any such fine be made payable upon his collection of the undercharges. In this connection, he asserted that both Hall and Pacific have assured him that they will pay any undercharges found by the Commission, and that Stelex has informed him that it will pay him for any undercharges but would need time to do so.

Based on a review of the evidence, we are of the opinion that Kooyman should be directed to collect the undercharges found herein; that a fine in the amount of the undercharges and an additional punitive fine of \$500 should be imposed on Kooyman; and that he should be ordered to cease and desist from violating the Commission's minimum rate orders. While we do not agree with Kooyman that the fine in the amount of the undercharges should not be subject to a specific time limit, we will authorize him to pay the entire fine in two parts. \$3,530.17 (the amount of the punitive fine and the amount of the undercharge fines in connection with Hall and Pacific) will be due within 40 days after the effective date of the order, and \$9,028.86 (the amount of the undercharge fine in connection with Stelex) will be due within 90 days after the effective date of this order.

Findings

1. Kooyman operates pursuant to radial highway common carrier and dump truck carrier permits.
2. Kooyman was served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.
3. Redding Steel & Supply Co., South Highway 99, near Redding, and American Steel & Supply, Inc., 2305 Radio Lane, near Redding, are not served by rail facilities.
4. The transportation to Redding Steel & Supply Co. summarized in Exhibits 2 and 5 (Stelex) was delivered to that company's premises at the location referred to in Finding 3.
5. The ratings and undercharges computed by the staff in Exhibits 5 (Stelex), 6 (Hall), and 7 (Pacific) are correct.
6. Kooyman charged less than lawfully prescribed minimum rates in the instances set forth in Exhibits 5 (Stelex), 6 (Hall), and 7 (Pacific) resulting in undercharges in the amounts of \$9,028.86, \$1,859.76, and \$1,170.41, respectively. The total is \$12,059.03.

Conclusions

1. Kooyman violated Sections 3664 and 3667 of the Public Utilities Code.

2. Kooyman should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$12,059.03, and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$500.

3. Kooyman should be directed to cease and desist from violating the minimum rates and rules established by the Commission.

The Commission expects that Kooyman 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. Pete J. Kooyman, an individual doing business as Pete Kooyman Trucking, shall pay a fine of \$12,559.03 to this Commission in two installments with the first installment of \$3,530.17 due on or before the fortieth day after the effective date of this order and the second installment of \$9,028.86 due on or before the ninetieth day after the effective date of this order.

2. Pete J. Kooyman 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. Pete J. Kooyman 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, respondent shall file with the Commission, on the first Monday of each month after the end of the 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. Pete J. Kooyman 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 Pete J. Kooyman. 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 13th
day of MARCH, 1973.

Vernon L. Sturgeon
President
William J. Lyons Jr.
[Signature]
[Signature]
Commissioners

Commissioner Thomas Moran, being
-6- necessarily absent, did not participate
in the disposition of this proceeding.