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Decision No. 81344

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 E. I. BRANDT, dba BRANDT TRUCKING SERVICE; PINE MOUNTAIN LUMBER COMPANY, a California corporation; McDANIEL & BURROUGHS, INC., a California corporation; WEST COAST PLYWOOD, LTD., dba FOREST FABRICATIONS, a California corporation; OSCAR M. HILL, dba MAX HILL LUMBER COMPANY; and DEE LUMBER, INC., a California corporation.

Case No. 9479  
(Filed December 5, 1972)

James J. Cherry, Attorney at Law, and Gene Cahoon,  
for the Commission staff.

O P I N I O N

Public hearing was held before Examiner Fraser at Yuba City on February 21, 1973 and the matter was submitted on a stipulation which was placed in evidence by staff counsel as Exhibit No. 1. The Commission staff was the only party represented at the hearing. None of the respondents were present. The stipulation was executed by counsel for E. I. Brandt and staff counsel. It affirmed that the staff allegations in the Order Instituting Investigation were all true and correct; that the staff's ratings were true and correct; and that the total undercharges are as follows (from Appendix 2 of Exhibit No. 1):

|                               |             |
|-------------------------------|-------------|
| Respondent Pine Mountain      | \$ 76.41    |
| Respondent M and B            | 136.00      |
| Respondent Forest Fabricators | 83.42       |
| Respondent Hill               | 316.97      |
| Respondent Dee Lumber         | 12,224.65   |
| Total                         | \$12,837.45 |

The stipulation provided for a fine of \$2,500 under the provisions of Section 3774, in addition to the amount of the undercharges, and provides for the fine of \$15,337.45 to be paid in \$1,000 installments from July through December 1973 and July through November 1974 with the balance of the fine owing to be paid in December 1974. The stipulation acknowledges respondent E. I. Brandt's lengthy record of rule violations and undercharge letters. ✓

In view of the record and the stipulation filed herein the Commission finds as follows:

1. Respondent E. I. Brandt operates as a certificated highway common carrier under authority of Commission Decision No. 51697 dated July 18, 1955 and as a radial highway common carrier and a highway contract carrier.

2. Respondent Brandt was served with the appropriate tariffs and all supplements thereto.

3. Brandt employs 14 drivers, 6 office employees, and 5 shop employees out of terminals in Yuba City and Montebello, operating with 25 tractors, 54 trailers, and one pickup.

4. Brandt's gross operating revenue for the year ending on September 30, 1972 was \$609,610.

5. Respondent Brandt has charged and collected a lesser sum for transportation of property than the applicable charges prescribed in Minimum Rate Tariff 2, and has remitted a portion of the rates and charges that should have been assessed to respondent Dee Lumber for transportation services by providing refunds and by failing to bill respondent Dee Lumber in violation of the provisions of Minimum Rate Tariff 2 and Public Utilities Code Sections 3664, 3667, and 3737.

6. Respondent Brandt permitted Dee Lumber to obtain transportation services at less than the minimum rates in violation of Sections 3668 and 3737 of the Public Utilities Code by falsifying shipping documents and by hauling free loads.

7. The transportation of lumber and structural steel by respondent Brandt in the transportation identified in Appendix 2 of Exhibit No. 1 has been performed at rates less than the minimum rates resulting in undercharges totaling \$12,837.45.

Conclusion

Brandt has violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$12,837.45 and in addition thereto should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$2,500.

The Commission expects that respondent 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 respondent and the results thereof. If there is reason to believe that 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. Respondent E. I. Brandt shall pay a fine of \$15,337.45 to this Commission in installments of \$1,000, due on the first of each of the months of July through December of 1973 and July through November of 1974; the last installment of \$4,337.45 shall become due on December 1, 1974.

2. 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. 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, 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. Respondent 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 respondent E. I. Brandt. The effective date of this order shall be twenty days after the completion of such service on such respondent. The Secretary is directed to cause service by mail of this order to be made upon all other respondents. As to them, the effective date of this order shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 8<sup>th</sup> day of MAY, 1973.

Vernon L. Stinson  
President  
William Lyons Jr.  
[Signature]  
[Signature]  
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate  
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