

Decision No. 81357

**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 COMMANDER INDUSTRIES, INC., a California corporation; Clint Rygel, an individual, dba Rygel Lumber Sales; The Key Corporation, a California corporation; Publishers Forest Products, a California corporation; J. & M. Lumber, Inc., a foreign corporation; John B. Tweedy, an individual, dba Tweedy Lumber Co.; Marquart-Wolfe Lumber Company, a California corporation and True-stone Concrete Products, Inc., a California corporation.

Case No. 9341  
(Filed March 7, 1972)

Rawlins Coffman, Attorney at Law, for Commander Industries, Inc., respondent.  
E. J. Sjostrom, Attorney at Law, and E. 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 Commander Industries, Inc., a California corporation (Commander), 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 for-hire transportation performed for the seven shippers named in the above caption.

Public hearing was held before Examiner Mooney in Red Bluff on October 11, 1972, on which date the matter was submitted.

Commander operates pursuant to radial highway common carrier and highway contract carrier permits. It has a terminal in Red Bluff. During the staff investigation referred to hereinafter,

it had 50 employees, operated 20 tractors and 25 sets of trailers, and had been served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each. Its gross operating revenue for the year ending June 30, 1972 was \$303,859.

On various days during June, July, and August 1971, a representative of the Commission staff visited Commander's place of business in Red Bluff and examined its records for the period October 15, 1970 through April 15, 1971. The representative testified that his investigation disclosed rate errors in connection with six shipments of bricks transported for Truestone Concrete Products, Inc. (Truestone), and in connection with various shipments of lumber for the other six shipper respondents. Photocopies of freight bills and underlying documents for this transportation and other necessary information were transmitted to a staff rate expert who formulated the rate statements in Exhibits 4 through 10, as amended by Exhibits 12 and 13. Each rate exhibit summarizes the transportation performed for a particular shipper respondent and shows the rates and charges assessed by Commander, the rates and charges computed by the staff, and the amount of undercharges alleged by the staff for the transportation. The name of the shipper and the amount of the alleged undercharges in each exhibit and the total thereof are as follows:

<u>Exhibit No.</u>	<u>Shipper</u>	<u>Amount of Undercharges</u>
4	Publishers Forest Products	\$ 1,069.28
5	J & M Lumber, Inc.	604.64
6*	Rygel Lumber Sales	942.48
7	The Key Corporation	1,502.93
8	Tweedy Lumber Co.	312.42
9**	Marquart-Wolfe Lumber Company	9,587.92
10	Truestone	1,323.86
	Total Undercharges	15,343.53

\* As amended by Exhibit 13.

\*\* As amended by Exhibit 12.

The rate expert testified that the alleged rate errors resulted from improper consolidation of shipments, assessing flat charges, failure to assess off-rail charges, and assessing incorrect rates. With respect to the six shipments for Truestone, the photocopies of the documents for this transportation in Exhibit 1 show that Commander assessed a flat charge of \$120 for each load of bricks transported, and all but one of the documents issued by respondent carrier have the notation thereon that this was subhaul transportation for Campbell Trucking, Inc. The representative testified, however, that all charges for this transportation were billed to and paid by Truestone and not Campbell Trucking, Inc.; that no fee paid statements or subhaul agreements were issued by Campbell Trucking, Inc.; and that there was an affiliation between Truestone and Campbell Trucking, Inc. Based on the representative's testimony, it was the staff's position that Commander was in fact the prime carrier and not a subhauler for this transportation and should have been paid the full minimum rate.

Evidence regarding the Truestone shipments was presented on behalf of Commander by one of its drivers, the controller of its Trucking Division at the time the transportation moved, and its manager. The driver's testimony was as follows: He has driven for Commander for six years; he knows Mr. Campbell of Campbell Trucking, Inc. in Oxnard and uses his office to obtain backhaul traffic from the Los Angeles area; at the time the transportation in issue moved, there was no backhaul traffic available, but he was informed by Mr. Campbell that Campbell Trucking, Inc. had been engaged to haul bricks to Fresno and Commander could have half of the loads if its rates were right; he called his Red Bluff office and received authority to haul the loads for Campbell Trucking, Inc.; Mr. Campbell instructed him to bill his company; although he knew Mr. Campbell was the boss of Truestone and both companies had the same address, he knew nothing of any ownership or other relationship between the two companies. The manager stated as follows: when the telephone call

was received from the driver, he assumed that the brick hauls were subhaul transportation for Campbell Trucking, Inc. which would not be subject to rate regulation; the transportation was billed on this basis; when the staff representative informed him during the investigation that the full minimum rate should have been assessed, he had the transportation charges recalculated on this basis and a balance due bill issued; he is still of the opinion that this was subhaul transportation. The former controller testified as follows: A letter explaining the rebilling and balance due bills in the amount of \$1,107 were sent to Truestone on November 10, 1971 (Exhibit 14); a reply dated December 13, 1971 (Exhibit 15) was received from Truestone stating that it had Commander's account with it for \$1,107 but that Commander owed it \$1,200 for forklift service for unloading the bricks at Fresno, based on a flat rental of \$800 per month plus costs for transporting the forklift to and from the jobsite, and a payment of \$93 from Commander would finalize the matter; in early 1972 he received a telephone call from a man who identified himself as Mr. Campbell and stated he was also the president of Truestone; the caller requested that all papers on the brick hauls be destroyed; the request was denied.

The manager further testified as follows: The company's main business is forest products; it has mills in California and assembly mills in three other states; its trucks are used approximately 75 percent of the time to transport its own products, and the balance of the time in for-hire transportation; it has no rate expert; it calls a traffic consultant firm if it needs a particular rate; with the exception of the question of whether the Truestone transportation was subject to rate regulation, its traffic consultant agrees with the staff ratings; steps have been taken to assure that rate errors do not occur in the future; lawsuits have been filed against Marquart-Wolfe Lumber Company and against The Key Corporation, and the other undercharges have either been collected or rebilled.

The only issue requiring discussion herein is whether the Truestone shipments were transported by Commander as a prime carrier or as a subhauler. If it is determined to be prime carriage, minimum rates would apply and undercharges would result as alleged by the staff; whereas, if it is determined to be subhaul transportation, the opposite would be true. While there is some evidence which tends to establish the transportation as prime carriage, we are of the opinion that the evidence on this issue is not sufficiently persuasive to support such a finding. We have, on the one hand, the facts that Commander billed Truestone for the freight charges and no fee paid statements or subhaul agreements were issued to Commander by Campbell Trucking. This evidence would tend to establish that the transportation was prime carriage. However, on the other hand, we have the fact that Campbell Trucking engaged Commander to perform the transportation. This latter fact would tend to establish that the transportation was subhauling. Furthermore, while there was some testimony that Mr. Campbell was involved with both Campbell Trucking, Inc., and Truestone, there is nothing in the record to show the degree of common ownership, management, or control, if any, that might in fact exist between the two companies. There is certainly no sound basis on this record for any finding that an alter ego relationship exists between Campbell Trucking, Inc. and Truestone. By eliminating the undercharges shown in Exhibit 10 for the Truestone shipments, the total of the undercharges in the other six staff rate exhibits is \$14,019.67.

Commander formerly operated under the name Corona Box and Lumber Company which was a respondent in Case No. 7590 wherein a fine was imposed on it for undercharging.

Based on a review of the entire record, we are of the opinion that, with the exception of Exhibit 10 (Truestone), Commander should be directed to collect the undercharges set forth in the staff rate exhibits, a fine in the amount of the undercharges found herein plus a punitive fine of \$1,000 should be imposed on Commander, and it should be directed to cease and desist violating the minimum rates.

Findings

1. Commander operates pursuant to radial highway common and highway contract carrier permits.
2. Commander was served with all applicable minimum rate tariffs and distance tables, together with all supplements and additions to each.
3. The record is not persuasive that undercharges exist in connection with Exhibit 10 (Truestone).
4. The rates and charges computed by the staff in Exhibits 4 through 9 and the amendments thereto in Exhibits 12 and 13 are correct.
5. Commander charged less than the lawfully prescribed minimum rates in the instances set forth in the following exhibits and in the amounts shown:

<u>Exhibit No.</u>	<u>Shipper</u>	<u>Amount of Undercharges</u>
4	Publishers Forest Products	\$1,069.28
5	J & M Lumber, Inc.	604.64
6*	Rygel Lumber Sales	942.48
7	The Key Corporation	1,502.93
8	Tweedy Lumber Co.	312.42
9**	Marquart-Wolfe Lumber Company	9,587.92

\* As amended by Exhibit 13.  
 \*\* As amended by Exhibit 12.

6. The total of the undercharges listed in Finding 5 is \$14,019.67.
7. Commander has collected some of the undercharges referred to in Finding 5 and has either rebilled or filed suit for the balance.

Conclusions

1. Commander violated Sections 3664, 3667, and 3737 of the Public Utilities Code.

2. Commander should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$14,019.67, and, in addition thereto, should pay a fine pursuant to Section 3774 thereof in the amount of \$1,000.

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

The Commission expects that Commander 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 Commander and the results thereof. If there is reason to believe that either Commander 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. Commander Industries, Inc., a California corporation, shall pay a fine of \$15,019.67 to this Commission on or before the fortieth day after the effective date of this order.

2. Commander 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. Commander 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, Commander 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. Commander 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 Commander Industries, 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 8th day  
of MAY, 1973.

Vernon L. Stevenson  
President  
William J. Jones  
[Signature]  
[Signature]  
Commissioners