

ORIGINAL

Decision No. 82546

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 WALKER BROWN TRUCKING, INC., a California corporation; OWL ROCK PRODUCTS CO., a California corporation; and PAUL T. SALATA and ALEXANDER S. RADOS, doing business as PASADENA AGGREGATES, a partnership.

Case No. 9591
(Filed July 31, 1973)

G. Ralph Grago, for Association of Independent Owner-Operators, interested party.
Janice E. Kerr, Attorney at Law, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, charges, and practices of Walker Brown Trucking, Inc. (Brown) for the purpose of determining whether it charged less than the applicable minimum rates in connection with the transportation of property for Owl Rock Products, Inc. (Owl) by means of providing an employee of Owl the use of an automobile and free gasoline, and whether it charged less than the applicable minimum rate in connection with the transportation of property for Paul T. Salata and Alexander S. Rados, doing business as Pasadena Aggregates (Pasadena), by means of extending credit in violation of Item 45 of Minimum Rate Tariff 7 and supplements thereto.

Public hearing was held before Examiner Banks at Los Angeles on December 7, 1973 and the matter was submitted on a stipulation placed into evidence by staff counsel as Exhibit 1 and subject to the filing of late-filed Exhibit 1-A. The late-filed exhibit has been received and the case is ready for decision.

At the hearing the representative for the Association of Independent Owner-Operators objected to the Commission accepting the written stipulation and requested a full hearing be held. Staff counsel pointed out that the stipulation admitted the facts and issues contained in the Order Instituting Investigation and agreed to the fines and recommendations. In response to questions posed by staff counsel and the examiner, the Independent Owner-Operators conceded that their objection to stipulation was the amount of the fine assessed. It was suggested that the amount was a "mere slap on the wrist" and as such would not deter respondents or others from future violations.

The punitive fine recommended by staff and stipulated to by respondent Brown is \$750. This figure was based on undercharges in a comparatively small amount and was considered by staff to be fair in view of the violations.

The examiner overruled the objection of the Independent Owner-Operators and recommended that the Commission accept the written stipulation as a hearing would not add anything substantive to the stipulated facts and would only delay a Commission decision.

Findings

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

1. Brown operates as a radial highway common carrier and as a dump truck carrier.
2. Brown was served with appropriate tariffs and all supplements thereto.

3. Brown employs 5 drivers, 6 office employees, and 1 mechanic.

4. Brown's gross operating revenue for the year ending June 30, 1972 was \$2,243,218.15.

5. Brown charged and collected \$795.79 less than the applicable rates prescribed for the transportation of property than should have been charged to respondent Owl Rock Products Co. by means of refunding or remitting a portion of the rates by providing use of an automobile and gasoline free of charge to an employee of Owl in violation of Sections 3664 and 3667 of the Public Utilities Code.

6. Brown charged and collected \$1,262 less than the applicable minimum rates prescribed for the transportation of property than should have been charged to Pasadena Aggregates, Inc. by means of extending credit to respondent Pasadena in violation of Item 45 of Minimum Rate Tariff 7 and supplements thereto.

7. The transportation of products by Brown for respondents Owl and Pasadena has been performed at rates less than the minimum rates resulting in undercharges of \$2,057.79.

Conclusion

Brown 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 \$2,057.79, and in addition thereto should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$750.

The Commission expects that Walker Brown Trucking, Inc. 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 such measures. If there is reason to believe that Walker Brown Trucking, Inc. 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 determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Walker Brown Trucking, Inc. shall pay a fine of \$750.00 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Walker Brown Trucking, Inc. shall pay interest at the rate of seven percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

2. Walker Brown Trucking, Inc. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$2,057.79 on or before the fortieth day after the effective date of this order.

3. Walker Brown Trucking, Inc. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 7, and shall notify the Commission in writing upon collection.

4. Walker Brown Trucking, Inc. shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of the operating authority of Walker Brown Trucking, Inc. until the report is filed.

5. Walker Brown Trucking, Inc. 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 Walker Brown Trucking, Inc. and to cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be twenty days after completion of service on that respondent.

Dated at San Francisco, California, this
12th day of MARCH, 1974.

Verano L. Sturgeon
President
William J. Lyons
Richard
Edo
Commissioners

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