

Decision No. 83428**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 Reginald E.  
Smart, Jr., an individual, doing  
business as Reg Smart Trucking;  
Roy Forest Products Co., a  
California corporation and Sierra  
Pacific Industries, a California  
corporation.

Case No. 9678  
(Filed March 12, 1974)

Reginald E. Smart, for himself, respondent.  
Elmer J. Sjoström, Attorney at Law, and  
Kenneth K. Henderson, for the Commission staff.

O P I N I O N

On March 12, 1974 the Commission instituted an investigation on its own motion into the operations, rates, and practices of Reginald E. Smart, an individual doing business as Reg Smart Trucking (Smart); Roy Forest Products Co.; and Sierra Pacific Industries for the purposes of determining:

1. Whether respondent Smart has violated Sections 3664 and 3737 of the Public Utilities Code by charging less than the minimum rates by failure to comply with Items 690 and 691 of Minimum Rate Tariff 2 for said operations.
2. Whether respondent Smart has violated Section 3575 of the Public Utilities Code and Commission General Order No. 102-Series by engaging subhaulers without first having obtained and placed on file with the Commission a subhaul bond.
3. Whether respondent shippers have paid less than the applicable rates and charges for the transportation performed by respondent Smart.

4. Whether any sums of money are now due and owing to respondent Smart from respondent shippers.

5. Whether respondent Smart should be ordered to collect from respondent shippers, or from any other persons liable therefor, the difference between the charges collected and the charges due under the aforementioned tariff.

6. Whether respondent Smart should be ordered to cease and desist from any and all unlawful operations and practices.

7. Whether the operating authority of respondent Smart should be canceled, revoked, or suspended, or as an alternative, whether a fine should be imposed pursuant to Public Utilities Code Section 3774.

8. Whether a fine in the amount of the undercharges should be imposed pursuant to Public Utilities Code Section 3800.

9. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

Public hearing was held before Examiner O'Leary at Oroville on May 21, 1974 at which time the matter was submitted.

Smart holds radial highway common and livestock carrier permits. He owns two tractors and four trailers and employs one driver. His terminal is located at Oroville. His gross operating revenue for the four quarters ended September 30, 1973 was \$85,454. He was served a copy of General Order No. 102-Series on July 18, 1968.

The staff presented evidence which shows that:

1. During the period December 1972 through April 1973 Smart transported 18 shipments of lumber for Roy Forest Products at rates less than the applicable minimum rates. Undercharges aggregate \$806.78.

2. During April 1973 Smart transported four shipments of lumber for Sierra Pacific Industries at rates less than the applicable minimum rates. Undercharges aggregate \$37.26.

3. During March 1973 Smart transported three shipments of lumber weighing a total of 125,917 pounds for Sierra Pacific Industries free of charge. Charges based on the applicable minimum rate to the three shipments aggregate \$91.29.

4. During the period February 1972 thru April 1973 Smart employed subhaulers on twenty occasions without having the bond required by General Order No. 102-Series.

Smart did not contest the staff's evidence with respect to the transportation performed for Roy Forest Products and the four shipments transported for Sierra Pacific Industries for which undercharges totaled \$37.26.

With respect to the staff's evidence concerning the transportation for Sierra Pacific Industries free of charge, Smart presented evidence disclosing that he received \$75.00 for the three shipments involved. This evidence was not refuted by the staff. Thus, the undercharges for the three shipments total \$16.29 rather than \$91.29 as alleged by the staff.

Evidence presented by Smart, concerning one instance wherein Gaub Trucking was allegedly engaged as a subhauler, disclosed that Smart was erroneously paid by another trucker, namely, Larry Stidham who had engaged Gaub Trucking as a subhauler. The payment by Smart to Gaub Trucking was merely to forward monies to Gaub Trucking which were erroneously paid by Larry Stidham to Smart. The evidence presented by the staff as to two other instances wherein it alleges that Smart employed Gaub Trucking as a subhauler fails to show conclusively that Gaub Trucking was employed as a subhauler. As to the other seventeen instances wherein the staff alleges that subhaulers were employed by Smart, the evidence supports such allegation.

#### Findings

1. Smart operates pursuant to radial highway common carrier and livestock carrier permits.

2. During the period December 1972 through April 1973 Smart transported eighteen shipments of lumber for Roy Forest Products at rates less than the applicable minimum rates resulting in undercharges totaling \$806.78.

3. During the period March and April 1973 Smart transported seven shipments of lumber for Sierra Pacific Industries at rates less than the applicable minimum rates resulting in undercharges totaling \$53.55.

4. Smart was served with a copy of General Order No. 102-Series.

5. During the period February 1972 through April 1973, Smart employed subhaulers on seventeen occasions without having the bond required by General Order No. 102-Series.

Conclusions

1. Smart has violated Sections 3664 and 3737 of the Public Utilities Code by charging less than the minimum rate for transportation of lumber.

2. Smart has violated Section 3575 and General Order No. 102-Series by engaging subhaulers without first having obtained the required bond.

3. Smart should be ordered to collect undercharges in the amount of \$860.33 and pay a fine in said amount pursuant to Section 3800 of the Public Utilities Code and in addition thereto should pay a fine in the amount of \$250.00 pursuant to Section 3774 of the Public Utilities Code.

The Commission expects that Reginald E. Smart, Jr., 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 Reginald E. Smart, Jr., 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 determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Reginald E. Smart, Jr., shall pay a fine of \$250.00 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Reginald E. Smart, Jr., 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. Reginald E. Smart, Jr., shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$860.33 on or before the fortieth day after the effective date of this order.
3. Reginald E. Smart, Jr., shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Findings 2 and 3, and shall notify the Commission in writing upon collection.
4. Reginald E. Smart, Jr., 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


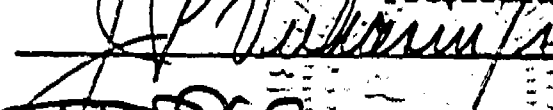
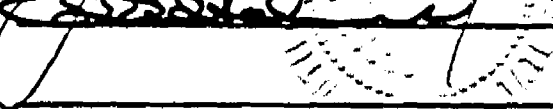
remaining to be collected, specifying the action taken to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Reginald E. Smart, Jr., operating authority until the report is filed.

5. Reginald E. Smart, Jr., 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.

6. Reginald E. Smart, Jr., shall cease and desist from engaging subhaulers in violation of Section 3575 of the Public Utilities Code and General Order No. 102-Series.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent Reginald E. Smart, Jr. 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 11<sup>th</sup> day of SEPTEMBER, 1974.

  
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President  
  
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Commissioners

Commissioner William Simons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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