

ORIGINAL

Decision No. 84633

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of BAYVIEW TRUCKING, INC., a California corporation and Campbell Soup Co., a New Jersey corporation; M & M Meat Co., a California corporation; and Service Packing Co., a California corporation.

Case No. 9780  
(Filed August 20, 1974)

Frank Loughran, Attorney at Law, for  
Bayview Trucking, Inc., respondent.  
Peter Arth, Attorney at Law, and E. E.  
Cahoon, for the Commission staff.

O P I N I O N

By its order dated August 20, 1974, the Commission instituted an investigation into the operations of Bayview Trucking, Inc. (Bayview), Campbell Soup Co., Service Packing Co., and M & M Meat Co. to determine whether Bayview charged the respondent shippers less than minimum rates for certain transportation.

Public hearing was held before Examiner Fraser on December 4 and 5, 1974 in San Francisco.

It was stipulated (Exhibit 1) between the staff and respondent Bayview that undercharges rated by the staff on the transportation performed for Campbell Soup Co. total \$9,717.37 and \$1,899.63 for transportation performed for Service Packing Co. It was further stipulated that respondent Bayview would pay a \$4,000 fine under the provisions of Section 3774 of the Public Utilities Code in addition to a fine in the amount of the undercharges. The undercharges due from Campbell Soup Co. and Service Packing Co. were collected prior to the date of hearing. For the most part, the

apparent types of violation causing undercharges were (1) the application of rail commodity rates via nonapplicable routes and failure to assess off-rail charges for the transportation of frozen food for Campbell Soup Co. and (2) failure to charge applicable Minimum Rate Tariff 2 class rates and proper rail rates for shipments of chilled fresh meat or bones for Service Packing Co.

No undercharges were collected from M & M Meat Co., and it was not represented at the hearing. Respondent Bayview advised that M & M Meat Co. has refused to negotiate or even acknowledge undercharges. The staff presentation of evidence was concerned exclusively with transportation performed for M & M Meat Co.

Staff evidence indicated that a copy of the order instituting this investigation was mailed to M & M Meat Co. on August 28, 1974 and received on August 30, 1974. It was further indicated that notice of hearing was mailed on October 29, 1974 and received according to receipt returned by the post office.

Respondent carrier's records were examined by a Commission representative during October 1973 on transportation performed from July 1, 1972 through June 30, 1973. All documents relating to the 64 M & M Meat Co. shipments were withdrawn from respondent carrier's files and photocopied. This staff witness testified that the records obtained from the carrier's Sacramento terminal were not coincident with Los Angeles records. This prompted a visit to M & M Meat Co. in Los Angeles, where the investigator was informed on October 31, 1973 that records were not maintained and that none were available. The witness obtained copies of documents from sources other than Bayview to substantiate the allegations on Parts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 45, 46, 48, 51, 52, 54, 56, 57, 58, 59, 60, 61, 62, and 64.

The people identified at the end of this paragraph were subpoenaed by the staff to authenticate the documents referred to in the previous paragraph. Their testimony is related to the transportation covered by freight bills listed in Table 1 of Appendix A of this decision. The alleged violations on each freight bill are identified by description and tariff reference in Table 2 of Appendix A.

William A. Lundin  
General Manager  
Federal Cold Storage  
Pacific Cold Storage  
Vernon

Ms. Mona Bricker  
Office Manager  
United Cold Storage  
South San Francisco

Thomas B. Cook  
Traffic Manager  
Terminal Refrigerating Co.  
Burbank

Steven L'Ecluse  
Triangle Cold Storage  
Commerce

Louis J. Figone  
President  
Regal Packing Co.  
San Leandro

Phil M. Meyers  
Traffic and Warehouse Manager  
American Home Foods  
Vacaville

A Commission rate expert testified that he considered the data contained in Exhibits 2, 3, 4, 5, and 7 supplied by the transportation representative and prepared a rate analysis on the M & M Meat Co. shipments. It was placed in evidence as Exhibit 6 and is summarized in Table 1 of Appendix A. Exhibit 6 reflects purported undercharges of \$15,055.08.

Respondent carrier called its executive vice-president who testified he was employed in August 1973 and became executive vice-president during January 1974. He testified that during the period under investigation the carrier's Los Angeles terminal rated its own shipments, and all freight bills seemed to be correct and to adequately describe the commodities and shipments. He testified he visited Los Angeles on frequent occasions and advised the terminal manager to weigh all shipments; the manager insisted it was not necessary and he was finally terminated as an employee when he neglected to weigh loads originating at the Los Angeles terminal after being ordered to do so by the carrier's president. He testified all rating seemed correct until the Order Instituting Investigation was published; it was then apparent that the freight bills did not adequately describe the shipments. Shippers were immediately notified of the undercharges

and the sums due were collected. M & M Meat Co. was contacted and refused to acknowledge the undercharges. He testified that the carrier's rating system had been revised as a result of this investigation. All ratings are now completed at respondent's main office in Sacramento. Respondent carrier's counsel made a brief closing statement. He argued that the shippers involved must bear the principal blame, since they must have known of the faulty entries on the shipping documents and did not notify the carrier's main office.

#### Findings

1. Bayview operates pursuant to a radial highway common carrier permit. It also has a highway common carrier certificate, which was received on September 25, 1973 and is not involved in this proceeding.

2. Bayview was served copies of Minimum Rate Tariffs 1-B, 2, 8, 9-B, 19, Distance Table 7, and Exception Ratings Tariff 1.

3. Bayview employs 40 persons and operates with one tractor and 43 trailers out of terminals in Sacramento, Los Angeles, and Wilmington, with a shop and principal office in Sacramento.

4. Bayview's gross operating revenue for the last two quarters of 1973 and the first two quarters of 1974 is as follows:

<u>Quarter</u>	<u>Gross</u>	<u>Earned by Subhauling</u>	<u>Amount Paid To Subhauler</u>
2nd - 1974	\$447,496	\$3,051	\$209,838
1st - 1974	431,441	3,659	242,389
4th - 1973	486,813	5,525	238,348
3rd - 1973	<u>474,465</u>	<u>8,308</u>	<u>281,961</u>
Total (year ending 6/30/74)	\$1,840,215	\$20,543	\$972,536

5. Bayview charged less than the prescribed minimum rates for the shippers and in the amounts listed below from Exhibit 1.

Campbell Soup Co.	\$9,717.37
Service Packing Co.	<u>1,899.63</u>
Total	\$11,617.00

6. Bayview charged less than the prescribed minimum rate on transportation performed for M & M Meat Co. as depicted in Exhibits 2 through 7 and summarized in Tables 1 and 2 of Appendix A attached hereto. The undercharges on this transportation total \$15,055.08.

7. The undercharges due from Campbell Soup Co. and Service Packing Co. have been paid to Bayview.

#### Conclusions

1. Bayview violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code and Items 60, 70, 162, 172, 200, 210, and 255 of Minimum Rate Tariff 2.

2. Bayview should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$26,672.08 and, in addition thereto, should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$4,000.

The Commission expects that Bayview 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 Bayview 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. Bayview Trucking, Inc. shall pay a fine of \$4,000 to this Commission pursuant to Public Utilities Code Section 3774 on or before the fortieth day after the effective date of this order. Bayview 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. Bayview Trucking, Inc. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3800 of \$26,672.08 on or before the fortieth day after the effective date of this order.


3. Bayview Trucking, Inc. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 6 and shall notify the Commission in writing upon collection.

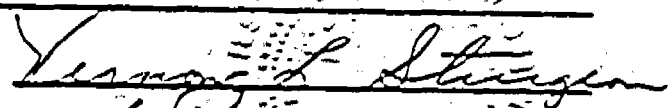
4. Bayview Trucking, Inc. shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the 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 Bayview Trucking, Inc. operating authority until the report is filed.



6. Bayview 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 Bayview 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 8<sup>th</sup> day of JULY, 1975.

  
President



  
  
Commissioners

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

Table I

TRANSPORTATION PERFORMED BY MYVIEW TRUCKING, INC. FOR M & M MEAT COMPANY

BILLED versus ACTUAL

No. of Part:Freight: No.: Bill	Commodity	Weight in Pounds	Point(s) of Origin	Point(s) of Destination	(6) Charge	(6)
Freight Bill	Actual	Freight Bill	Actual	Freight Bill	Actual	Freight Bill
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 2859	Fresh Chilled Meat	(1)	30,000 (8)40,020	MSH C/R (8)Federal LAJ Armour	SP Armour (9)United O/R	\$325.90 \$603.43 \$277.53
2 2886	"	(1)	30,000 (7)40,000	MSH C/R (3)	Regal O/R (4)	325.90 511.05 185.15
3 2957	"	(1)	30,000 (7)40,180	MSH C/R (3)	Regal O/R (4)	325.90 513.34 187.44
4 3002	"	(1)	30,000 (10)40,020	MSH C/R (10)Federal LAJ Armour	SP Armour (9)United O/R	325.90 603.43 277.53
5 3039	"	(1)	30,000 (7)45,040	MSH C/R (3)	Regal O/R (4)	325.90 575.03 249.18
6 3175	"	(1)	130,000 130,020	MSH C/R (3)	Regal Armour O/R SP (9)United O/R	824.95 1752.59 927.64
7 3182	"	(1)	30,000 (10)40,020	MSH C/R (10)Federal LAJ Armour	SP Armour (9)United O/R	325.90 603.43 277.53
8 3112	"	(1)	30,000 (7)40,000	MSH O/R (3)	Regal O/R (4)	325.90 511.05 185.15
9 3270	"	(1)	30,000 (7)40,000	MSH O/R (3)	Regal O/R (4)	325.90 511.05 185.15
10 3343	"	(1)	30,000 (11)40,020	MSH O/R (10)Pacific LAJ American	SP (4)	325.90 523.91 198.01
11 3355	"	(1)	30,000 (7)40,000	MSH O/R (3)	Regal O/R (4)	325.90 511.05 185.15
12 3503	"	(1)	21,040 (2)	MSH O/R (3)	Regal O/R (4)	257.10 310.62 53.52
13 3531	"	(1)	35,000 (7)45,040	MSH O/R (3)	Regal O/R (4)	371.40 575.03 263.66
14 3572	"	(1)	30,000 (11)40,020	MSH O/R (3)	American SP (4)	325.90 551.12 225.22
15 3616	"	(1)	30,000 (7)40,000	MSH O/R (3)	Regal O/R (4)	325.90 526.85 200.95
16 3662	Fresh Meat Trim- ings, Chilled	(1)	30,000 (11)40,020	Pacific LAJ (3)	American SP (4)	325.90 551.12 225.22
17 3683	Fresh Meat, Chilled	(1)	30,000 (7)40,000	MSH O/R (3)	Regal O/R (4)	325.90 526.85 200.95
18 3817	"	(1)	30,000 (7)40,020	MSH O/R (3)	Regal O/R (4)	325.90 527.11 201.21
19 3909	"	(1)	30,000 (7)40,020	MSH O/R (3)	Regal O/R (4)	325.90 527.11 201.21



*CORRECTION*

# CORRECTION

THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY