

ltc

Decision No. 84759

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 Union Trans-
portation Company, a California
corporation; Interpace Corporation,
a foreign corporation; Vita Bark
Division of D G Shelter Products
Company, a California corporation;
and Johns-Manville Products Corpor-
ation, a foreign corporation.

Case No. 9825
(Filed November 19, 1974)

Loughran & Hegarty, by Frank Loughran and
Thomas M. Loughran, Attorneys at Law,
for Union Transportation Company; and
R. M. Hinkley, for Interpace Corp.;
respondents.
Elmer Sjostrom, Attorney at Law, and
E. E. Cahoon, for the Commission staff.

O P I N I O N

By its order dated November 19, 1974, the Commission on its own motion instituted an investigation into the operations, rates, and practices of Union Transportation Company (Union), Interpace Corporation (Interpace), Vita Bark Division of D G Shelter Products Company (Vita Bark), and Johns-Manville Products Company (Johns-Manville).

Public hearing was held May 15, 1975 before Examiner Banks at Sacramento.

Union, a California corporation is engaged in the business of transporting property over the public highways of this State for compensation, holding a radial highway common carrier permit issued August 1, 1947, a highway contract carrier permit issued August 1, 1947, a dump truck carrier permit issued January 7, 1970,

and a cement carrier certificate granted by Resolution No. 13821, Sub. No. 19, on June 23, 1964 in Application No. 46450.

Union is alleged to have violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code as a highway permit carrier. The alleged violations concern undercharges for shipments of clay sewer pipe, ground fireclay, crushed pipe, and floor tile for Interpace, potting soil for Vita Bark, and roofing material for Johns-Manville.

At the time of the investigation Union employed 27 persons and operated 116 pieces of equipment with terminals in Los Angeles and Sacramento. Gross operating revenues for 1974 totaled \$832,445.

Subsequent to the investigation and prior to hearing Union ceased operations and auctioned off its equipment.

Union, Interpace, and the Commission staff were present at the hearing.

The matter was submitted pursuant to a stipulation introduced into evidence as Exhibit 2. The stipulation was executed by Union's president, its counsel, and the Commission staff counsel. The stipulation affirmed that, with the exception of certain excluded counts, the allegations in the order instituting investigation (OII) are true and correct, that the staff's ratings were true and correct, and that the total undercharges resulting from charging less than the lawfully prescribed minimum rates for the respondent shippers are:

Interpace	\$ 4,281.93
Vita Bark	5,758.60
Johns-Manville	<u>222.13</u>
Total	\$10,262.66

The stipulation also provided that concurrent with revocation of Union's operating authority, Union should collect all undercharges and be assessed a fine in the amount of \$10,262.66 pursuant to Sections 3774 and 3800 of the Public Utilities Code.

The investigation covered shipments of clay sewer pipe, ground fireclay, crushed pipe, or floor tile for Interpace for the period July 25, 1973 to April 11, 1974. The undercharges as modified by the stipulation amount to \$4,281.93.

Interpace admits to some of the undercharge allegations as contained in the OII stating the correct amount should be \$417.44.

It appears that for the Interpace shipments of clay sewer pipe and ground fireclay Union assessed rail rates for traffic billed to the Southern Pacific team track at Corona.^{1/} Interpace contends that this destination was subject to the alternative application of rail rates inasmuch as Corona was included in the index of stations and in the rate item of PSFB Tariff 257-C until December 30, 1973.

In its unverified written statement introduced as Exhibit 4 Interpace states:

"...that the Open and Prepay abandonment referred to by the Commission Staff is too vague and obscure a reference publication for a shipper or trucker to have instant knowledge of. It is unreasonable to expect truckers or shippers to police station abandonments as may be published from time to time in the Open and Prepay List."

However, staff Exhibit 3 includes "Rules and Other Governing Provisions - General Rules and Regulations" for PSFB Tariff 257-C wherein Item 10 provides:

^{1/} Nineteen loads of ground fireclay were hauled to the Interpace plant located off-rail near Corona in the extended area of Junction 6105. The remaining traffic was delivered to Interpace at Corona.

STATION LISTS
AND
CONDITIONS

"This Tariff is governed by the Official List of Open and Prepay Stations⁸⁷, ICC A-52, issued by Station List Publishing Company, Agent, to the extent shown below:

"PREPAY REQUIREMENTS AND STATION CONDITIONS

"For additions and abandonments of stations, and except as otherwise shown herein for prepay requirements, changes in names of stations, restrictions as to acceptance or delivery of freight, and changes in station facilities.

"When such a station is abandoned as of a date specified in the above named tariff, the rates from and to such stations as published in this Tariff are inapplicable on and after this date."

By Supplement 17 to Official List of Open and Prepay Stations⁸⁷, the effective date of the abandonment of the Corona station was June 20, 1973. The Commission in Decision No. 57923, Charlie P. Jeter, December 7, 1959, Case No. 6165, stated that:

"...the trucker uses the alternative rail rate provisions at his own risk; the burden is upon him to find, compute and assess a rail rate which is appropriate and current for the freight handled between the points involved." (Emphasis added.)

We concur with the staff interpretation and assessment as contained in the stipulation introduced.

No issue was made of other undercharges involving the 33 shipments for Vita Bark and one shipment for Johns-Manville.^{2/}

^{2/} In addition to failing to assess applicable class rates, the reasons for Vita Bark undercharges included shipment weight discrepancies and improper commodity classification. The undercharge for Johns-Manville was caused by failure to assess an applicable off-rail charge at point of destination.

Based on the record and the stipulation filed herein the Commission finds:

1. Union Transportation Company, a California corporation, holds a radial highway common carrier permit, a highway contract carrier permit, a dump truck carrier permit, and a cement carrier certificate.

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

3. Union charged less than the minimum rates as set forth in Minimum Rate Tariff 2 in violation of Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.

4. Union's failure to assess the prescribed minimum rates resulted in undercharges in the amount of \$10,262.66 for the shippers as set forth in Exhibit 2.

5. Pursuant to Section 3800 of the Public Utilities Code Union should collect the undercharges and be assessed a fine in the amount of \$10,262.66.

6. Union's operating authority should be revoked as an alternative to a fine pursuant to Section 3774 of the Public Utilities Code.

Conclusions

1. Union 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 \$10,262.66.

2. The Commission expects that Union 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 Union and the results thereof. If there is reason to believe that Union 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. Union Transportation Company shall pay a fine of \$10,262.66 to this Commission pursuant to Public Utilities Code Section 3800 on or before the fortieth day after the effective date of this order.

2. Union Transportation Company shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth in Finding 4, and shall notify the Commission in writing upon collection.

3. Union Transportation Company shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. 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, Union Transportation Company 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.

4. Concurrently with receipt of the payment of the fine imposed by Ordering Paragraph 1 of this order the following operating authority granted to Union Transportation Company shall be revoked:

Radial highway common carrier permit issued August 1, 1947, highway contract carrier permit issued August 1, 1947, dump truck carrier permit issued January 7, 1970, and cement carrier certificate granted by Resolution No. 13821, Sub. No. 19, on June 23, 1964.

5. Union Transportation Company 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 Union Transportation Company 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 5th day of AUGUST, 1975.

William Squisus President
Terrence J. Sturgeon
J. Roy
Robert S. Smith Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.