

Decision No. 85769**ORIGINAL**

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
 RUSSELL T. PHILLIPS, an individual,
 dba Russ Phillips Trucking; and
 ELK GROVE MEAT CO., a California
 corporation; and ARMOUR & CO., a
 Delaware corporation.

Case No. 9878
 (Filed February 19, 1975)

SUPPLEMENTAL OPINION

Decision No. 85139 dated November 18, 1975 in the above-entitled matter found that respondent without authorization applied deviation rates and an expired temperature control rating table and consequently charged less than the lawfully prescribed minimum rates for certain transportation resulting in undercharges in the amount of \$22,000.10. The decision, among other matters, ordered respondent Phillips to collect the undercharges and to pay a fine in the amount of the undercharges pursuant to Section 3800 of the Public Utilities Code.

On April 2, 1976, respondent Phillips filed a Petition for Modification of the fine payment provisions imposed by Decision No. 85139. Phillips is operating under Chapter XI of the Bankruptcy Act, and anticipates repaying his unsecured creditors under a plan of arrangement. This plan has not yet started and will be based on expected cash flow from operations of his trucking business.

Phillips by his petition offers to pay on the Section 3800 fine of \$22,000.10 beginning April 1, 1976 and on the first of each succeeding month, at the rate of \$200 per month, until such time as he has paid all unsecured creditors under his plan of arrangement.

On the first of the next succeeding month the payment to the Public Utilities Commission on the fine would increase to \$500 per month and continue at that rate on the first of each succeeding month until the entire amount of the fine has been paid.

It is apparent that respondent, operating his trucking business as debtor-in-possession under provisions of Chapter XI of the Bankruptcy Act, and with no other nonexempt assets than those associated with his trucking operation, is at this time financially unable to pay the fine imposed by Decision No. 85139 in full. It is also apparent that as operations continue, respondent will be able to make regular payments on the fine imposed.

Findings

1. Respondent Phillips at this time is not able to pay in full the fine imposed by Decision No. 85139.
2. Respondent Phillips appears able to make regular monthly installment payments on the fine.
3. Respondent Phillips has petitioned the Commission that he be allowed to make installment payments.

Conclusion

The Commission concludes that Ordering Paragraph 1 of Decision No. 85139, insofar as it pertains to the Section 3800 fine payment, should be amended as set forth in the following supplemental order.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. Russell T. Phillips (Phillips), dba Russ Phillips Trucking, shall pay to this Commission a fine of \$22,000.10 pursuant to Public Utilities Code Section 3800. This fine shall be paid in installments beginning April 1, 1976 and on the first day of each succeeding month at the rate of \$200 per month until such time as Phillips has paid

all unsecured creditors under the Chapter XI Bankruptcy Act plan of arrangement approved for Phillips by the Bankruptcy Court, and thereafter at the rate of \$500 on the first day of each succeeding month until the entire amount of the \$22,000.10 fine has been paid.

2. Phillips shall file with this Commission, within ten days after the event, a copy of the order releasing him from jurisdiction of the Bankruptcy Court.

3. In all other respects Decision No. 85139 shall remain in full force and effect.

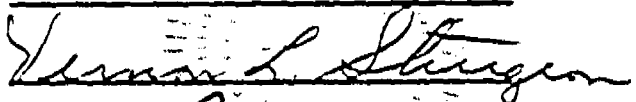
The Executive Director of the Commission is directed to cause personal service of this order to be made upon respondent Phillips.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14
day of MAY, 1976.



President



Commissioners



Commissioners

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