

ORIGINAL

Decision No. 85851

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of METROPOLITAN WAREHOUSE COMPANY for a retroactive extension of time to file quarterly report of gross operating revenue, fees and taxes. File No. T-11,616

Application No. 56042
(Filed October 29, 1975)

E. E. Beaver, for applicant.
Herbert Hughes, for California
Trucking Association, inter-
ested party.
Stanley E. Garrett, for the
Commission staff.

O P I N I O N

Metropolitan Warehouse Company was assessed penalties by the Commission aggregating \$425.88 for filing late its quarterly report of gross operating revenue from trucking operations^{1/} for the second quarter of 1975 (period April 1 to June 30, 1975). Applicant is not now delinquent, having paid the required fees and penalties. Applicant contends that the total penalty assessed was excessive and unduly harsh because of certain extenuating circumstances. Applicant is willing to pay interest on the late-paid fees.

Public hearing was held before Examiner Norman Haley at Los Angeles on March 29, 1976, and the matter was submitted.

^{1/} Metropolitan Warehouse Company holds authority to conduct trucking operations as a certificated highway common carrier, and as a permitted radial highway common carrier and highway contract carrier. This company also performs public utility warehouse operations, which are not involved herein.

The protested amount of \$425.88 is the sum of two penalties which were calculated by the Commission and added to fees based on applicant's gross operating revenue for the second quarter of 1975. A penalty of 25 percent was added to the fee of one-third of one percent of gross operating revenue assessed pursuant to Public Utilities Code, Division 2, Chapter 6 (Transportation Rate Fund and Fees). In addition, a penalty of 25 percent was added to the fee of one-tenth of one percent of gross operating revenue assessed pursuant to Division 2, Chapter 3 (Highway Carriers' Uniform Business License Tax Act).

According to Code Sections 4304 and 5003.1, applicant should have filed with the Commission between the first and fifteenth of July, 1975, a statement showing gross operating revenue from transportation of property for the preceding three calendar months, and paid the required fees. July 15 is 15 days after the end of the second quarter. The fees were not paid by July 15, 1975 and, thereafter, applicant was in default. However, Sections 4307 and 5007 contain a 30-day penalty-free default period during which time quarterly payments still could have been made without penalty. Those sections also provide that the Commission may extend the 30-day penalty-free period upon written application and proper showing. The quarterly report involved was mailed to the Commission on Monday, August 18, 1975, the first working day after Friday, August 15, the end of the penalty-free period. In October the instant application was filed seeking

retroactive extension of time to file the report. Sections 4307 and 5007 are similar in construction. The latter section is quoted below:

"If any transportation agency referred to in this chapter is in default in the payment of the fees prescribed, other than filing fees, for a period of 30 days or more, the commission may suspend or revoke any certificate of public convenience and necessity, permit, or license of such agency, and shall estimate from all available information the gross operating revenue of such agency, and shall add to such estimate a penalty of 25 percent for failure, neglect, or refusal to report. The transportation agency shall be estopped from complaining of the amount of such estimate. In no event shall such penalty be less than one dollar (\$1). Upon payment of the amount estimated and the penalty thereon, the certificate, permit, or license of such agency theretofore suspended in accordance with the provisions of this section shall be reinstated.

"The commission may grant a reasonable extension of such 30-day period to any transportation agency, upon written application of the transportation agency and proper showing thereunder of the necessity for such extension.

"Upon revocation of any operating authority issued to any transportation agency subject to this chapter, all fees provided for herein shall become due and payable immediately."

Applicant's controller introduced and explained Exhibits 1, 2, and 3. According to this witness applicant has a record of paying quarterly fees on time. Payments usually are made on or before the penalty date, which is 45 days after the end of each quarter. On July 16, 1975, the employee responsible for preparing the quarterly report was in a serious automobile accident and was hospitalized. He did not return to work until

August 18, the first working day after the penalty-free default period. On August 18 the quarterly report involved was mailed to the Commission. During the time the employee was off work, the record shows that applicant had been experiencing a drop in business and also was undergoing a drastic reduction in personnel and reassignment of duties. There was no one qualified to replace the absent employee. To do so would have required a protracted training period. The witness asserted that a provision in the union contract (Exhibit 3) restricted management personnel from preparing the quarterly report under the circumstances involved. It was the responsibility of the assistant controller to review quarterly reports when completed before they were sent to the Commission.

Testimony on behalf of the staff was presented through an associate transportation representative. He introduced and explained Exhibit 4, which contains instructions for preparing quarterly reports of gross operating revenue. These instructions are prepared by the Tariff and License Branch of the Transportation Division and furnished to each transportation agency required to file quarterly reports. Among other things, the instructions state what constitutes gross revenue, how to compute quarterly fees, and that 25 percent penalties must be added to the fees and taxes if a report is not filed (postmarked, without exception) by the penalty date (end of the 30-day penalty-free period). The instructions also provide that written request for extension of time must be filed prior to the penalty date.

It is the position of the staff that if applicant needed an extension of the 30-day penalty-free period, it should have sought an extension prior to the end of such period, as specified in Exhibit 4; that management personnel should have

been aware of the requirement; that the instruction form is mailed, along with each quarterly report form (Form TL 540); and that the latter form for the second quarter of 1975 stated that payment is subject to penalty if not mailed and postmarked on or before August 15, 1975.

Section 5007 of the Public Utilities Code, quoted above (and Section 4307), provides that the Commission may suspend or revoke a carrier's operating authority if the carrier is in default in the payment of fees, other than filing fees, for a period of thirty days or more. Application of this penalty by the Commission is discretionary. However, those sections state that the Commission shall estimate from all available information the gross operating revenue of such agency, and shall add to such estimate a penalty of 25 percent for failure, neglect, or refusal to report. This monetary penalty is mandatory. The monetary penalty is required even though the Commission does not also suspend or revoke the carrier's operating authority.

The circumstances advanced by applicant do not justify a retroactive extension of time. The 30-day penalty-free default period was in addition to a 15-day period following the end of the second quarter of 1975. Applicant should have had the second quarter report prepared and ready to mail by July 15, 1975, to avoid being in default. The automobile accident involved did not occur until July 16. Furthermore, management personnel should have been aware of our written instructions (Exhibit 4 and the quarterly report form furnished by the Commission four times each year) to make requests for extension of time before the end of the 30-day penalty-free default period (by August 15, 1975 in this instance). The total penalty assessed was computed correctly in accordance with the methods prescribed in Code Sections 4307 and 5007. It was not shown to be excessive nor unduly harsh.

Findings

1. After July 15, 1975 applicant, a highway carrier, was in default in the payment of fees for the second quarter of 1975, as specified in Public Utilities Code, Division 2, Chapter 3 and Chapter 6.

2. Applicant was assessed penalties totaling \$425.88 for failure to file its quarterly report of gross operating revenue from trucking operations for the second quarter of 1975 on or before August 15, 1975, which was the end of the 30-day penalty-free default period provided in Sections 4307 and 5007 of the Public Utilities Code. Applicant made its filing on August 18, 1975.

3. Applicant is not now delinquent with respect to fees or penalties on those fees for the second quarter of 1975, having subsequently paid them.

4. Under Sections 4307 and 5007 the Commission is authorized, but not required, to suspend or revoke a carrier's operating authority if the carrier is in default in the payment of fees, other than filing fees, for a period of 30 days or more, or beyond an authorized extension of such period.

5. Under Sections 4307 and 5007 the Commission is required to assess the monetary penalty specified in those sections if the carrier is in default in the payment of fees, other than filing fees, for a period of 30 days or more, or beyond an authorized extension of such period.

6. The monetary penalty identified in Finding 5 was mandatory, even though the Commission did not also apply the penalty identified in Finding 4.

7. The total penalty of \$425.88 was computed correctly in accordance with the methods provided in Sections 4307 and 5007. The penalty was not shown to be excessive nor unduly harsh.

8. Applicant did not seek an extension of the 30-day penalty-free default period, as provided in Sections 4307 and 5007, until after such period had ended.

9. The record does not justify a retroactive extension of time, as sought.

The Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that the relief requested in Application No. 56042 is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 25th day of MAY, 1976.

 President
William Sproule Jr.
Yermond L. Stieglitz

 Commissioners

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

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.