

Decision No. 86056

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

United Couriers, Inc., for relief)
from penalties assessed pursuant)
to Sections 4307 and 5007 of the)
Public Utilities Code.)

Application No. 56348
(Filed March 22, 1976)

Gordon E. Ikemori, Sr., for applicant.
T. H. Peceimer, for the Commission staff.

O P I N I O N

United Couriers, Inc. was assessed \$2,286.15 in penalties by the Commission for the late filing of its quarterly report of gross operating revenue from certificated freight forwarder and highway contract carrier operations and payment of the Transportation Rate Fund Fee and Uniform Business License Tax in connection therewith for the fourth quarter of 1975. The fee and tax totaled \$8,687.37. Applicant contends that the late filing was due to certain extenuating circumstances and requests abatement of the penalties.

Public hearing was held before Examiner Arthur M. Mooney in Los Angeles on May 6, 1976 on which date the matter was submitted.

Sections 4304 and 5003.1 of the Public Utilities Code provide in part that every freight forwarder and for-hire motor carrier under the jurisdiction of the Commission shall, between the first and fifteenth of January, April, July, and October of each year, file with the Commission a statement showing the gross operating revenue derived from such operations for the preceding three calendar months and include therewith a filing fee of four dollars and payment of the Transportation Rate Fund Fee, which is one-third of one percent of the gross operating revenue, and the

Uniform Business License Tax, which is one-tenth of one percent of the gross operating revenue. The tax and fee in issue were not paid by January 15, 1976, and applicant was, thereafter, in default. However, Sections 4307 and 5007, which relate to the tax and fee, respectively, each contain a 30-day penalty-free default period during which time the quarterly payment could be made without penalty. Both of these sections also provide that the Commission may extend the 30-day penalty-free period upon written application and proper showing. The penalty-free period for filing the quarterly report in question expired February 17, 1976, the first working day after Sunday, February 15, the end of the penalty-free period. According to Exhibit 1, the envelope in which the report and payments were mailed was postmarked February 24, 1976, which would be considered the date of filing, and they were received at the Commission's San Francisco office on February 26, 1976. No written request was made by applicant prior to the February 17, 1976 expiration date for an extension of time. The instant application for abatement of the penalties was filed March 22, 1976 and is, in effect, a request for a retroactive extension of time.

The following evidence was presented by applicant's controller: He has been in his present position for four and one-half years and has had substantial prior experience in accounting and business administration. Applicant's accounting and administrative functions are handled by a centralized office which also performs these services for four affiliated companies which serve four southwestern states and do a gross annual business of 22 million dollars. He is responsible for all of this work and has four full-time and two part-time employees to assist him. His senior accountant left the business in November 1975, and he tried several new people before finding a satisfactory replacement in February 1976.

During the period the report in question was due, his department was going through an annual certified audit in which all personnel were involved. As evidenced by the photostatic copies in Exhibits 1 and 2, the invoice for the payment of the 1975 fourth quarter fee and tax was prepared on January 31, 1976, the quarterly report was completed and signed on February 9, 1976, and the check for the \$8,687.37 payment was drawn on February 12, 1976, all before the final filing date of February 17, 1976. He was informed by the clerk responsible for mailing the report, invoice, and check to the Commission that although he could not remember when it was actually mailed, it might have been placed in the mail before the filing deadline. He admitted, however, that he did not feel that the post office would have been so negligent as to leave mail around for a week without date stamping it. Since he has been with applicant, all prior quarterly reports and payments have been filed with the Commission before the final closing date and generally well in advance thereof as evidenced by the photostatic copies of the cancelled checks in Exhibit 2. The late filing would not have occurred had it not been for the annual audit and the personnel problem at the time. Any error that may have occurred was a simple clerical error, and, in the circumstances, the 25-percent penalty is unreasonable and should be abated particularly in light of applicant's scrupulous and prompt payment of all past fees.

The staff representative, in his statement, asserted that the late filing was due to an administrative lapse; that there was no major reason for it such as a fire, earthquake, or strike; that applicant could have requested an extension of time which it did not do; and that there are no provisions in the statute for waiver of the penalty. He recommended that the application be denied.

In addition to providing for the 30-day penalty-free default period, Sections 4307 and 5007 of the Public Utilities Code each provide that if a carrier is in default in the payment of fees,

other than filing fees, beyond this penalty-free period, the Commission may, which is discretionary, suspend or revoke the carrier's operating authority and shall, which is mandatory, add a penalty of 25 percent for failure, neglect, or refusal to report and remit the required payment. For the reasons stated, the Commission is, therefore, required by legislative mandate to impose the monetary penalty. It has no discretion in this matter as it does with the suspension and revocation provisions.

The justification advanced by applicant for its request for the retroactive extension of time is clerical error. This is not an acceptable excuse. It had the 30-day penalty-free default period in addition to the 15-day period following the end of the fourth quarter of 1975 within which to file the report and tender payment. This it did not do. We agree with the staff that there was an administrative lapse. While the neglect may have been inadvertent and unintentional, the aforementioned code provisions make no allowance for this. Furthermore, a request could have been filed for an extension of time before the end of the 30-day penalty-free period on February 17, 1976. This also was not done. As to the date on which the envelope containing the report and payment was deposited in a mailbox, there is no likelihood that this would have been done a week before the post office placed its February 24, 1976 cancellation date stamp on it. In the absence of convincing evidence to the contrary, which we do not have here, it is presumed that the cancellation date is the mailing date. In the circumstances, the 25-percent penalty is applicable, and in our opinion it is not excessive or unduly harsh. A request by Metropolitan Warehouse Company for similar retroactive relief has also been denied. (Decision No. 85851 dated May 25, 1976 in Application No. 56042.)

Findings

1. After January 15, 1976, applicant, a freight forwarder and highway carrier, was in default in the payment of fees for the fourth quarter of 1975 as required by Sections 4304 and 5003.1 of the Public Utilities Code.

2. Applicant was assessed penalties totaling \$2,286.15 for failure to file its quarterly report of gross operating revenue from freight forwarder and trucking operations for the fourth quarter of 1975, on or before February 17, 1976, 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 February 24, 1976, the date of the post office stamp on the envelope in which the report and payment were mailed to the Commission.

3. The Commission is required by legislative mandate to impose the monetary penalty referred to in Finding 2 for failure, neglect, or refusal to file the required quarterly report and remit the necessary payment within the 30-day penalty-free period which applicant did not do.

4. Applicant's failure to file the required quarterly report and remit the necessary payment was due to neglect on its part.

5. The monetary penalty referred to in Finding 2 was correctly computed and was not excessive or unduly harsh.

6. Applicant did not seek an extension of the 30-day penalty-free period prior to the expiration thereof.

7. The sought retroactive extension of time and the abatement of the monetary penalty referred to in Finding 2 have not been justified.

Conclusion

The application should be denied.

O R D E R

IT IS ORDERED that the relief requested in Application No. 56348 is denied.

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

Dated at San Francisco, California, this 7th day of JULY, 1976.

William J. Quon President
Vernon L. Sturgeon
Leonard Ross
Robert Bateman Commissioners