

Decision No. 86060**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
DON E. KEITH, an individual, and
San Joaquin Oil Company, a
California corporation, doing
business as San Joaquin
Refining Co.

Case No. 9784
(Filed August 27, 1974)

O P I N I O N

The Commission instituted this investigation on its own motion into the operations, rates, charges, and practices of respondents Don E. Keith (Keith) and San Joaquin Oil Company (OIL) for the purpose of determining whether Keith violated Section 494 of the Public Utilities Code^{1/} by having performed transportation services for OIL at less than the applicable rates and charges published in Keith's tariff, Western Motor Tariff Bureau, Tariff No. 18, CPUC No. 24, and whether OIL has paid less than the applicable rates and charges for transportation by Keith.

1/ All references are to the Public Utilities Code, unless otherwise stated.

"494. No common carrier shall charge, demand, collect, or receive a different compensation for the transportation of persons or property, or for any service in connection therewith, than the applicable rates, fares, and charges specified in its schedules filed and in effect at the time, nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, except upon order of the commission as provided in this part, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons."

The factual situation giving rise to this investigation is the same as set forth in D.85355 in C.9785, Investigation of Oilfields Trucking Company dated January 20, 1976. The legal issue to be resolved is also the same as in C.9785, i.e., the interpretation of Section 531 of the Code.^{2/}

Since the factual and legal issues are the same in this case as those set out in D.85355 we will not repeat them.

The parties entered into the following stipulation, which is received as Exhibit 1:

"THIS STIPULATION made and entered into on the date set forth below by and between Lyman D. Griswold, Attorney at Law, for Don E. Keith, an individual; and Kenneth E. Fait, Attorney at Law, attorney for San Joaquin Oil Company, a California corporation; and Walter H. Kessenick, Attorney at Law, and Edward H. Hjelt for the Public Utilities Commission Staff, as follows:

"(1) That on or about November 25, 1974, Lyman D. Griswold, Attorney for Don E. Keith, requested that the above investigation be taken off calendar to await the decision in Case No. 9785 before the Public Utilities Commission, and that generally, the factual background of Case No. 9785 and Case No. 9784 is the same, except that a different hauler is involved in Case No. 9784, to wit, Don E. Keith.

^{2/}"531. Every common carrier subject to the provisions of this part may transport free or at reduced rates contractors and their employees engaged in carrying out contracts with the United States, this State, or any county or municipal government, or other governmental agency in this State, and materials or supplies for use in carrying out such contracts, in each case to the extent only that such free or reduced rate transportation is provided for in the specifications upon which the contract is based and in the contract itself."

"(2) That an opinion has been rendered in Case No. 9785, and the Decision has become final.

"(3) On page 7 of the opinion in Case No. 9785, it is stated as follows:

"OIL had contacted other carriers in connection with the DWP contract. One of the successful carriers was Don E. Keith, whose quotation was almost identical to OTC's and was quoted under Section 531.

"(4) That the summary of certain shipping data contained in the records of Don E. Keith and computed by Gordon E. McColl, Associate Transportation Rate Expert for the Public Utilities Commission, is true and correct, and a copy of the summary is attached to this stipulation, marked 'Exhibit A' and made a part of this stipulation.

"(5) That said Exhibit A discloses the number of barrels transported and the dates thereof.

"(6) That the difference between charges under the point-to-point rates and the reduced rates is \$42,803.20, constituting an undercharge.

"(7) Don E. Keith is engaged in the business of transporting property over the public highways of the State of California for compensation and has been issued a Petroleum Irregular Route Certificate of Public Convenience and Necessity.

"(8) Don E. Keith did assess charge and collect a rate different than his published tariff rate for the transportation of residual fuel oil for San Joaquin Oil Company.

"(9) San Joaquin Oil Company entered into a contract with DWP for the sale of 2,400,000 barrels of residual fuel oil on a delivered basis. San Joaquin Oil Company relied upon the assertions of DWP that a reduced rate for the transportation was lawful.

- "(10) Don E. Keith had never heard of Section 531 until he bid on the haul and performed the services, believing in good faith it was lawful.
- "(11) Section 531 does not apply to the transportation performed.
- "(12) There was an energy crisis existing at the time the transportation was performed.
- "(13) The parties acted in good faith in negotiating the contract and in assessing the reduced rate. Don E. Keith should be penalized in the amount of \$2,000.00 under the provisions of Section 1070.
- "(14) Don E. Keith violated Section 494 by assessing and collecting charges other than his filed tariff rates and charges.
- "(15) Section 531 is applicable only to transportation involving contractors engaged in public work construction for governmental agencies.
- "(16) The Public Utilities Commission of the State of California has the authority under Section 494 to remit undercharges.
- "(17) That the parties hereto, by and through their respective attorneys above named, stipulate to the order of the Public Utilities Commission of the State of California as follows:
- "(1) That Don E. Keith shall pay a fine of \$2,000.00 to the Commission pursuant to Public Utilities Code Section 1070 on or before the 30th day after the effective date of the order. Don E. Keith shall pay interest at the rate of 7% per annum on the fine; such interest is to commence upon the date payment of the fine is delinquent.
- "(2) Don E. Keith shall cease and desist from transporting property free or at reduced rates under Section 531, other than public works contracts.

"(3) Don. E. Keith is not required to collect, nor is San Joaquin Oil Company required to pay, \$42,803.20 in under-charges."

Findings of Fact

1. Keith is engaged in the business of transporting property over the public highways of this State for compensation and has been issued a petroleum irregular route certificate of public convenience and necessity.

2. Keith did assess, charge, and collect a rate different than his published tariff rates for the transportation of residual fuel oil for OIL.

3. OIL entered into a contract with Los Angeles Department of Water and Power (DWP) for the sale of 2,400,000 barrels of residual fuel oil on a delivered basis.

4. Exhibit 1 shows that only 127,410.61 barrels of oil were transported between August and December, 1973.

5. Exhibit 1 shows that Keith assessed charges amounting to \$109,012.89 for the transportation performed, whereas the charges under the tariff rates amount to \$151,816.09, a difference of \$42,803.20.

6. OIL relied upon the assertions of DWP that a reduced rate for the transportation was lawful.

7. Keith assessed a lower rate than published in his tariff under the ostensible authority of Section 531 of the Code.

8. Section 531 does not apply to the transportation performed.

9. There was an energy crisis existing at the time the transportation was performed.

10. The parties acted in good faith in negotiating the contract and in assessing the reduced rate.

11. Keith violated Section 494 by assessing and collecting charges other than his filed tariff rates and charges.

12. Keith should be penalized in the amount of \$2,000 under the provisions of Section 1070.

13. The Public Utilities Commission has the authority under Section 494 to remit undercharges. Under the special circumstances of this case, the Commission should not require the collection of undercharges.

Conclusions of Law

1. Keith violated Section 494 by assessing and collecting charges other than those in his filed tariff.

2. Section 531 is applicable only to transportation involving contractors engaged in public works construction for governmental agencies.

3. The Commission has the authority, under Section 494, to remit undercharges.

O R D E R

IT IS ORDERED that:

1. Don E. Keith shall pay a fine of \$2,000 to this Commission pursuant to Public Utilities Code Section 1070 on or before the thirtieth day after the effective date of this order. Keith shall pay interest at the rate of seven percent per annum on this fine; such interest is to commence upon the day payment of the fine is delinquent.

2. Keith shall cease and desist from transporting property free or at reduced rates under Section 531 for other than public works contractors.

3. Keith is not required to collect, nor is San Joaquin Oil Company required to pay, \$42,803.20 in undercharges.

The Executive Director shall cause personal service of this order to be made upon respondent Keith and 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 upon that respondent.

The effective date of this order for all other purposes shall be twenty days after the date hereof.

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

William L. Sturgeon
President
William L. Sturgeon Jr.
Leonard Ross
Robert B. Brown
Commissioners