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ORIGINAL

Decision No. 86461

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion  
into the operations, rates and practices of  
Mammoth Freight Lines, Inc., a California  
corporation; Mik-Mar Foods Co., a California  
corporation; Davis Canning Company, a  
California corporation; Interstate Kol-Pak;  
Shamrock Meats Inc., a California corpora-  
tion; Smith Food King No. 1, a foreign  
corporation; United Food Supply Company, a  
California corporation; Danfoods Corporation,  
a California corporation; Vons Grocery  
Company, a foreign corporation; C. H. B.  
Foods, Inc., a California corporation; Los  
Angeles Meat Co., a California corporation.

Case No. 10004  
(Filed November 18, 1975)

Marvin Handler, Attorney at Law, for Mammoth Freight Lines,  
Inc.; and Vincent D. Todisco, Attorney at Law, for  
Interstate Kol-Pak; respondents.  
Elmer J. Sjostrom, Attorney at Law, and E. Hjelt, for the  
Commission staff.

### O P I N I O N

By its order dated November 18, 1975, the Commission on its  
own motion instituted an investigation (OII) into the operations,  
rates, and practices of Mammoth Freight Lines, Inc. (Mammoth);  
Mik-Mar Foods Co. (Mik-Mar); Davis Canning Company (Davis); Interstate  
Kol-Pak (Kol-Pak); Shamrock Meats, Inc (Shamrock); Smith Food King  
No. 1 (Smith); United Food Supply Company (United); Danfoods Corpora-  
tion (Danfoods); Vons Grocery Company (Vons); C. H. B. Foods, Inc.  
(CHB), and Los Angeles Meat Co. (L.A. Meat).

Public hearing was held June 4, 1976 before Examiner Banks at San Francisco at which time the matter was submitted.

Mammoth, a California corporation, engaged in the business of transporting property over the public highways of this State for compensation, holding a highway contract carrier permit issued June 10, 1969 and a radial highway common carrier permit issued November 24, 1975,<sup>1/</sup> is alleged to have violated Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code, by charging less than the minimum rates. Mammoth operates terminals in Fresno, Los Angeles, and San Leandro with a staff of approximately 60 people and 80 pieces of equipment.

The Commission staff conducted an investigation of Mammoth's operations during March, November, and December 1973, and January, February, and March 1974.

At the hearing the staff introduced as Exhibit No. 1 a "Stipulation of Facts, Issues and Recommended Fines" executed by the staff and Mammoth's counsel. The stipulation affirmed that, with certain exceptions, the allegations in the 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:

Interstate Kol-Pak	\$1,836.57
Davis Canning	3,394.60
Mik-Mar Foods Co.	2,028.78
Danfoods	98.55
Shamrock Meats	794.60
United Food Supply	245.11
Smith Food King	423.64
Vons Grocery Co.	427.10
CHB Foods	278.56
Los Angeles Meat Co.	168.56
Total	\$9,696.07

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<sup>1/</sup> Issued November 24, 1975 to Mammoth of California Inc. Permit amended November 26, 1975 to reflect certificate of amendment of Articles of Incorporation of Mammoth Freight Lines, Inc.

An analysis of the staff's ratings attached as Appendix 3 to the stipulation discloses most of the undercharges resulted from Mammoth's violations of the split pickup and split delivery rules set forth in Minimum Rate Tariff 2 which indicates an attempt to conceal the violations by issuing false shipping documents.

The stipulation also provided that Mammoth should collect the undercharges and be assessed a fine in the amount of \$9,696.07 pursuant to Section 3800 of the Public Utilities Code and a fine in the amount of \$1,000 pursuant to Section 3774 of the Public Utilities Code.

Mr. Bill Almeida, vice-president and general manager of Mammoth, testified that to his knowledge there were no objections from shippers to billings for the undercharges. He also testified that Mik-Mar owed Mammoth approximately \$6,000 secured by a promissary note payable \$500 per month and requested that with respect to the undercharges due from Mik-Mar that Mammoth be allowed to make collection on an installment basis.

Counsel for Kol-Pak stated that his client did not object to the stipulation introduced by the staff and defendant Mammoth but wanted the record to show that Kol-Pak was not a party to the stipulation, nor is Kol-Pak under the Commission's jurisdiction and was therefore not bound by the stipulation. Kol-Pak argued that it relied on Mammoth to charge the proper rate and that it would be unfair and unjust to require Mammoth to collect any undercharges, especially when there were no injuries.

Section 3800 of the Public Utilities Code provides:

"Whenever the commission, after a hearing, finds that any highway permit carrier has charged, collected or received for the transportation of property, or for any service in connection therewith, rates or charges less than the minimum rates and charges applicable to such transportation established or approved by the commission, or has directly or indirectly refunded or remitted in any manner or by any device any portion of such minimum rates or charges, or has paid a commission, without an order of

the commission so authorizing, the commission shall require such carrier to collect the undercharges involved and may impose upon the carrier a fine equal to the amount of such undercharges. All such fines shall be paid into the State Treasury to the credit of the General Fund. The remedy and penalty provided by this section are cumulative and shall not be a bar to or affect any other remedy or penalty provided for in this chapter, or to the exercise by the commission of its power to punish for contempt." (Emphasis added.)

The stipulation entered into acknowledges that the charges for transportation of products for the shippers named in the OII resulted in undercharges and that the amounts listed therein are true and correct.

The language of Section 3800 is clear that the Commission "shall" require such carrier to collect the undercharges involved. Thus, while it may seem inequitable and unfair from a shipper's vantage point, the Commission is required to order collection of the undercharges involved.

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

1. Mammoth Freight Lines, Inc., a California corporation, holds a highway contract carrier permit and a radial highway common carrier permit.
2. Mammoth was served with the appropriate tariffs and all supplements thereto.
3. Mammoth charged less than the minimum rates set forth in MRT's 1-B, 2, 8, 9-B, 14, 15, and 16, DTs 7 and 8, and ERT 1 in violation of Sections 3664, 3667, 3668, and 3737 of the Public Utilities Code.
4. Mammoth's failure to assess the prescribed minimum rates resulted in undercharges in the amount of \$9,696.07 for the shippers as set forth in Exhibit No. 1.
5. Section 3800 of the Public Utilities Code requires the collection of undercharges by Mammoth.

6. Mammoth should be fined in the amount of \$9,696.07 for the undercharges pursuant to Section 3800 of the Public Utilities Code and a fine in the amount of \$1,000 pursuant to Section 3774 of the Public Utilities Code.

7. Mammoth should be allowed to collect the undercharges from Mik-Mar at \$500 per month.

Conclusions

1. Mammoth 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 \$9,696.07 and should pay a fine pursuant to Section 3774 of the Public Utilities Code in the amount of \$1,000.

2. Mammoth should collect the undercharges from Mik-Mar at \$500 per month.

3. The Commission expects that Mammoth 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 such measures. If there is reason to believe that Mammoth 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. Mammoth Freight Lines, Inc. shall pay a fine of \$9,696.07 to this Commission pursuant to Public Utilities Code Section 3800 on or before the fortieth day after the effective date of this order.

2. Mammoth Freight Lines, Inc. shall pay a fine to this Commission pursuant to Public Utilities Code Section 3774 of \$1,000 on or before the fortieth day after the effective date of this order. Mammoth Freight Lines, Inc. shall pay interest at the rate of seven

percent per annum on the fine; such interest is to commence upon the day the payment of the fine is delinquent.

3. Mammoth Freight Lines, Inc. shall take such action, including legal action, as may be necessary to collect the undercharges set forth in Finding 4 and shall notify the Commission in writing upon collection.


4. Mammoth Freight Lines, Inc. shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. In the event the undercharges ordered to be collected by paragraph 3 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent 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. Failure to file any such monthly report within fifteen days after the due date shall result in the automatic suspension of Mammoth Freight Lines, Inc. operating authority until the report is filed.

5. Mammoth Freight Lines, Inc. 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.

6. Mammoth Freight Lines, Inc. is placed on notice that failure to collect the undercharges will not serve as an equitable cause for a reduction in the undercharge fine pursuant to Public Utilities Code Section 3800.

The Executive Director of the Commission shall cause personal service of this order to be made upon respondent Mammoth Freight Lines, Inc. 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 on that respondent.

Dated at San Francisco, California, this 5<sup>th</sup>  
day of OCTOBER, 1976

  
President  
William J. Synovis  
Vernon L. Sturgeon  
A. Roza  
Rafael Bateman  
Commissioners