

MAR 21 1984

Decision 84 03 073

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
American Pacific Forwarders, Inc.,
and Kerr Glass Manufacturing Corp.

OII 83-10-03
(Filed October 19, 1983)

O P I N I O N

On October 19, 1983 an investigation on the Commission's own motion (OII) was instituted into the operations, rates, charges, and practices of American Pacific Forwarders, Inc. (American) for the purpose of determining:

1. Whether American has violated Public Utilities (PU) Code Section 494 by failing to charge and collect rates and charges set forth in its filed tariffs in connection with the transportation of glass bottles for Kerr Glass Manufacturing Corp. (Kerr Glass) from July 12, 1982 to September 7, 1982.
2. Whether American should be ordered to collect found undercharges from Kerr Glass.
3. Whether Kerr Glass has paid American less than the applicable rates and charges.
4. In the event sums less than said applicable rates and charges are found to be charged, collected, received, or paid:
 - a. Whether American should be ordered to collect found undercharges from Kerr Glass.
 - b. Whether a fine in the amount of found undercharges should be imposed upon American under PU Code Section 2100.

5. Whether any or all of American's operating authority should be canceled, revoked, or suspended, or as an alternative, should a fine be imposed under PU Code Section 1070.
6. Whether American should be ordered to cease and desist from any unlawful activity found, or whether any other order or orders that may be appropriate should be enacted in the lawful exercise of the Commission's jurisdiction.

Following negotiations between American's counsel, staff counsel, and a staff Transportation Division representative, a written Stipulation of Facts, Issues, and Recommended Fines (Stipulation) was submitted in resolution of the issues in the above-entitled action. A copy of the Stipulation is attached as Appendix A and incorporated here by this reference.

Relevant portions of the Stipulation are as follows:

1. American admits it transported commodities for Kerr Glass from July 12 through September 7, 1982 at less than applicable tariff rates in violation of PU Code Section 494.
2. The total undercharges for said transportation is \$20,238.93.
3. The answers to questions 1 through 4 and paragraph 6 of OII 83-10-03 are affirmative.
4. American should be ordered to pay a punitive fine of \$3,000 under PU Code Section 1070.
5. American should be ordered to collect the undercharges from Kerr Glass and pay a fine equal to the amount of such undercharges under PU Code Section 2100.

Inasmuch as the Stipulation will save the Commission and American the time and expense of a formal hearing in this matter, and inasmuch as the fine of \$3,000 appears reasonable, the Commission approves and accepts the Stipulation.

Findings of Fact

1. During July 12, 1982 to September 7, 1982, American transported shipments of glass bottles for Kerr Glass at rates less than the applicable rates set forth in Western Motor Tariff Bureau Tariff No. 570 in violation of PU Code Section 494.

2. The photocopies of American's documents prepared by staff relative to the transportation enumerated in OII 83-10-03 and referred to as Exhibit 2 in the Stipulation are true and correct.

4. The staff's rate statement reflecting total undercharges of \$20,238.93 is in all respects true and correct.

5. American agrees that staff Exhibits 1, 2, and 3 may constitute the bases for a decision and an order in OII 83-10-03.

6. American agrees that paragraphs 1 through 4 and paragraph 6 of OII 83-10-03, should be answered in the affirmative.

Conclusions of Law

1. American has violated PU Code Section 494 and, therefore, should pay a fine under PU Code Sections 1070 and 2100.

2. The agreements contained in the Stipulation set forth in Appendix A in this decision are reasonable and should be adopted.

O R D E R

IT IS ORDERED that:

1. American Pacific Forwarders, Inc. (American) shall pay a fine of \$3,000 under PU Code Section 1070. This fine may be paid in one lump sum within 30 days of date of issuance of this order, or in three equal installments, the first installment being due within 30 days of date of issuance of this order and subsequent installments due on the thirtieth and sixtieth day thereafter.

2. American shall proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges from Kerr Glass Manufacturing Corp. (Kerr Glass), including the institution of legal proceedings should the undercharges remain uncollected or unpaid 60 days after the effective date of this order and shall promptly pay a fine to the Commission in the amount of the undercharges under PU Code Section 2100.

3. In the event the undercharges ordered to be collected or any part of the undercharges remain uncollected 120 days after the effective date of this order, American shall file with the Commission, on the first Monday of each month after the end of 120 days, a report of the undercharges remaining to be collected, specifying the action taken to collect such undercharges, and the results of such action, until such undercharges have been collected in full or until further order of the Commission.

4. American shall cease and desist from violating any rules established by the Commission and from charging and collecting compensation for the transportation of property or for any services in connection with it in a lesser amount than that required by the applicable tariff or contract rates and charges.

5. The Executive Director is ordered to cause personal service of this order to be made upon American and to cause service by mail upon Kerr Glass.

The effective date of this order shall be 30 days after the completion of such service upon American.

Dated MAR 21 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

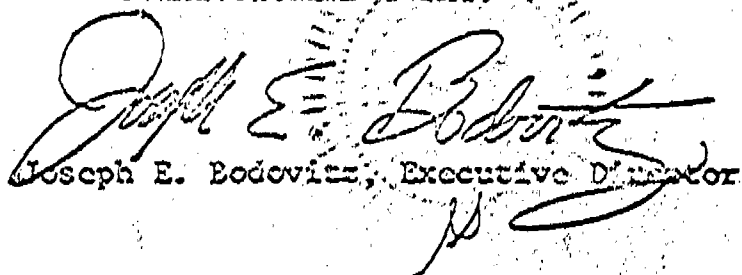
PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

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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)
American Pacific Forwarders, Inc.,)
and Kerr Glass Manufacturing Co.)

OII No. 83-10-03

STIPULATION OF FACTS, ISSUES AND
RECOMMENDED FINES

Respondent American Pacific Forwarders, Inc., hereinafter referred to as American, and the staff of the Public Utilities Commission, hereinafter referred to as the staff, hereby stipulate as follows:

1. That on various dates in 1982 the staff of the Public Utilities Commission conducted an investigation into the operations, rates and practices of American for the time period July 12, 1982 through September 7, 1982.

2. During the period July 12, 1982 through September 7, 1982, American transported shipments of glass bottles for Kerr Glass at rates less than the applicable rates set forth in Western Motor Tariff Bureau, Tariff 570, in violation of Section 494 of the Public Utilities Code.

3. That said investigation resulted in the issuance of OII 83-10-03 by the Public Utilities Commission on October 19, 1983.

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4. That the document described as a Carrier Profile of American, attached hereto as Exhibit 1 and incorporated herein by this reference, is true and correct.

5. That the photocopies of American's documents prepared by the staff relative to the transportation enumerated in OII 83-10-03, attached hereto as Exhibit 2 and incorporated herein by this reference, are true and correct.

6. That attached hereto as Exhibit 3 and incorporated herein by this reference is a document entitled "Summary of Certain Shipping Data Contained in the Records of American Pacific Forwarders, Inc., for Transportation Performed for Kerr Glass Manufacturing Corporation", which constitutes the staff's rate statement reflecting total undercharges of \$20,238.93; that in all respects, Exhibit 3 is true and correct.

7. That Exhibits 1, 2, and 3 may constitute the basis for a decision and order in OII 83-10-03.

8. That numbered Paragraphs 1 through 4 and paragraph 6 of OII 83-10-03 should be answered in the affirmative.

9. That in accordance with numbered Paragraph 4 of OII 83-10-03, respondent American should be ordered to collect the undercharges shown in Exhibit 3 from Kerr Glass Manufacturing Co. and be ordered to pay a fine equal to the amount of such undercharges pursuant to Section 2100 of the Public Utilities Code.

10. That in response to numbered Paragraph 5 of OII 83-10-03, staff and American agree that none of American's operating

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authority should be cancelled, revoked, or suspended but, as an alternative, the staff and American agree that American should pay and be ordered to pay a punitive fine of \$3,000 pursuant to Section 1070 of the Public Utilities Code. This fine may be paid in one lump sum within thirty (30) days of date of issuance of the Public Utilities Commission decision in OII 83-10-03 or in three equal installments, the first installment due within thirty (30) days of date of issuance of the Public Utilities Commission decision in OII 83-10-03 and subsequent installments due on the 30th and 60th day thereafter.

11. That this stipulation and the violations and fines agreed upon herein are applicable only to the transportation shown in Exhibits 2 and 3 and, notwithstanding the broad wording regarding the scope of OII 83-10-03 as found in the first three (3) lines of page 3 of said Order Instituting Investigation, the scope of this investigation includes only the transportation shown in said Exhibits 2 and 3.

12. That staff and American agree that this stipulation may be used by the Public Utilities Commission as the factual and legal basis of its decision in OII 83-10-03 only if, in such decision, the fines or penalties imposed do not exceed the fines and penalties which have been agreed upon herein.

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Staff and American agree to the foregoing Stipulations
numbered 1 through 12.

Dated this _____ day of _____, 1983.

American Pacific Forwarders, Inc.

By: *[Signature]* Date 12/28/83

California Public Utilities Commission

By:
Staff Representative *[Signature]* Date 1-18-84

Staff Counsel *Melissa K. Nappan* Date 1/19/84