

Decision 88 01 035 JAN 28 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operation,)
rates, and practices of)
Adams Trucking, Inc. and the)
individuals, partnerships, or)
corporations listed as Debtor)
Respondents in Attachment A,)
Respondents.)

I.87-01-035
(Petition for Modification
Filed November 12, 1987)

ORDER MODIFYING DECISION 87-08-033

On August 26, 1987, we issued Decision (D.) 87-08-033.
Ordering Paragraph 3 of that decision provides that:

"3. Adams Trucking, Inc. shall:

- "a. Pay a fine to this Commission under PU Code Section 2100 of \$49,627.17 on or before the 40th day after the effective date of this order.
- "b. Examine its records for the period October 17, 1984 to January 14, 1987 for the purpose of ascertaining the undercharges set forth in Finding 4.
- "c. Within 90 days after the effective date of this order, complete the examination of its records required by paragraph 3b of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.
- "d. Take such action, as may be necessary to collect the undercharges set forth herein together with those found after the examination required by Paragraph 3b of this order, including timely legal action under PU Code Section 737.
- "e. Notify the Commission in writing upon collection.

- "f. Promptly take all reasonable steps to collect the undercharges.
- "g. File with the Commission on the first Monday of each month a report of any undercharges remaining uncollected 60 days after the effective date of this order, specifying the action taken to collect them and the result of such action, until they have been collected in full, or until further order of the Commission. Failure to file any such monthly report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.
- "h. Not charge or collect less than lawful rates approved by the Commission."

On November 12, 1987, Adams Trucking, Inc. (Adams) filed a Petition for Modification of D.87-08-033. The petition states that:

"On October 12, 1987, Adams wrote all 28 shippers who were undercharged a demand letter, a copy of which is attached hereto as Exhibit A. On November 10, 1987, a follow-up demand letter was forwarded to those shippers who did not respond to the initial letter and a copy of that follow-up letter is attached as Exhibit B.

"To date, twelve shippers have paid to Adams the undercharges found by the FUC to have been assessed. Adams has filed a report letter with the Commission (see copy attached as Exhibit C) and forwarded along with that letter the total undercharges collected to date.

"Two shippers, Ford Wholesale and GAF Industries, have contacted Adams' counsel by telephone and indicated their resolve not to pay the undercharges unless ordered by a court to do so. Adams has computed the statute of limitations time period for filing complaints against these shippers and will file suit against GAF and Ford Wholesale no later than the early part of December 1987. GAF Corporation was found to have been undercharged in the amount of \$16,584.75 and Ford Wholesale in the amount of \$11,640.52. These are

by far the largest shipper undercharges found in this investigatory proceeding.

"In addition, it appears that Double T Wholesale, Inc. and Commercial Lumber & Pallet Co., Inc. have filed bankruptcy petitions. The demand letters forwarded to these shippers were returned to the sender and initial inquiries have indicated that these two corporations have gone into bankruptcy. There are 15 additional shippers that have not been heard from and it is entirely possible that some of these shippers have also gone into bankruptcy or closed their doors."

The letter contained in Exhibit C to the petition discloses that the undercharges collected from the 12 shippers total \$8,367.24 which has been paid to the Commission in partial payment of the \$49,627.17 fine.

Adams requests that D.87-08-033 be amended as follows:

- "A. Should GAF and/or Ford Wholesale fail or refuse to pay the substantial undercharges of \$16,584.75 and \$11,640.52 respectively, Adams shall take judicial action against them.
- "B. That Adams not be required to file judicial complaints where as shown in the petition the amount involved is so small as to make the cost of such litigation prohibitive and in many instances could be unsuccessful. For example, it has been demonstrated that some of those shippers are already in bankruptcy or out of business.
- "C. That Adams pay to the Commission all undercharges as they are continued to be collected. Adams assures the Commission that it will exert continuing efforts in its attempt to collect from those who fail to pay.
- "D. Adams requests that where its efforts to collect the smaller undercharges are unsuccessful that the penalty be reduced accordingly with Adams continuing to pay to the Commission undercharges as collected. Thus, the requirement that the total amount of the undercharges of \$49,627.17 not be required to be paid on or before November 12, 1987."

On November 20, 1987 Trucking Unlimited filed a document entitled "Objections to petition for modification of Decision 87-08-033 rendered in OII 87-01-035."

Discussion

No modification of D.87-08-033 is necessary with respect to request A. above since Ordering Paragraph 3.d. of the decision presently requires that timely legal action be taken. The requested modification in B. above will not be granted. Legal action to collect small amounts can be pursued in Small Claims Court which actions should not entail prohibitive costs as alleged in the petition. With respect to shippers who are already in bankruptcy, appropriate claims should be filed in the bankruptcy proceeding. The requested modification in C. above will be granted. The requested modification set forth in D. above is premature and will be denied.

IT IS ORDERED that:

1. Ordering Paragraph 3.a. of D.87-08-033 is amended as follows:
 - "a. Pay a fine to this Commission under PU Code Section 2100 of \$49,627.17 in installments as undercharges are collected. Said installments to be paid within 5 days after the collection of the undercharges."

2. In all other respects D.87-08-033 shall remain in full force and effect.


This order is effective today.

Dated JAN 28 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Weisser, Executive Director