

Decision 88 03 011 MAR 09 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
 motion into the operations, rates and )  
 practices of Cooper & Sons Trucking, )  
 Inc., a California Corporation; C&C )  
 Recyclers, Inc.; Gammel & Ollendick, )  
 a partnership; Gentile Steel & Supply )  
 Co., Inc.; Golden State Steel Co., )  
 Inc.;; Johannessen Trading Co., a )  
 corporation; Jim's Supply, Inc.; and )  
 Miller Pacific Steel Corporation. )

I.84-11-016  
 (Filed November 7, 1984)

**OPINION AND ORDER MODIFYING  
 DECISIONS 86-04-060 AND 86-07-025**

**Prior Decisions**

By Decision (D.) 86-04-060, Cooper & Sons Trucking, Inc. (Cooper), was found to have transported railroad ties, posts and steel articles for seven shippers at less than rates authorized by the Commission. By Ordering Paragraphs 1 through 6 of the decision, Cooper was ordered to pay a punitive fine in the amount of \$1,000 and pay a further fine in the total amount of \$45,679.13, which represents the amounts found as undercharges from the following shippers:

Johannessen Trading Co.	\$19,808.00
Gentile Steel & Supply Co., Inc.	12,892.68
Jim's Supply, Inc.	6,301.24
C&C Recyclers, Inc.	2,728.62
Golden Gate Steel Co., Inc.	2,687.54
Miller Pacific Steel Co.	662.22
Gammel & Ollendick	<u>588.83</u>
Total	\$45,679.13

D.86-07-025, modified D.86-04-060 in some particulars and denied rehearing.

Modification Requested

Cooper requests that the Commission modify D.86-04-060 and D.86-07-025 by reducing the Public Utilities Code § 2100 fine from the full \$45,679.13 ordered to the amount of \$32,786.45, which Cooper has already collected from six of the seven involved shippers and paid to the Commission as a fine. Cooper also requests that the Commission find that Cooper has taken all reasonable steps to collect the undercharges and should not be required to initiate further action in the form of a legal suit which, under the circumstances, would appear to be a futile act serving no useful purpose.

Grounds for the Requested Modification

As found in D.86-04-060, none of the violations which were the subject of the orders sought to be modified were willful or intended to undercut other potential competitors for the traffic. D.86-04-060 found that Cooper had cooperated with the Commission staff throughout the investigation.

Upon the issuance of D.86-04-060 and D.86-07-025, Cooper alleges that it diligently attempted to collect the undercharges from all seven shippers involved, and has secured payment from six of the seven shippers. The amounts collected have been paid to the Commission as ordered.

The undercharges ordered from the seventh shipper, listed on the Order Instituting Investigation and the Commission orders as Gentile Steel & Supply Co., Inc. (Gentile) have not been collected and, to the best of Cooper's knowledge, the amount of \$12,892.68 found due from Gentile is uncollectible.

As evidenced by a declaration attached to the petition, Gentile was sold approximately 14 months prior to the initiation of this investigation. Cooper is informed and believes, and on that

basis has declared that: the corporate name was changed to Eslan Steel, Inc. on September 6, 1983; the new owners and officers (Boylan and Esserman) are entirely unconnected with the prior owner (Carl Gentile); and the new owners have assumed no liability for undisclosed liabilities prior to the sale. Further, Cooper states that he has been unable to determine whether Carl Gentile is dead or alive, and, if alive, where he may be located.

Cooper appears to have diligently pursued the collection of all undercharges. Six of the seven shippers have paid, but the seventh shipper sold his business, cannot be located, and Cooper is not aware of any further steps which may be taken for the successful collection of the \$12,892.68 found due from Gentile.

Findings of Fact

1. D.86-04-060 ordered Cooper to collect \$45,679.13 in undercharges and pay them to the Commission as fines.
2. Included in the undercharges was \$12,892.68 owing from Gentile.
3. Cooper has taken all reasonable steps to collect from Gentile, but without success.
4. None of the violations found by D.86-04-060 were wilful, and Cooper has exercised due diligence in complying with the decision.

Conclusion of Law

The undercharge fine in D.86-04-060 should be reduced by the apparent uncollectible amount of \$12,892.68 owing from Gentile.

I.84-11-016 ALJ/OIW/ltg

IT IS ORDERED that D.86-04-060, as modified by D.86-07-025, is further modified to exclude the undercharges to Gentile Steel & Supply Co., Inc. in the amount of \$12,892.68 from respondent's obligations to collect and pay the undercharges to the Commission.

This order is effective today.

Dated MAR 09 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 Weissor, Executive Director

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