

APR 28 1988

ORIGINAL

Decision 88-04-075 April 27, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Frank C. Alegre Trucking, Inc., )  
 a California corporation, for )  
 authority to establish cement rates )  
 less than the maximum reasonable )  
 rate pursuant to the provisions of )  
 Sections 452 and 452.1 of the Public )  
 Utilities Code and General Order )  
 150-A. )

Application 87-12-052  
(Filed December 28, 1987)

INTERIM OPINION

On December 28, 1987 Frank C. Alegre Trucking, Inc. (Alegre) filed the instant application, allegedly to rejustify and continue in effect the rates set forth in Rate Reduction Filing RR-1305 (RR-1305). The application is protested by several cement carriers who are competitors of Alegre.

Paragraphs IV, V, and VI of the application state:

"IV

"Pursuant to Rate Reduction Filing RR-1305, Applicant has been granted authority to assess rates between various points in California that are less than the maximum reasonable rate. Such rates were effective May 30, 1983 and are stated in Item 250 of Frank C. Alegre Trucking, Inc. Tariff No. 1. In Decision 87-11-032, dated November 13, 1987 the Commission clarified its intention in Decision 87-01-075 when it addressed issues contained in AB 4033 involving cost justification from point of origin to point of destination, and return, in Rate Reduction proceedings. In Decision 87-11-032 the Commission said, "Under the provisions of AB 4033, reduced rates must be fully compensatory based solely upon the cost from origin to destination and return, and revenues therefrom, i.e., without regard to backhaul revenues. (Public Utilities Code Section 452.1)."

"Furthermore, the decision identified Alegre's RR-1305 as including 45 separately cost-justified movements, about half of which involve both front- and backhauls of cement. Given these circumstances, the Commission has determined that Alegre must rejustify Rate Reduction 1305 to be in conformance with new legislation, as well as its own regulations.

"V

"Applicant has therefore, extensively reviewed its operating circumstances, cost-rate relationships, and its position in the marketplace, to determine that the rate reductions now in effect should be continued. Since the 45 rates included in RR-1305 involve various shipping points and various lengths of haul, applicant believes it would be simpler and more appropriate to express these rates on a mileage scale of rates covering all lengths of haul. By this application, Alegre seeks to replace Item 250 of its tariff with the rates attached hereto as Appendix A. These rates reflect the actual cost and productivity currently experienced by applicant. Applicant has prepared a full-scale analysis of its operating cost, and that analysis is included herewith as a part of the affidavit, referenced as Appendix B. Said Appendix B is an exhaustive narrative explanation of the methodology employed in the cost tables. The resulting total cost by length of haul is used for conversion to the scale of proposed rates in Appendix A.

"VI

"Ordering Paragraph 1 in Decision 87-11-036 states as follows:

- '1. D.87-01-075 is modified as follows:
  - a. Ordering paragraph 3.b. is modified to read: All cement transportation rate reductions, and me-toos of all cement transportation rate reductions, are cancelled unless justified on the basis of AB4033 by December 31, 1987....'

"Because applicant desires to continue the rate reductions uninterrupted, we hereby request that the proposed rates become effective January 1, 1988. In addition, the proposed rates are designed to replace its present distance rates. Given the short time period between the effective date of Decision 87-11-036 and implementation of Ordering Paragraph 1, applicant has provided in Appendix B all of the evidence upon which it relied in seeking the relief sought. Applicant believes that, based upon the evidence provided, and its compliance with Ordering Paragraph 1, the Commission must authorize continuance of RR-1305, expressed in the rate format contained in Appendix A. Applicant will implement the proposed rates on January 1, 1988."

On February 26, 1988 the Commission staff filed its "Motion for an Ex-Parte Cease and Desist Order" (Motion). The motion requests the Commission issue an immediate cease and desist order, by ex-parte order directing Alegre to cease and desist from soliciting and transporting cement, in bulk or in package, at the rates proposed in the application until such time as the Commission approves Application (A.) 87-12-052. Attached to the motion is the sworn affidavit of Greg Thompson, an Associate Transportation Representative, which declares that the Commission has not acted upon A.87-12-052, that Alegre's official tariff on file does not contain proposed Item 205, First Revised Page 17, that Item 250 has not been cancelled and is still in effect, and that Alegre commenced transporting cement in bulk assessing rates in said proposed Item 205 commencing on January 5, 1988. During January 1988, Alegre transported a total of approximately 1,200 shipments for seven debtors.

On March 8, 1988, Alegre filed its "Reply in Opposition to Motion for an Ex-Parte Cease and Desist Order" (Reply). In its reply Alegre's argument can be summarized as follows:

1. The rates have been properly filed as prescribed by General Order 150-A, Rule 8.

2. Rule 8.2 (E) (1) of General Order (GO) 150-A provides four specific types of cement carrier rate filings which must be filed with the Truck Tariff Section and the Rule 7.1 (A) (2) filing made by Alegre is not included as among those which require filing with the Truck Tariff Section.
3. The filing was properly made with the Docket Office, was accepted, deemed filed and subsequently calendared.
4. The filing included the tariff page for continued reduced rates.

Alegre further argues that if the rates filed were believed to be improperly filed, the Commission Staff should have invoked Rule 9 of GO 150-A prior to filing the motion.

Discussion

The Commission believes that the issue as to whether Alegre should be ordered to cease and desist from soliciting and transporting cement in bulk or in a package at the rates proposed in the application until the Commission approves the rates should be severed from this proceeding and set for hearing. The Commission is therefore issuing concurrently with this interim opinion an Order to Show Cause as to why a cease and desist order should not issue together with an Order Instituting Investigation into the operations, rates and practices of Frank C. Alegre Trucking.

Finding of Fact

The issues raised by the motion for an ex parte order to cease and desist should be set for hearing.

Conclusion of Law

None of the issues raised by the application and motion for an order to cease and desist are decided herein.

INTERIM ORDER

IT IS ORDERED that the issues raised by motion for an ex parte cease and desist order and replies thereto are hereby severed from this proceeding and transferred to the Order to Show Cause proceeding and Order Instituting Investigation issued today.

This order is effective today.

Dated April 27, 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

FRANK C. ALEGRE TRUCKING, INC.

Section 2  
DISTANCE (MILEAGE) RATES  
(Rates in Cents Per 100 Pounds)

ITEM  
NO.

NORTHERN TERRITORY RATES

MILES		RATES		MILES		RATES	
Over	But Not Over	(1) Bulk	(2) Sack	Over	But Not Over	(1) Bulk	(2) Sack
0	3	20	22-3/4	145	150	74-3/4	78
3	5	21-1/2	24-1/4	150	160	77-1/4	80-1/2
5	10	23	26-1/2	160	170	79	82-1/4
10	15	23-3/4	27-1/4	170	180	81-3/4	84-1/2
15	20	24-3/4	28-1/2	180	190	83-3/4	86-3/4
20	25	25-1/2	29-3/4	190	200	86	88-1/2
25	30	27-3/4	31-1/4	200	210	88-1/4	90-1/2
30	35	28-3/4	32-3/4	210	220	91	92-1/2
35	40	30-1/4	34-1/4	220	230	93-1/4	95-1/4
40	45	32	36	230	240	95-1/2	97-3/4
45	50	35	38-1/2	240	250	97-3/4	94-1/2
50	55	37-1/2	41-1/2	250	260	100-1/4	102-1/2
55	60	40-3/4	44-1/2	260	270	103-1/4	104-1/2
60	65	42-3/4	47	270	280	106	107-1/4
65	70	44-1/2	50	280	290	108-1/2	109-1/4
70	75	47-1/2	52-3/4	290	300	111-1/2	112
75	80	49-1/2	54	300	320	116-3/4	117-1/4
80	85	51-1/2	55-1/2	320	340	121-3/4	122-3/4
85	90	53-1/4	56-3/4	340	360	126-3/4	127-1/2
90	95	54-3/4	59	360	380	132	133
95	100	55-3/4	60-1/2	380	400	137	138-1/2
100	105	57-1/2	62-1/4	400	420	142-1/2	143-1/4
105	110	59-1/2	64-1/4	420	440	147-1/2	148-1/4
110	115	62	66-1/4	440	460	153-1/2	153-3/4
115	120	64-1/2	68-1/4	460	480	160-3/4	160-3/4
120	125	66-3/4	70-1/4	480	500	164-1/2	164-3/4
125	130	68-1/4	71-1/2	500	+	(Add to the rate for 500 miles 06c per 100 pounds for each 25 miles or fraction thereof)	
130	135	70	73				
135	140	71-3/4	74-1/4				
140	145	73-1/4	76-1/2				

205

- (1) Rates apply on shipments in bulk.
- (2) Rates apply on shipments in packages.

Issued under authority of CA PUC Resolution TS-634.

The Provisions published herein will, if effective, not result in an effect on the quality of the human environment.

For Explanation of abbreviations and reference marks not explained on this page, see last page.

ISSUED: May 25, 1983

EFFECTIVE: May 30, 1983

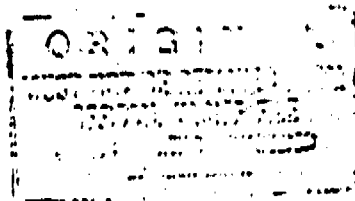
ISSUED BY: Frank C. Alegre, Sr.  
President  
STATE OF CALIF.  
PUBLIC UTILITIES COMM.  
802 North Cliff Avenue  
Lodi, CA 95240

FRANK C. ALZGRE TRUCKING, INC.

Section 3  
SPECIFIC COMMODITY RATES  
(Rates in Cents Per 100 Pounds)

ITEM  
NO.

COMMODITY	TO	FROM				A 250
		RATES				
CEMENT: hydraulic, masonry, mortar, natural or portland, in bulk.  <u>Minimum Weight:</u> 52,000 pounds		Davenport	Kentucky House	Permanente	Sacramento	
	MZ 104	39-3/4	—	25-3/4	—	
	MZ 105	41-1/2	—	23	—	
	MZ 106	39-3/4	—	22	—	
	MZ 107	39-3/4	—	21-1/2	—	
	MZ 130	35	—	23	—	
	Concord	53-1/2	52	41-1/2	44-1/4	
	Elk Grove	72	38	57-3/4	23-3/4	
	Empire	66-3/4	39-3/4	51	48	
	French Camp	60	35	41-1/2	35	
	Modesto	63-1/2	39-3/4	48	44-1/4	
	Rancho Cordova	76	41-1/2	63-1/2	22	
	Roseville	78	46	68-1/4	23	
	Sacramento	76	41-1/2	62	18-1/2	
Tracy	53-1/2	41-1/2	38	41-1/2		



A - Issued pursuant to Rate Reduction Filing RR-1305 dated January 7, 1983.  
 (Transferred from WMB Tariff 17, Cal PUC 21, Item 4060 without change.)  
 Issued under authority of CA PUC Resolution TS-634.

The Provisions published herein will, if effective, not result in an effect on the quality of the human environment.

For Explanation of abbreviations and reference marks not explained on this page, see last page.

ISSUED: May 25, 1983

EFFECTIVE: May 30, 1983

ISSUED BY: Frank C. Alzgre, Sr.  
 President  
 802 North Cluff Avenue  
 Lodi, CA 95240

FRANK C. ALEGRE TRUCKING, INC.

Section 2  
DISTANCE (MILEAGE) RATES  
(Rates in Cents Per 100 Pounds)

ITEM NO.

NORTHERN TERRITORY RATES

MILES		RATES		MILES		RATES	
Over	But Not Over	(1) Bulk*	(2) Sack	Over	But Not Over	(1) Bulk*	(2) Sack
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10	15	22	27-1/4	170	180	80-1/2	84-1/2
15	20	23	28-1/2	180	190	83	86-3/4
20	25	24	29-3/4	190	200	86	88-1/2
25	30	26	31-1/4	200	210	88-1/4	90-1/2
30	35	28	32-3/4	210	220	91	92-1/2
35	40	30	34-1/4	220	230	93-1/4	95-1/4
40	45	31-1/2	36	230	240	95-1/2	97-3/4
45	50	33-1/2	38-1/2	240	250	97-3/4	99-1/2
50	55	35-1/2	41-1/2	250	260	100-1/4	102-1/2
55	60	37-1/2	44-1/2	260	270	103-1/4	104-1/2
60	65	39-1/2	47	270	280	106	107-1/4
65	70	41-1/2	50	280	290	108-1/2	109-1/4
70	75	43-1/2	52-3/4	290	300	111-1/2	112
75	80	45-1/2	54	300	320	116-3/4	117-1/4
80	85	47-1/2	55-1/2	320	340	121-3/4	122-3/4
85	90	49-1/2	56-3/4	340	360	126-3/4	127-1/2
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135	140	69	74-1/4			for each 25 mi.	
140	145	70-1/2	76-1/2			or fraction).	

205

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Issued under authority of Ca. PUC Resolution TS-634.

The Provisions published herein will not result in an effect on the quality of the human environment.

See last page for explanation of abbreviations and reference marks.

ISSUED: December 28, 1987

Effective: January 1, 1988

ISSUED BY: Frank C. Alegre, President

802 North Cluff Ave., Lodi, Ca. 95240

(END OF APPENDIX B)



ALJ/FJO/ra

Mailed

Decision 88 04 075 APR 27 1988

APR 28 1988

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Frank C. Alegre Trucking, Inc., )  
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Application 87-12-052  
 (Filed December 28, 1987)

**INTERIM OPINION**

On December 28, 1987 Frank C. Alegre Trucking, Inc. (Alegre) filed the instant application, allegedly to rejustify and continue in effect the rates set forth in Rate Reduction Filing RR-1305 (RR-1305). The application is protested by several cement carriers who are competitors of Alegre.

Paragraphs IV, V, and VI of the application state:

"IV

"Pursuant to Rate Reduction Filing RR-1305, Applicant has been granted authority to assess rates between various points in California that are less than the maximum reasonable rate. Such rates were effective May 30, 1983 and are stated in Item 250 of Frank C. Alegre Trucking, Inc. Tariff No. 1. In Decision 87-11-032, dated November 13, 1987 the Commission clarified its intention in Decision 87-01-075 when it addressed issues contained in AB 4033 involving cost justification from point of origin to point of destination, and return, in Rate Reduction proceedings. In Decision 87-11-032 the Commission said, "Under the provisions of AB 4033, reduced rates must be fully compensatory based solely upon the cost from origin to destination and return, and revenues therefrom, i.e., without regard to backhaul revenues. (Public Utilities Code Section 452.1)."

"Furthermore, the decision identified Alegre's RR-1305 as including 45 separately cost-justified movements, about half of which involve both front- and backhauls of cement. Given these circumstances, the Commission has determined that Alegre must rejustify Rate Reduction 1305 to be in conformance with new legislation, as well as its own regulations.

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"Applicant has therefore, extensively reviewed its operating circumstances, cost-rate relationships, and its position in the marketplace, to determine that the rate reductions now in effect should be continued. Since the 45 rates included in RR-1305 involve various shipping points and various lengths of haul, applicant believes it would be simpler and more appropriate to express these rates on a mileage scale of rates covering all lengths of haul. By this application, Alegre seeks to replace Item 250 of its tariff with the rates attached hereto as Appendix A. These rates reflect the actual cost and productivity currently experienced by applicant. Applicant has prepared a full-scale analysis of its operating cost, and that analysis is included herewith as a part of the affidavit, referenced as Appendix B. Said Appendix B is an exhaustive narrative explanation of the methodology employed in the cost tables. The resulting total cost by length of haul is used for conversion to the scale of proposed rates in Appendix A.

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"Ordering Paragraph 1 in Decision 87-11-036 states as follows:

- '1. D.87-01-075 is modified as follows:
  - a. Ordering paragraph 3.b. is modified to read: All cement transportation rate reductions, and me-toos of all cement transportation rate reductions, are cancelled unless justified on the basis of AB4033 by December 31, 1987....'

"Because applicant desires to continue the rate reductions uninterrupted, we hereby request that the proposed rates become effective January 1, 1988. In addition, the proposed rates are designed to replace its present distance rates. Given the short time period between the effective date of Decision 87-11-036 and implementation of Ordering Paragraph 1, applicant has provided in Appendix B all of the evidence upon which it relied in seeking the relief sought. Applicant believes that, based upon the evidence provided, and its compliance with Ordering Paragraph 1, the Commission must authorize continuance of RR-1305, expressed in the rate format contained in Appendix A. Applicant will implement the proposed rates on January 1, 1988."

On February 26, 1988 the Commission staff filed its "Motion for an Ex-Parte Cease and Desist Order" (Motion). The motion requests the Commission issue an immediate cease and desist order, by ex-parte order directing Alegre to cease and desist from soliciting and transporting cement, in bulk or in package, at the rates proposed in the application until such time as the Commission approves Application (A.) 87-12-052. Attached to the motion is the sworn affidavit of Greg Thompson, an Associate Transportation Representative, which declares that the Commission has not acted upon A.87-12-052, that Alegre's official tariff on file does not contain proposed Item 205, First Revised Page 17, that Item 250 has not been cancelled and is still in effect, and that Alegre commenced transporting cement in bulk assessing rates in said proposed Item 205 commencing on January 5, 1988. During January 1988, Alegre transported a total of approximately 1,200 shipments for seven debtors.

On March 8, 1988, Alegre filed its "Reply in Opposition to Motion for an Ex-Parte Cease and Desist Order" (Reply). In its reply Alegre's argument can be summarized as follows:

1. The rates have been properly filed as prescribed by General Order 150-A, Rule 8.

2. Rule 8.2 (E) (1) of General Order (GO) 150-A provides four specific types of cement carrier rate filings which must be filed with the Truck Tariff Section and the Rule 7.1 (A) (2) filing made by Alegre is not included as among those which require filing with the Truck Tariff Section.
3. The filing was properly made with the Docket Office, was accepted, deemed filed and subsequently calendared.
4. The filing included the tariff page for continued reduced rates.

Alegre further argues that if the rates filed were believed to be improperly filed, the Commission Staff should have invoked Rule 9 of GO 150-A prior to filing the motion.

#### Discussion

The application filed by Alegre is entitled "Application to Continue Reduced Rates." Most applications are merely entitled application; as a matter of fact, the prior three applications filed by Alegre (A.86-10-009, A.83-06-033, and A.83-03-04) were entitled "Application." We cannot know what applicant had in mind by giving the application the expanded title; however, it may be that it was endeavoring to point out the time sensitivity because the RR-1305 rates had to be justified by December 31, 1987 or be cancelled. Paragraph IV of the application refers to rejustification of RR-1305. The last sentence of Paragraph IV states: "Given these circumstances, the Commission has determined that Alegre must rejustify Rate Reduction 1305 to be in conformance with new legislation, as well as its own regulations. It is clear that Alegre's represented intent in filing the application was to continue the reduced rates in RR-1305. It is also clear that in its desire to "continue" the use of RR-1305 Alegre attempted to file a new set of mileage rates that would replace the existing mileage rates in its tariff.

Alegre raised the following arguments in its reply. The rates authorized by Rate Reduction Filing RR-1305 are set forth in Item 250 of Alegre's Tariff No. 1. Item 205 of Alegre's tariff No. 1 contains Alegre's distance rates. Appendix A attached hereto contain reproductions of Item 205 and Item 250 of Alegre's tariff No. 1. Appendix B, attached hereto, contains a copy of Alegre's proposed rates filed in the first amendment to this application.

Decision 87-11-032 modified Ordering Paragraph 3.b. to read as follows:

"All cement transportation rate reductions, and me-toos of all cement transportation rate reductions, are canceled unless justified on the basis of AB 4033 by December 31, 1987."

This application was filed on December 28, 1987, three days before the deadline of December 31, 1987 for the justification required by the above ordering paragraph. The title of the application is clear that the filing was intended as a justification to continue the rates authorized by Rate Reduction Filing RR-1305, and replace them with distance rates in a revised Item 205. We can only surmise, based on all of the circumstances surrounding this application, that the Commission and its staff have been misled by the applicant either intentionally or unintentionally.

Rule 7 of GO 150-A is entitled "Requirements for Rate Changes and Rate Establishment." In its reply Alegre states that its rate filing is a filing which is covered by Rule 7.1 (A) (2). From this premise Alegre argues that a filing pursuant to Rule 7.1(A) (2) is not one of the reduced rate filings required to be filed with the Truck Tariff Section as required by Rule 8.2 (E). Alegre then argues that the rate filing was accepted, deemed filed, and subsequently calendared.

Rule 7.1 (A) (2) provides that:

"Applications to reduce a cement rate to a level lower than the rates of competing cement carriers shall be made in accordance with the Commission's Rules of Practice and Procedure. The application shall include operational and cost data showing that the rate is fully compensatory based solely upon the cost of transportation from origin to destination and return and the projected revenue to be derived from the requested rate. (See Appendix B for suggested revenue and cost information to be included in the showing.) Cement rates that are reduced in accordance with this rule may be authorized for no longer than one year.

EXCEPTION: Applications requesting renewal of a rate established pursuant to this paragraph shall make a showing to the satisfaction of the Commission, supported by operating results and cost data developed from the transportation to which the established rate was applicable, that the renewal is justified."

There is no provision that a rate filing pursuant to Rule 7.1 (A) (2) must be filed with the Truck Tariff Section because such filings must be made in accordance with the Commission's Rules of Practice and Procedure. Rates proposed in such applications can only be implemented after having been authorized by a decision of the Commission. A decision on the application has not issued, therefore the rates proposed by Alegre have not been authorized and cannot be assessed. The staff motion should be granted.

Having analyzed the application the question now arises "Has Alegre complied with Ordering Paragraph 3.b. of D.87-01-075 as modified by D.87-11-032? The paragraph reads as follows:

"All cement transportation rate reductions, and ne-toos of all cement transportation rate reductions, are canceled unless justified on the basis of AB 4033 by December 31, 1987."

Although represented to be an application to continue reduced rates, application in fact asked to establish rates lower than

rates of competing cement carriers. It was not a justification of existing rate reductions.

Findings of Fact

1. On December 28, 1987, Alegre filed the instant application which was entitled "Application to Continue Reduced Rates."

2. Pursuant to D.87-01-075, as modified by D.87-11-032 all cement transportation rate reductions were to be cancelled unless justified on the basis of AB 4033 by December 31, 1987.

3. The title of the application indicates it to be a justification of existing rates on the basis of AB 4033.

4. RR-1305 has not been cancelled.

5. The instant application proposes a new scale of distance rates and seeks cancellation of the rates authorized by RR-1305.

6. Alegre states in the application that it will implement the proposed rates on January 1, 1988.

7. On February 26, 1988, the Commission Staff filed a motion for ex-parte cease and desist order.

8. On March 8, 1988 Alegre filed its response to the Commission Staff's motion.

9. Alegre admits that the filing is a filing which is covered by Rule 7 (A) (2) of GO 150-A.

10. Filings made pursuant to Rule 7 (A) (2) of GO 150-A are filed in accordance with the Commission's Rule of Practice and Procedure.

Conclusions of Law

1. The motion filed by the Commission Staff should be granted.

2. The application filed by Alegre is not an application to justify the continuation of RR-1305 rates but rather an application within the meaning of Rule 7 (A) (2) of GO 150-A.

3. RR-1305 should be cancelled immediately.

4. The application should be set for hearing at a time and place to be set.

5. Since Alegre should discontinue use of the unauthorized rates as soon as possible, this order should be effective on the day after it is personally served upon the applicant.

INTERIM ORDER

IT IS ORDERED that:

1. Frank C. Alegre Trucking, Inc. shall cease and desist from assessing rates set forth in First Revised Page 17 of its Tariff No. 1 unless and until such rates are authorized by the Commission.

2. Within five days after the effective date of this order Frank C. Alegre Trucking, Inc. shall file an amendment to its tariff cancelling the rates set forth in Frank C. Alegre's Tariff No. 1 in Item No. 250 (Original Page 21).

The Executive Director shall have this order personally served upon applicant.

This order becomes effective one day after service.

Dated APR 27 1988, at San Francisco, California.

STANLEY W. HULETT  
President

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