

OCT 27 1988

Decision 88 10 058 OCT 26 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 Tucker )  
Transport, Inc., an Oregon corpo- )  
ration, and Pacific Coast Building )  
Products, Inc., dba Pacific Supply- )  
Redding, a California corporation. )

I.87-04-039  
(Filed April 22, 1987)

Richard C. Celio, Attorney at Law, for Pacific  
Coast Building Products, Inc., and Anna Tucker,  
for Tucker Transport, Inc., respondents.  
Alberto Guerrero, Attorney at Law, and Paul Wuerstle,  
for the Transportation Division.

### OPINION

This is an investigation on the Commission's own motion into the operations, rates, charges, and practices of Tucker Transport, Inc. (Tucker), an Oregon corporation, to determine whether it violated certain sections of the Public Utilities (PU) Code while transporting property over the public highways of this State for Pacific Coast Building Products, Inc. (Pacific), dba Pacific Supply-Redding. Pacific is a California corporation based in Sacramento, California. Tucker operated under a highway contract carrier permit issued on July 18, 1984.

The purpose of the investigation is developed in the ordering paragraphs from pages 1, 2, and 3 of the Order Instituting Investigation (I.), quoted below:

"IT IS ORDERED that an investigation on the Commission's own motion is hereby instituted into the operations, rates, charges, and practices of the respondents named herein for the purpose of determining:

- "1. Whether respondent Tucker has violated Sections 3664, 3667, and 3737 of the Public Utilities Code by having

assessed and collected less than the applicable rates for transportation of property as provided by the Commission's Transition Tariff 2, and whether the rates and charges assessed and collected by respondent Tucker for the transportation of shipments of cement violate the rate regulation program set forth in General Order 150.

- "2. Whether respondent Tucker failed to execute and file contracts with the Commission in accordance with General Order 147.
- "3. Whether respondent Tucker transported loads of cement without holding either a cement carrier certificate or a cement contract carrier permit in violation of Sections 1068.2 and 3542.2 of the Public Utilities Code.
- "4. Whether respondent Pacific, by any device, sought or obtained transportation of property at less than the applicable rates and charges, in violation of Section 3669 of the Public Utilities Code.
- "5. Whether respondent Tucker should be ordered to collect from respondent Pacific the difference between charges billed or collected and the applicable rates and charges.
- "6. Whether any or all of the operating authority of respondent Tucker should be canceled, revoked or suspended or as an alternative, a fine should be imposed pursuant to Section 3774 of the Public Utilities Code.
- "7. Whether in the event undercharges are found to exist, a fine in the amount of such undercharges should be imposed on respondent Tucker pursuant to Section 3800 of the Public Utilities Code.

- "8. Whether respondents should be ordered to cease and desist from any unlawful operations or practices.
- "9. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction."

The matter was heard in San Francisco on November 16, 1987, before Administrative Law Judge Edward G. Fraser. Submission was subject to the filing of briefs, which were received on February 12 and February 22, 1988. Testimony was provided by two staff witnesses, plus a witness from respondent Tucker and the traffic manager of respondent Pacific.

The investigation covered transportation performed between June 29, 1984 and January 29, 1985. One hundred and thirty-four counts (Exhibit 2) concern the transportation of building material (asphalt shingles, roofing, felt, concrete mix, wallboard, cast stone, bricks, tile, sand, etc.); 127 were hauled for \$250 per truckload, 6 loads were hauled for \$125, and 1 load for \$312. An additional 9 counts involve the transportation of cement for \$250 per truckload. There are undercharges on these 9 loads plus the allegation that the cement was transported without the necessary authority from the Commission. All loads were transported at less than half of the alleged tariff minimum rate.

Tucker operated as a highway contract carrier during the period under investigation. Tucker's highway contract carrier permit was issued on July 18, 1984 and was placed in voluntary suspension on June 23, 1986. Tucker drove a truck and hired two other drivers to operate three tractors and three semitrailers. Tucker's gross income for the last two quarters in 1984 and the first two quarters in 1985 is provided in Exhibit 3.

<u>Quarter</u>	<u>Gross</u>	<u>Calif. Gross</u>	<u>ICC Exempt</u>
3rd 1984	\$122,099	\$86,691	\$69,462
4th 1984	122,646	91,191	71,215
1st 1985	114,810	89,957	78,515
2nd 1985	110,774	60,211	52,882

The staff evidence is summarized as follows:

The investigation of Tucker extended from January through March 1985. A staff representative visited Mrs. Tucker in Medford, Oregon, and reviewed her records on the transportation under investigation. The records on interstate transportation provided by Tucker were excluded from the investigation. Separate envelopes were provided for every load picked up in California, if it was also delivered in California. Documents available from Tucker on each of these loads consisted of an invoice and a delivery receipt. The former had the date of shipment and the statement "freight from Napa to Redding, Delivery Tag #3763." The load hauled was not identified, the column "unit price" had no entry, and the last column had an entry of \$250, the amount charged to haul the load. The delivery receipts identified the load by a commodity description like "roofing," or "brick," or "asphalt singles," and a quantitative description of the number of pallets or packages transported. There were no weighmaster certificates and weights were not included on the available documents.

The staff witness testified that he reviewed the applicable Commission records and discovered that Tucker had no written contract on file during the period the transportation under investigation was performed, as required by Commission's General Order (GO) 147. Tucker filed a proposed contract in February of 1985 through a transportation representative, but it was rejected in March of 1985. It was later resubmitted and accepted. The witness testified that where a contract carrier has no contract on file as required by the GO, the commodity transported by the carrier determines the lawful tariff rate. Tucker was therefore

required to assess and collect applicable rates from Transition Tariff 2 (TT-2).

The witness stated that Tucker transported nine loads of cement (Parts 135 through 143, Exhibit 2) from Napa to Redding without first obtaining the necessary authority to transport cement from the Commission. There is no evidence in the Commission files that Tucker ever held authority as a cement carrier.

The witness testified that Pacific, the shipper in this proceeding, also holds operating authority from this Commission as a highway common carrier, and has been served a copy of TT-2, Distance Table 8, Exceptions Rating 1, and a complete mailing of all applicable GOs and other regulations that pertain to the operation of a truck line. Pacific would also receive all supplementary material as the original documents served were updated. It holds a certificate of public convenience and necessity which became effective on January 30, 1980, as well as a highway contract carrier permit, also dated January 30, 1980, and a dump truck permit issued in January of 1982.

On cross-examination the witness explained how interstate loads were identified. The origin and destination of the loads were noted on all invoices. If either terminus was not in California, the load was not included. There was nothing to indicate that the loads selected were from out of State. There was also no indication that any load was interstate from those who were interrogated to supplement the information in the records maintained by Tucker.

A Commission rate expert testified it was apparent Tucker had agreed to haul each truckload for a flat agreed-upon sum, usually \$250. The rates in the rate exhibit were obtained from the Commission's TT-2 and are based on Tucker's transportation records, plus additional information obtained by the staff representative. The total undercharges alleged amount to \$52,995.09 (Exhibit 2).

Mrs. Tucker testified that she and her husband incorporated in 1984 to haul interstate in Oregon, Utah, and California. Her husband obtained a California operating authority after meeting several California carriers who advised they charged a flat rate of \$250 per load.

She managed the office, kept the books, and dispatched trucks. Her husband made the decisions and drove a truck. The Commission representative first called her in January of 1985 when she and her husband had decided on a divorce. The business became dormant and in November of 1985 her husband signed over his interest in the corporation. She has provided no transportation since her husband left the business. Tucker had two trucks when her husband left, which were leased to other operators. The corporation is still in existence as the owner of the trucks, but the Tucker name is no longer on the trucks and liability insurance is maintained by the lessee.

Pacific's traffic manager testified that the corporation manufactures and distributes building supplies, which include cement, lumber, bricks, wallboard, asphalt, roofing, clay, pipe, and related items. Pacific has 14 manufacturing facilities, 22 supply outlets, and a trucking subdivision. The latter is used primarily for proprietary hauling on a gross business of more than \$300 million per annum. Public carriers are employed on about 15% of its hauling, totaling from \$100,000 to \$250,000 per year.

He testified that the rate charged by Tucker was legal when applied by the other carriers used by Pacific, who had obtained the necessary Commission authority to charge a flat rate per truckload (Exhibit 5). Tucker told Pacific representatives that the rate he was charging was legal and approved. Since the rate was already approved for the other two carriers, Pacific did not investigate further. Pacific stopped shipping by Tucker as soon as they realized that Tucker did not have authority to charge the rate.

The witness stated that bricks vary considerably in weight and every brick in a truckload would not weigh 5 pounds. He noted that Pacific purchased its cement during the period of this investigation from a company in Fernle, Nevada, which shipped the cement to Pacific in Perkins, California. It was then moved to Napa, California, where it was bagged or converted to blocks. The seller considered the cement in transit until it reached its final destination in California. It was shipped to Perkins, California and distributed from there. The witness admitted that Tucker's shipping documents were too sketchy to indicate where the loads originated.

Respondent Pacific's brief argues that the staff failed to establish that either respondent violated any tariff provisions or sections of the PU Code. It argues that all cement shipments were clearly interstate, as noted by Pacific's witness. To hold otherwise is to disregard the only testimony which explained where the loads originated. Pacific's second argument concerned the determination of weight on the shipment of building materials. Since all bricks do not weigh the same, the shipment weights allotted by the staff representatives are mere conjecture and are not suitable as a basis for determining rates to be charged for the shipments. Finally, it is alleged that Pacific is a building supply sales corporation, with subsidiary units, one of which is a carrier, transporting 85% for its parent company and 15% for the public. The carrier's operation and management are separate from that of the parent company as Pacific's witness testified. It is alleged that knowledge or guilt cannot be transferred to Pacific's carrier operation to justify a charge of violation of PU Code § 3669, which in effect states that no person or corporation "will seek to obtain, or obtain transportation for property for less than the minimum rates" authorized.

Mrs. Tucker filed a brief in which she reinforced her testimony and noted that her husband had told her the \$250 rate had

been approved for the other carriers and could therefore be adopted by Tucker. She stated that she tried to get some advice from the Commission staff, but received nothing but the mailed tariffs and supplements. The staff witness had testified that the Commission policy of advising new holders of operating authority was discontinued in late 1982 and was not available when Tucker started operating.

The staff brief emphasized that reliance on another to ascertain the correct rate does not authorize undercharges. (Sunny Sally, Inc. v Lom Thompson, Decision (D.) 57327 (1958).) Nor does an equitable defense or claim of unfairness excuse the Commission from ordering collection of the undercharges. (Mammoth Freight Lines, Inc. (1976) 80 CPUC 533.)

The staff brief argues that all evidence available at the time of investigation indicated that the movement of cement was intrastate in character. The carrier invoices listed in-state origins and destinations, and shipper employees who were questioned did not mention that loads were from out of state. Most important, Pacific has presented no shipping documents or invoices to show that the loads came from Nevada.

The staff brief applies the same logic to attack respondent's position on the determination of the weight of shipments. The staff representative had to obtain the correct weight to rate the shipment. The carrier's shipping documents did not include weights, so the information had to be obtained from those who either loaded or received the merchandise. The documents included the number of pallets or packages involved in each load. When a shipper employee gave the weight of a single item and how many items were in a pallet, or package, it was possible to compute the weight of the entire load.

Staff recommended that Pacific be ordered to cease and desist from violating PU Code § 3669. The staff reasons that Pacific is a carrier as well as a shipper and is experienced in



both fields of endeavor. Cases are cited to substantiate the position that a shipper can be ordered to cease and desist.

Discussion

The cement shipped in the current investigation is intrastate in character. The shipping documents indicate that all transportation rated was picked up and delivered in California. The first staff witness testified that no loads were included in the order instituting investigation if either the origin or destination of the load was out of the State of California. The carrier and shipper witnesses interrogated during the course of the staff investigation corroborated the information in the shipping documents.

The classification of a load as interstate depends on the final destination of the load as determined by the shipper at the time of the initial movement. (Southern Pacific Transport Co. v ICC (1977) 565 F 2d 615.) A shipment from the shipper to a customer that crosses state boundaries will be deemed interstate commerce if the final point of destination is known prior to initial shipment and if the continuity of the transportation is not destroyed before the shipment arrives at its ultimate destination. (Watkins Motor Lines, Inc. Ext., 67 MCC 120, 121.) If, however, the shipment comes to rest at a storage place along the way, then the interstate journey is considered ended and the subsequent movement therefrom is a separate movement in interstate commerce. (Gwin, White & Prince v S.P. Co., 172 ICC 543, 544.) The charging and collection of intrastate rates are also a factor in determining whether the transportation is intrastate or interstate. (Red Star Exp. Lines of Auburn, Inc., 87 MCC 105, 108.)

The cement shipments were transported from Fernle in Nevada to Perkins in California. It was then hauled to Napa, where it was bagged and used to manufacture bricks or blocks--according to Pacific's witness--and stored until it was sold. No testimony or documents were produced to show any intent other than to move

the cement from Nevada to Pacific at Perkins. The shipments were also rated under state regulation when transported by Tucker from Napa to Redding; a further indication that the parties considered the movement to be intrastate.

After the cement arrived in Napa, it was bagged, or converted to bricks or blocks, which materially changed its character and ended its interstate journey. (Arkadelphia Co. v St. Louis S.W. Ry. Co. (1918) 249 US 134, 151.) The staff method of determining the weight of the shipments was proper under the circumstances in this proceeding.

Pacific objected to the admission of Exhibit 1 claiming that the shipment weights totaled by the staff were inaccurate and without foundation. The staff started with the description "no. of pallets" found on all the delivery receipts. Shipper employees were then questioned about the number of bricks in a pallet and the weight of individual bricks. The weight of individual bricks (an estimate) was multiplied by the number of bricks in a pallet to obtain the weight of each pallet. The individual pallet was then multiplied by the number of pallets in the load, to obtain the total weight. Pacific was afforded the time and opportunity to refute the staff estimates by testimony or physical evidence, but it did not do so.

The carrier failed to put the weight of each load on the shipping documents as mandated in the tariff. This required the staff representative to obtain the information by the best method available, which he did. A contrary holding would reward carriers who fail to weigh shipments as required by the tariffs. Pacific's arguments are not persuasive.

Should Pacific be found in violation of § 3669 of the PU Code?

A shipper-carrier has been held in violation of PU Code § 3669 in past decisions. A lumber company which sold lumber and transported it to the consignee in its own vehicles as the carrier

violated § 3669 by hiring subhaulers and paying them less than the tariff rate. Paying less than the lawful rate was a device under the statute to obtain transportation at less than the lawful minimum rate. (Inv. of Heron Mills, Inc. (1962) 59 Cal PUC 507, 511.)

Pacific contracted for the transportation as a shipper. It is not involved as a carrier and its trucking operation is separate from the manufacturing, processing, and sales of building material. The mere fact that a shipper is also a common carrier does not in itself justify a finding of a violation of PU Code § 3669, absent a demonstration that Pacific's common carrier operation was somehow involved in the dispute at hand.

Should the shipper be ordered to cease and desist from violating tariff provisions and the PU Code?

The shipper failed to verify the carrier's authority to charge the deviated rate or to determine whether carrier even had such authority. Everyone involved in transportation is equally responsible for assessing and paying the lawful tariff rates. (Sunny Sally, Inc. v Lem Thompson, D.57327, dated September 10, 1958, in Case 5864.) The shipper should be ordered to cease and desist from unlawful practices.

Pacific argued that the payment of undercharges should be excused since all of the carriers hired by Pacific were authorized to charge the rate on which the undercharges are based, except for Tucker. Pacific states that it asked the owner of Tucker Trucking if Tucker could lawfully haul for the rate used by the other carriers and was advised in the affirmative. Thus, Pacific asserts it did everything within reason to operate lawfully and was involved in the undercharging only as a result of Tucker's deception.

Pacific quoted from the Acme Trucking Company decision as a basis for the proposition that the Commission can grant carrier relief from the collection of undercharges when special circumstances exist, such as a good faith belief on the part of the

carrier and the shipper that the rates assessed were the proper rates. The decision states the rule, then proceeds as follows:

"...however in exercising this authority--the Commission has the obligation and the duty to maintain the integrity of the established minimum rates and must give that the utmost consideration." (Acme Truck Co. (1965) 65 Cal PUC 20, 23.)

It is evident that undercharges can be forgiven only when the integrity of the minimum rates is not compromised thereby.

The Acme defense has already been considered in the Inv. of Cooper and Sons (D.86-04-060, dated April 16, 1986, in I.84-11-016) and the Inv. of Siskiyou West (D.86-08-071 in I.86-02-028).

Cooper was required to collect undercharges based on the published rates in the Commission's TT-2. These rates were applied to the commodity hauled by Cooper because Cooper had never adopted a separate tariff and had not filed for authority to transport steel for less than the TT-2. Cooper argued that other carriers were authorized rates much lower than the TT-2 rates and that he could have used these rates had he filed for "me too" authority to do so. It was then argued that (1) since the lower rates were commonly available from carriers authorized to charge them, that shippers had no reason to know that Cooper was not authorized to charge the same rates and (2) they gained no competitive advantage from using a carrier who was charging less than his authorized rate and therefore Cooper should not have to collect the undercharges from the shippers and pay them to the Commission as a fine. Adoption of these arguments would save the shippers \$35,000 in undercharges and guarantee that their transportation would be charged at the going rate for moving steel.

The Commission rejected these arguments stating that even though the collection of undercharges would require the shippers involved to pay substantially more for the transportation than the

rates charged by other carriers, an alternate holding was unacceptable because it would "establish a precedent measuring undercharges by the difference between the unlawful rate paid and the lowest lawful rate available from other certificated carriers." (D.86-04-060 page 9.) The decision reiterates the rule that a misunderstanding does not relieve the parties from assessing and paying the proper rate, and the law charges all parties with knowledge of the lawful rate, from which no one can deviate without prior Commission authority.

In the Siskiyou West investigation the carrier neglected to file a petition for authority to apply the rates authorized in RR 1199, which were substantially less than the rates in TT-2. The carrier was, therefore, required to apply the rates and rules of TT-2, which it failed to do. The documentation required by TT-2 was not provided and the tariff rates were disregarded.

A shipper protested the assessed undercharges, arguing that documentation is not required under RR 1199 and 10 other carriers lawfully used the RR 1199 rates, and the shipper assumed that Siskiyou West also had this authority. The shipper argued that adopting the RR 1199 rates was so easy that it was unfair to charge a shipper for the carrier's failure to take the necessary action. The Commission rejected the arguments of the shipper. The decision states that the rates charged by Siskiyou West were substantially lower than the rates charged by other carriers for the same transportation. This fact should have alerted the shipper to check the legality of the lower rates. (D.86-08-071 page 7.) Shippers are responsible for checking that a carrier is authorized to charge any rate offered which is less than the applicable tariff rate for the same transportation.

There is no basis for excusing the undercharges due from Pacific.

The final determination is the amount of the punitive fine. The staff recommended \$5,000.

Whether to impose a punitive fine and the amount of the fine depends on the extent of the carrier's wrong doing. A \$5,000 punitive fine has been imposed where the carrier transported free loads. (Riggs and Allen Transportation (1980) 3 Cal PUC 2nd 131, 133.) A \$3,000 fine has been levied on a carrier who transported free loads and altered its shipping documents to deceive the staff. (Dee Jay Transportation, Inc. (1977) 81 Cal PUC 649, 655, 656.) A recommended \$250 fine was not imposed where "there was no indication that the undercharges were willful or intended to undercut other potential competitors." (Jack Robinson dba Boyd Transportation (1969) 69 Cal PUC 563, 566.) In 1980 the Commission held that a punitive fine would not be imposed where there is no culpability on the part of the carrier. (Dolphin Transportation Inc. (1980) 4 Cal PUC 2nd 409.) A fine of \$1,000 was imposed in Cooper (prev. Cit.) and the Commission discussed the need for the presentation of additional evidence to support staff recommendations on the imposition of punitive fines.

Tucker operated three trucks out of Medford, Oregon, while performing the transportation under investigation. It ran its California operation on advice from other truckers. The husband who managed the company when the undercharges were incurred is long gone and a substantial punitive fine would punish the surviving wife, who is leasing out the remaining two trucks. Tucker no longer transports property for hire. Under the circumstances of this case, we feel that a punitive fine of \$750 is adequate and justified.

#### Findings of Fact

1. During the period from June 29, 1984 to January 29, 1985, respondent Tucker, a highway contract carrier, performed transportation for respondent Pacific at rates lower than those specified in Commission's TT-2, and in violation of the Commission's rate regulation program set forth in GO 150.

2. Tucker transported nine loads of cement for Pacific, without holding authority as a cement carrier.

3. Respondent Tucker failed to execute and file contracts with the Commission in accordance with GO 147.

4. All shipments of building materials and cement described in this investigation were intrastate transportation.

5. Tucker did not file a request for rate reduction or a "me-too" contract with the Commission for the transportation of building materials (Parts 1 through 134, Exhibit 2) during the period from June 1984 through January 1985.

6. The rates charged for transportation provided were flat rates and resulted in the collection of less than the applicable tariff charges.

7. Pacific paid Tucker less than the applicable rates and charges for the transportation of building materials and cement.

8. Undercharges for the transportation of building materials and cement during June 1984 through January of 1985 total \$52,995.09 (Exhibits 1 and 2).

9. The transportation rates applicable to the transportation described in this proceeding are contained in Commission's TT-2 or are subject to the regulatory program for cement transportation set forth in GO 150.

10. Tucker is not a resident of California and does not do business in this State.

11. The collection of undercharges by Tucker from Pacific, based upon the rates and rules of TT-2 and GO 150, is equitable and just and in accord with Commission policy.

12. Pacific did not willfully or intentionally violate the provisions of the PU Code or TT-2.

#### Conclusions of Law

1. Tucker has violated PU Code §§ 3664, 3667, and 3737 by assessing and collecting rates less than those named in TT-2.

2. Tucker has violated Commission's GO 147 by failing to execute and file contracts with the Commission as required by the order.

3. Tucker violated PU Code §§ 1068.2 and 3542.2 by transporting loads of cement without holding either a cement carrier certificate or a cement contract carrier permit.

4. Respondent Tucker should be ordered to collect \$52,995.09 in undercharges from Pacific, as the difference between charges billed or collected and the applicable rates and charges.

5. Tucker should pay a fine of \$52,995.09 under PU Code § 3800 and an additional fine of \$750 under PU Code § 3774.

6. Pacific did not violate the provisions of PU Code § 3669.

7. The motion of Pacific to dismiss I.87-04-039 should be denied.

8. All respondents should be ordered to cease and desist from any unlawful operations or practices.

Respondent Tucker Transport, Inc. should promptly take all reasonable actions to collect the undercharges. If necessary, it should file timely complaints according to PU Code § 3671. The Commission staff will investigate respondent's compliance. If it believes that Tucker Transport, Inc. or its attorney has not acted in good faith, the Commission will reopen this proceeding to determine whether to impose sanctions.

#### ORDER

IT IS ORDERED that Tucker Transport, Inc. shall:

1. Pay a fine of \$750 to this Commission under PU Code § 3774 on or before the 40th day after the effective date of this order.
2. Pay 7% annual interest on the fine, beginning when the payment is delinquent.



3. Pay a fine to this Commission under PU Code § 3800 of \$52,995.09 on or before the 40th day after the effective date of this order.
4. Take such action, as may be necessary, to collect the undercharges set forth in Finding 8, including timely legal action under PU Code § 3671.
5. Notify the Commission in writing upon collection.
6. Promptly take all reasonable steps to collect the undercharges.
7. 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.
8. Not charge or collect less than lawful rates approved by the Commission.
9. Respondents shall cease and desist from unlawful operations and practices.

The Executive Director shall have this order personally served upon respondent Tucker Transport, Inc. and served by mail upon all other respondents.

The order shall become effective for each respondent 30 days after order is served.

Dated OCT 26 1990, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
FREDERICK R. DUDA  
JOHN B. OHANIAN  
Commissioners

Commissioner G. Mitchell Wilk  
being necessarily absent, did  
not participate.

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

*[Signature]*  
Vicki Weisner, Executive Director

The witness stated that bricks vary considerably in weight and every brick in a truckload would not weigh 5 pounds. He noted that Pacific purchased its cement during the period of this investigation from a company in Fernle, Nevada, which shipped the cement to Pacific in Perkins, California. It was then moved to Napa, California, where it was bagged or converted to blocks. The seller considered the cement in transit until it reached its final destination in California. It was shipped to Perkins, California and distributed from there. The witness admitted that Tucker's shipping documents were too sketchy to indicate where the loads originated.

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the cement from Nevada to Pacific at Perkins. The shipments were also rated under state regulation when transported by Tucker from Napa to Redding; a further indication that the parties considered the movement to be intrastate.

After the cement arrived in Napa, it was bagged, or converted to bricks or blocks, which materially changed its character and ended its interstate journey. (Arkadelphia Co. v. St. Louis S.W. Ry. Co. (1918) 249 US 134, 151.) The staff method of determining the weight of the shipments was proper under the circumstances in this proceeding.

Pacific objected to the admission of Exhibit 1 claiming that the shipment weights totaled by the staff were inaccurate and without foundation. The staff started with the description "no. of pallets" found on all the delivery receipts. Shipper employees were then questioned about the number of bricks in a pallet and the weight of individual bricks. The weight of individual bricks (an estimate) was multiplied by the number of bricks in a pallet to obtain the weight of each pallet. The individual pallet was then multiplied by the number of pallets in the load, to obtain the total weight. Pacific was afforded the time and opportunity to refute the staff estimates by testimony or physical evidence, but it did not do so.

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2. Tucker has violated Commission's GO 147 by failing to execute and file contracts with the Commission as required by the order.

3. Tucker violated PU Code §§ 1068.2 and 3542.2 by transporting loads of cement without holding either a cement carrier certificate or a cement contract carrier permit.

4. Respondent Tucker should be ordered to collect \$52,995.09 in undercharges from Pacific, as the difference between charges billed or collected and the applicable rates and charges.

5. Pacific should pay a fine of \$52,995.09 under PU Code § 3800 and an additional fine of \$750 under PU Code § 3774.

6. Pacific did not violate the provisions of PU Code § 3669.

7. The motion of Pacific to dismiss I.87-04-039 should be denied.

8. All respondents should be ordered to cease and desist from any unlawful operations or practices.

Respondent Tucker Transport, Inc. should promptly take all reasonable actions to collect the undercharges. If necessary, it should file timely complaints according to PU Code § 3671. The Commission staff will investigate respondent's compliance. If it believes that Tucker Transport, Inc. or its attorney has not acted in good faith, the Commission will reopen this proceeding to determine whether to impose sanctions.

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