

Decision 88-11-007 NOV 9 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of the Commission's)
 own motion into the operations,)
 rates, and practices of Russell T.)
 Phillips, dba Russ Phillips Trucking,)
 Inc., a sole proprietorship, J. D.)
 Meat Packing Co., Damar)
 International, General Processors,)
 Inc., Griffith Meat Brokerage,)
 Glenn's Choice Meat Co., Inc., dba)
 Lido Products, P. A. Graziani Meat,)
 Richmond Wholesale Co., Salem)
 Packing Co., Scott Meat, Select Meat)
 Co., Inc. and Union Packing Company.)

Mailed

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OII 76
(Petition to Modify
filed August 5, 1988)

ORDER FURTHER AMENDING DECISION 93518

By Decision (D.) 93518, Russell T. Phillips (Phillips) was found to have transported fresh, frozen, and chilled meat for 10 shippers at less than rates authorized by the Commission. By Ordering Paragraphs 1 through 8 of the decision, Phillips was ordered to pay a punitive fine of \$5,000, to collect \$67,846.24 from the 10 shippers as undercharges due, and to pay the sum of \$67,846.24 to the Commission as an additional fine. Decision 93518 was modified by D.82-01-41, dated January 5, 1982. The later decision authorized Phillips to pay the \$67,846.24 fine in segments, as undercharges were collected.

The \$5,000 punitive fine has been paid. Phillips filed a petition on August 5, 1988, to request that D.93518, as amended, be further amended to reduce the fine due under Section 2100 of the Public Utilities (PU) Code from \$67,846.24 to \$22,811.55. The latter sum has been collected from 6 of the original 10 shippers and facts are alleged in the petition which indicate that the

remaining 4 are out of business and left no representatives or forwarding addresses. Phillips obtained the necessary judgments, but has not been able to collect on the accounts. Phillips further requests that the Commission find that all reasonable steps were taken to collect the undercharges and that further litigation or search for assets would be futile and would serve no useful purpose.

The Commission staff has recommended that the Petition to Modify be granted.

Findings of Fact

1. D.93518 ordered Phillips to pay a punitive fine of \$5,000 and a fine of \$67,846.24 under PU Code Section 2100.

2. The \$5,000 punitive fine was paid as ordered by the Commission.

3. D.82-01-41, dated January 5, 1982, authorized the payment of the \$67,846.24 fine in segments, as undercharges due were collected from the shippers.

4. Phillips has collected \$22,811.55 from 6 of the shippers and has paid this sum to the Commission as a part of the fine due.

5. The remaining 4 shippers are out of business and cannot be located. Phillips has obtained judgments against them but has not been able to enforce collection.

6. The remainder of the fine due under Section 2100 of the PU Code should be cancelled.

7. Phillips has done everything required to collect the undercharges and should not be required to take further action.

Conclusions of Law

1. The petition to modify should be granted.

2. Ordering Paragraph 3 of D.93518, as amended, should be modified to read as follows:

3. Pay a fine to this Commission under PU Code Section 3800 of \$22,811.55, receipt of which sum is hereby acknowledged.

ORDER

IT IS ORDERED that:

1. Ordering Paragraph 3 of D.93518 is modified to read as follows:

3. Pay a fine to this Commission under PU Code Section 3800 of \$22,811.55, receipt of which sum is hereby acknowledged.

2. In all other respects D.93518, as amended, shall remain in full force and effect.

This order is effective today.

Dated NOV 9 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
Victor Weisser, Executive Director
DW