

Decision 89 02 047 FEB 24 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Mailed

Investigation on the Commission's)
own motion into the operations,)
rates, and practices of NORTHERN)
REFRIGERATED TRANSPORTATION, INC.)
dba PUBLIC EXPRESS - PENGUIN)
TRUCKING, POPPY STATE EXPRESS,)
BRISK TRANSPORTATION, a Delaware)
corporation, and GENERAL FOODS)
CORPORATION, a Delaware corporation.)

FEB 27 1989

I.88-04-066
(Filed April 27, 1988)

Edward J. Hegarty, Attorney at Law, for
Northern Refrigerated Transportation, Inc.,
and Poppy State Express, and M. F.
Southward, for Brisk Transportation, Inc.,
respondents.
Lawrence O. Garcia, Attorney at Law, and Paul
Wuerstle, for the Transportation Division.

O P I N I O N

Northern Refrigerated Transportation, Inc. (Northern) and
Poppy State Express (Poppy) transport property over the highways
for compensation. Both hold highway common carrier certificates
and highway contract carrier and agricultural carrier permits.
Northern and Poppy are affiliated through ownership and management
and operate out of a common office in Ceres, California.

Brisk Transportation, Inc. (Brisk) is a wholly owned
subsidiary of General Foods Corporation (General), operating under
contract authority issued by the Interstate Commerce Commission.
Brisk obtains transportation services for its parent corporation,
General.

A staff investigation revealed that Northern and Poppy
may have violated Public Utilities Code §§ 458 and 494 in
transporting property for Brisk and General at other than the

applicable common carrier tariff rates; and that General and/or Brisk may have violated § 458 by obtaining transportation at less than the applicable rates and charges.

Accordingly, the Commission issued on April 27, 1988, its order instituting investigation (OII) to determine:

1. Whether Northern and Poppy violated PU Code §§ 458 and 494 by failing to assess rates and charges in compliance with their common carrier tariffs.

2. Whether General is the alter ego of Brisk and should, therefore, be held responsible for complying with all orders issued in this proceeding.

3. Whether General and/or Brisk have paid less than the applicable rates and charges for transportation services furnished by Northern and Poppy.

4. Whether Northern and Poppy should be ordered to collect from General and/or Brisk the difference between the charges billed and collected and the applicable rates and charges.

5. Whether a fine in the amount of any undercharges should be imposed upon Northern and Poppy under PU Code § 2100.

6. Whether General and/or Brisk have violated PU Code § 458 by obtaining or seeking to obtain transportation at less than the applicable rates and charges.

7. Whether Poppy has violated PU Code § 494 by assessing rates and charges greater than its common carrier tariff.

8. Whether Poppy should be ordered to refund to General and/or Brisk any proven overcharges.

9. Whether any or all of Northern's or Poppy's operating authority should be cancelled, revoked, or suspended, or, in the alternative, a fine should be imposed under PU Code § 1070.

10. Whether Northern and Poppy should be ordered to cease and desist from any unlawful operations or practices.

11. Whether General and/or Poppy should be ordered to cease and desist from any unlawful operations and practices.

12. Whether any other orders should be entered in the lawful exercise of the Commission's jurisdiction.

This investigation encompasses transportation performed by Northern, evidenced by freight bills listed on Attachment A to the OII, and transportation performed by Poppy, evidenced by freight bills listed on Attachment B to the OII.

Procedural Background

Copies of the OII were duly served upon the respondents and they appeared by counsel or representative at prehearing conferences held on June 3 and July 14, 1988, to discuss settlement of the case with the staff. Settlement discussions were held and agreements reached between the respondents and the staff that resolved all outstanding issues. These agreements are embodied in a document entitled Stipulation for Settlement (Exhibit 1), which is signed by counsel for Northern and Poppy, the representative of Brisk, and staff counsel and is dated December 22, 1988. In his letter tendering the stipulation to the administrative law judge staff counsel represents and requests that:

"General Foods Corporation, a named respondent, was determined not to be a debtor during the course of settlement negotiations. The staff requests that this stipulation be approved and adopted as a final disposition of all matters in I.88-04-066."

The stipulation¹ is brief and the substance of it is repeated in full, as follows:

1 This stipulation is not governed by Article 13.5 (Stipulations and Settlements) of the Rules of Practice and Procedure. Those rules apply only to "formal proceedings involving gas, electric, telephone, and Class A water utilities" (Rule 51.10) or in other proceedings where a party has moved to apply Article 13.5. No such motion has been made in this case.

"STIPULATION FOR SETTLEMENT"

"THE PARTIES TO THIS PROCEEDING now pending before the Public Utilities Commission desiring to avoid the expense, inconvenience and uncertainty attendant upon litigation of the issues in dispute between them have agreed upon a settlement of the said issues and desire to submit to the Public Utilities Commission this stipulation for approval and adoption as its final disposition of the matters herein.

"NOW, THEREFORE, THE PARTIES DO STIPULATE AS FOLLOWS:

"1. Respondent Northern Refrigerated Transportation, Inc. (Northern) agrees to pay a fine to be deposited with the Commission in the sum of two thousand five hundred dollars (\$2,500) pursuant to Section 1070 of the Public Utilities Code.

"2. Respondent Poppy State Express (Poppy) agrees to pay a fine to be deposited with the Commission of one thousand two hundred fifty dollars (\$1,250) pursuant to Section 1070 of the Public Utilities Code.

"3. Respondent Brisk Transportation, Inc., as debtor, agrees to pay \$7,274.21 to Respondent Northern in satisfaction of any claims that Northern might have regarding additional charges or undercharges for the transportation of property in this proceeding.

"4. Respondent Northern agrees that \$7,274.21 may be paid directly by respondent Brisk to the Public Utilities Commission pursuant to Section 2100.

"5. Respondent Brisk agrees to pay \$1,750.67 in satisfaction of any claims that Respondent Poppy might have regarding additional charges or undercharges for the transportation of property at issue in this proceeding.

"6. Respondent Poppy agrees that \$1,750.67 may be paid directly by Respondent Brisk to the Public Utilities Commission pursuant to Section 2100 of the Public Utilities Code.

"7. The staff of the Public Utilities Commission, specifically the Compliance and Enforcement Branch of the Transportation Division, agrees with the terms of this stipulation and recommends to the Commission that these terms be accepted, that this proceeding known as I.88-04-066 be terminated, that all respondents in I.88-04-066 shall henceforth not be subject to any future sanctions arising out of issues in this proceeding and be relieved of liability for the payment of any amounts other than those specifically agreed to be paid in this stipulation.

"8. The parties enter into this agreement freely and voluntarily.

"9. It is understood and agreed that the terms herein are binding when approved by the Commission."

Findings of Fact

1. General is not a debtor in this case.
2. The stipulation is reasonable.

Conclusions of Law

1. The stipulation should be adopted.
2. Northern should be ordered to pay a fine to the Commission of \$2,500 under PU Code § 1070.
3. Poppy should be ordered to pay a fine to the Commission of \$1,250 under PU Code § 1070.
4. Northern should be ordered to collect \$7,274.21 in additional charges or undercharges from Brisk and remit to the Commission.
5. Alternatively, Brisk may pay \$7,274.21 directly to the Commission under PU Code § 2100.

6. Poppy should be ordered to collect \$1,750.67 in additional charges or undercharges from Brisk and remit to the Commission.

7. Alternatively, Brisk may pay \$1,750.67 directly to the Commission under PU Code § 2100.

8. Northern remains responsible for pursuing and collecting the undercharges from respondent shippers if they do not pay them directly to the Commission.

9. Since the matter is resolved by stipulation, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. Northern Refrigerated Transportation, Inc. (Northern) shall forthwith pay to the Commission a fine of \$2,500.

2. Poppy State Express (Poppy) shall forthwith pay to the Commission a fine of \$1,250.

3. Northern shall forthwith collect from Brisk Transportation, Inc. (Brisk) and remit to the Commission the sum of \$7,274.21; or, in the alternative, Brisk shall forthwith remit that sum directly to the Commission.

4. Poppy shall forthwith collect from Brisk and remit to the Commission the sum of \$1,750.67; or, in the alternative, Brisk shall forthwith remit that sum directly to the Commission.

5. This investigation is dismissed as to General Foods Corporation.

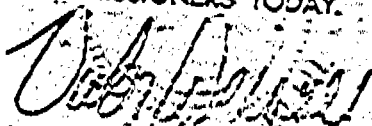
6. This investigation is terminated.

This order is effective today.

Dated FEB 24 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

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


Victor Wolcott, Executive Director