

Decision 89 04 067 APR 26 1989

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 Boyd Trucking Company and)
Bohemia, Inc., as Debtor Respondent,)
Respondents.)

I.88-05-010
(Filed May 11, 1988)

OPINION

Boyd Trucking Company (Boyd), a California corporation, is engaged in the business of transporting property over the public highways of this state for compensation. Respondent Boyd holds a highway contract carrier permit, highway common carrier certificate, and an agricultural carrier permit.

A staff investigation revealed that Boyd may have provided Bohemia, Inc., (debtor respondent), with transportation services over the public highways of this state for compensation at rates less than the applicable rates by failing to charge and/or collect the applicable rates in violation of Sections 494, 702, 3664, 3667, and/or 3737 of the Public Utilities (PU) Code.

Accordingly, on May 11, 1988 the Commission issued its order instituting investigation (OII) to determine:

1. Whether respondent Boyd in performing transportation for debtor respondent, has violated Sections 494, 702, 3664, 3667, and 3737 of the PU Code, or any of these sections, by failing to charge and/or collect the applicable rates and charges set forth in Transition Tariff 2, for transportation as a highway common carrier or, in the alternative, by failing to have on file with the Commission contracts for the provision of transportation services to debtor respondent.

2. Whether debtor respondent has paid less than the applicable rates and charges for transportation performed by respondent Boyd.
3. Whether, in the event that amounts less than the applicable rates and charges are found to have been charged, collected, received, or retained, a fine in the amount of those undercharges should be imposed on respondent Boyd, pursuant to Sections 2100 and 3800 of the PU Code, or either of these sections.
4. Whether respondent Boyd should be ordered to collect from debtor respondent the difference between the payments actually received and the applicable rates and charges, pursuant to Sections 2100 and 3800 of the PU Code, or either of these sections.
5. Whether any or all of respondent Boyd's operating authority should be cancelled, revoked, or suspended, or in the alternative, a fine should be imposed pursuant to Sections 1070 and 3774 of the PU Code, or either of these sections.
6. Whether respondent Boyd should be ordered to cease and desist from any and all unlawful operations and practices.
7. Whether debtor respondent has violated Section 3669 of the PU Code by obtaining or seeking to obtain transportation at less than the applicable rates and charges.
8. Whether a fine should be imposed upon debtor respondent pursuant to Section 3804.1 of the PU Code.
9. Whether any other orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

Copies of the OII were duly served upon the respondents who then met, by counsel or representative, with staff counsel to enter into the following settlement:

"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 Boyd Trucking Company agrees to pay to the Commission the sum of five thousand dollars (\$5,000) pursuant to Sections 1070 and 3774 of the California Public Utilities Code.
- "2. Respondent Bohemia, Inc. agrees to pay to the Commission the sum of four thousand dollars (\$4,000) pursuant to Section 3804.1 of the Public Utilities Code.
- "3. Respondent Bohemia agrees to pay \$43,505.79 in satisfaction of any claims that Respondent Boyd might have regarding additional charges or undercharges for the transportation of property at issue in this proceeding.
- "4. Respondent Boyd agrees that the \$43,505.79 amount is to be paid directly by Respondent Bohemia to the Public Utilities Commission pursuant to Section 2100 and 3800 of the Public Utilities Code.
- "5. The Staff of the Public Utilities Commission, specifically the Enforcement

and Compliance 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.88-05-010 be terminated, that the respondents Boyd and Bohemia 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 by them to be paid in this stipulation.

"6. The parties entered into this agreement freely and voluntarily.

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

Finding of Fact

The stipulation is reasonable.

Conclusions of Law

1. The stipulation should be adopted.
2. Boyd should be ordered to pay a fine to the Commission of \$5,000 under PU Code §§ 1070 and 3774.
3. Debtor respondent Bohemia should be ordered to pay a fine to the Commission of \$4,000 under PU Code § 3804.1.
4. Debtor respondent Bohemia shall pay directly to the Commission under PU Code §§ 2100 and 3800 the undercharges of \$43,505.79.

ORDER

IT IS ORDERED that:

1. The stipulation is adopted.
2. Boyd Trucking Company shall pay to the Commission a fine of \$5,000 within 10 days of the effective date of this order.

3. Bohemia, Inc. shall pay to the Commission a fine of \$4,000 within 10 days of the effective date of this order.

4. Bohemia, Inc. shall pay to the Commission as a fine, the undercharges of \$43,505.79 within 10 days of the effective date of this order.

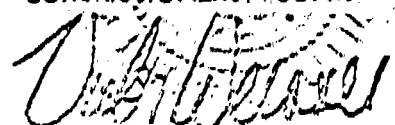
5. This investigation is terminated.

This order is effective today.

Dated APR 26 1989, at San Francisco, California.

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

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



Victor Weisser, Executive Director