

Decision 89 04 071 APR 26 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 NFI, Inc. of
California, dba Fleetline Express,
and Owens-Corning Fiberglas
Corporation, a Delaware corporation,

Respondents.

APR 26 1989

I.88-10-023

(Filed October 14, 1988)

OPINION

NFI, Inc., of California (NFI) transports property over the highways of this state for compensation. It operates under a highway common carrier certificate and a highway contract carrier permit, both issued by this Commission. Owens-Corning Fiberglas Corporation (Owens-Corning) is a shipper that used the services of NFI.

A staff investigation revealed that NFI may have violated Public Utilities (PU) Code §§ 3664, 3667, and 3737 by failing to assess its applicable contract rates and charges in transporting shipments for Owens-Corning. Accordingly, the Commission issued on October 14, 1988 its Order Instituting Investigation (OII) to determine:

1. Whether respondent NFI, in transporting property for respondent Owens-Corning, violated §§ 3664, 3667, and 3737 of the PU Code by failing to assess its applicable contract rates and charges.
2. Whether respondent NFI failed to assess the increased applicable rates required by Decision 86-04-045 against respondent Owens-Corning.
3. Whether respondent NFI filed a deficient exception to the mandatory increase which was therefore properly rejected by staff and thereafter failed to raise its contract

rate by 10% or to file a formal protest to the staff's rejection.

4. Whether respondent Owens-Corning has paid less than the applicable rates and charges for transportation performed by respondent NFI.
5. Whether in the event sums less than the applicable rates and charges are found to have been charged, collected, or received, a fine in the amount of such undercharges should be imposed upon respondent NFI pursuant to § 3800 of the PU Code.
6. Whether a penalty or fine should be imposed upon respondent Owens-Corning pursuant to § 3804.1 of the PU Code.
7. Whether respondent NFI should be ordered to collect from respondent shipper Owens-Corning the difference between the charges actually received and the applicable rates and charges.
8. Whether any or all of respondent NFI's operating authority should be canceled, revoked, or suspended, or as an alternative, a fine should be imposed pursuant to § 3774 of the PU Code.
9. Whether respondent NFI or Owens-Corning should be ordered to cease and desist from any unlawful operations or practices.
10. Whether any other orders which may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

After service of the OII on respondents NFI and Owens-Corning settlement discussions took place between respondents' counsel and staff counsel which culminated in the following stipulation for 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 NFI, Inc. of California (NFI) agrees to pay an amount to be deposited with the Commission in the sum of \$2,500 pursuant to Section 1070 of the Public Utilities Code.
- "2. Respondent Owens-Corning Fiberglas Corporation (OCF) agrees to pay an amount to be deposited with the Commission of \$1,500 pursuant to Section 3804.1 of the Public Utilities Code.
- "3. Respondent OCF agrees to pay \$27,232.20 to Respondent NFI in satisfaction of any claims that NFI might have regarding additional charges or undercharges for the transportation of property in this proceeding.
- "4. Respondent NFI and Respondent OCF agree that \$27,232.20 may be paid directly by Respondent OCF to the Public Utilities Commission pursuant to Section 2100.
- "5. 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.88-10-023 be terminated, that all respondents in I.88-10-023 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.

- "6. The parties enter 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, with the exception that under Paragraph 1 thereof, reference to § 1070 should be made to read § 3774 and with reference to Paragraph 4, reference to § 2100 should be made to read § 3800.
2. NFI should pay a fine to the Commission of \$2,500 under PU Code § 1070.
3. Owens-Corning should pay a fine to the Commission of \$1,500 under PU Code § 3804.1.
4. NFI should be ordered to collect \$27,232.20 in undercharges from Owens-Corning and to remit a fine in this amount to the Commission or, alternatively, Owens-Corning may pay the undercharges of \$27,232.20 directly to the Commission.

O R D E R

IT IS ORDERED that:

1. The stipulation is adopted.
2. NFI, Inc., of California shall pay to the Commission a fine of \$2,500 within 10 days after the effective date of this order.
3. Owens-Corning Fiberglas Corporation shall, within 10 days of the effective date of this order, pay to the Commission a fine of \$1,500.
4. NFI, Inc., of California shall collect from Owens-Corning Fiberglas Corporation and remit to the Commission the sum of

\$27,232.20 or, in the alternative, Owens-Corning Fiberglas Corporation may remit the sum directly to the Commission. In either case, payment shall be remitted 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.

[Signature]
Victor Weissert, Executive Director

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