

ORIGINAL

Decision 89 05 015 MAY 10 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of Otto Terkildsen, Inc., a California corporation, and of Basalite Block Co., a Division of Pacific Coast Building Products, Inc., a California corporation.

MAY 11 1989

I.88-12-026 (Filed December 19, 1988)

Otto Terkildsen, for Otto Terkildsen, Inc.; and Edward J. Hegarty, Attorney at Law, for Basalite Block Co.; respondents. Lawrence O. Garcia, Attorney at Law, for the Commission staff.

OPINION

Otto Terkildsen, Inc. (respondent Terkildsen), a California corporation, is engaged in the business of transporting property over the public highways of this State for compensation, holding a highway common carrier permit, a highway contract carrier permit, a dump truck carrier permit, and an agricultural carrier permit, all issued in 1984. Basalite Block Co., a division of Pacific Coast Building Products (respondent Basalite) is a shipper who used the services of respondent Terkildsen.

A staff investigation revealed that respondent Terkildsen may have violated the Public Utilities Code by operating without proper authority and by failing to assess and collect the applicable rates when transporting shipments for respondent Basalite. Accordingly, the Commission issued its Order Instituting Investigation (OII) to determine:

- 1. Whether respondent Terkildsen transported loads of cement without holding either a cement carrier certificate or a cement contract carrier permit in violation of

Sections 1068.2, 3621, and 352.2 of the Public Utilities Code.

2. Whether respondent Terkildsen has violated the bonding requirements of Section 3575 of the Public Utilities Code and of the Commission's General Order 102-H.
3. Whether respondent Terkildsen transported loads of cement without having either a contract or tariff on file in accordance with Section 493 and 3737 of the Public Utilities Code.
4. Whether respondent Terkildsen has violated Sections 3664, 3667, and 3737 of the Public Utilities Code by having assessed and collected less than the lowest applicable rates of competing cement carriers contained in West Coast Freight Tariff Bureau Local Freight Tariff No. 200, and whether the rates and charges assessed and collected by respondent Terkildsen for the transportation of shipments of cement violate the rate regulation program set forth in General Order 150 series.
5. Whether respondent Basalite, 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.
6. Whether respondent Terkildsen should be ordered to collect from respondent Basalite the difference between charges billed or collected and the applicable rates and charges.
7. Whether any or all of the operating authority of respondent Terkildsen should be cancelled, revoked or suspended or, as an alternative, a fine should be imposed pursuant to Section 3774 of the Public Utilities Code.
8. Whether in the event undercharges are found to exist, a fine in the amount of such undercharges should be imposed on respondent Terkildsen pursuant to

Sections 1070 and 3800 of the Public Utilities Code.

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

After service of the OII on respondents Terkildsen and Basalite, settlement discussions took place between respondents' representatives 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 to 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 Otto Terkildsen, Inc. (OTI) agrees to pay a fine to be deposited with the Public Utilities Commission ('Commission') in the sum of \$3,500 pursuant to Section 1070 of the Public Utilities Code. This fine is to be paid in five consecutive monthly installments of \$700 each, the first installment due 30 days after issuance of the Commission's final order approving and adopting the terms of this Stipulation For Settlement as its final disposition of the matters subject to this investigation.

"2. Respondent Basalite Block Co., a Division of Pacific Coast Building Products, Inc. (Pacific), as debtor, agrees to pay

\$7,511.39 to Respondent OTI in satisfaction of any claims that OTI may have regarding additional charges or undercharges for the transportation of property for Pacific and which is included within the scope of this investigation. Upon receipt of this \$7,511.39 by OTI, this Respondent shall pay the entire amount to the Commission as a fine pursuant to the provisions of Section 2100 of the Public Utilities Code.

"3. Respondent OTI and the Commission's Compliance and Enforcement Branch of the Transportation Division (Commission Staff) agree that the \$7,511.39 may be paid directly by Pacific to the Commission pursuant to Section 2100 of the Public Utilities Code in lieu of payment through Respondent OTI as specified in Paragraph 2 above. Further, the Commission Staff agrees that Pacific may pay the \$7,511.39 to the Commission in seven consecutive monthly installments, the first six of which shall be in the amount of \$1,200 each and the seventh in the amount of \$311.39. The first installment shall be due 30 days after issuance of the Commission's final order approving and adopting the terms of this Stipulation For Settlement as its final disposition of the matters subject to this investigation.

"4. 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. 88-12-026 be terminated, that all respondents in I. 88-12-026 shall henceforth not be subject to any future undercharges, sanctions, or fines arising from cement transportation performed by OTI for Pacific to and including the date of this Stipulation, and be relieved of liability for the payment of any amounts other than those specifically agreed to be paid in this stipulation.

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

"6. 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. Respondent Terkildsen should pay a fine to the Commission of \$3,500 under Public Utilities (PU) Code § 1070 in five consecutive monthly installments of \$700 each.
3. Respondent Basalite should pay a fine to the Commission of \$7,511.39 under PU Code § 2100, in seven consecutive monthly installments, the first six of which shall be \$1,200 each and the seventh \$311.39.

ORDER

IT IS ORDERED that:

1. The stipulation is adopted.
2. Otto Terkildsen, Inc. shall pay to the Commission a fine of \$3,500 in five consecutive monthly installments of \$700 each, commencing 30 days from today.
3. Basalite Block Co. shall pay to the Commission a fine of \$7,511.39 in seven consecutive monthly installments the first six of which shall be \$1,200 each and the seventh \$311.39, commencing 30 days from today.

4. This investigation is terminated.
This order is effective today.
Dated May 10, 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 Weisner, Executive Director

4. This investigation is terminated.

This order is effective today.

Dated MAY 10 1989, at San Francisco, California.

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