

Decision 90 01 011 JAN 9 1990

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operation,  
rates, and practices of Adams  
Trucking, Inc. and the individuals,  
partnerships, or corporations  
listed as Debtor Respondents in  
Attachment A,

Respondents.

I.87-01-035  
(Petition for Modification  
filed September 8, 1989)

OPINION FURTHER MODIFYING DECISION 87-08-033

On August 26, 1987, we issued Decision (D.) 87-08-033. Ordering Paragraph 3 of that decision, as modified by D.88-01-035, provides that:

"3. Adams Trucking, Inc. shall:

- "a. Pay a fine to this Commission under PU Code Section 2100 of \$49,627.17 in installments as undercharges are collected. Said installments to be paid within 5 days after the collection of the undercharges.
- "b. Examine its records for the period October 17, 1984 to January 14, 1987 for the purpose of ascertaining the undercharges set forth in Finding 4.
- "c. Within 90 days after the effective date of this order, complete the examination of its records required by Paragraph 3b of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.
- "d. Take such action, as may be necessary to collect the undercharges set forth herein together with those found after the examination required by Paragraph 3b of this order, including timely legal action under PU Code Section 737.

- "e. Notify the Commission in writing upon collection.
- "f. Promptly take all reasonable steps to collect the undercharges.
- "g. File with the Commission on the first Monday of each month a report of any undercharges remaining uncollected 60 days after the effective date of this order, specifying the action taken to collect them and the result of such action, until they have been collected in full, or until further order of the Commission. Failure to file any such monthly report within 15 days after the due date shall result in the automatic suspension of the operating authority until the report is filed.
- "h. Not charge or collect less than lawful rates approved by the Commission."

On September 8, 1989, Adams Trucking, Inc. (Adams) filed a Petition for Modification of D.87-08-033. The petition states that:

"On or about April 22, 1988, Adams filed a study showing undercharges of \$36,731.14 relative to shipments transported by Adams for Gypsum Drywall. On May 3, 1988, Adams, as required by the PUC, filed a civil complaint against Gypsum Drywall in the California Superior Court for Yolo County to toll the statute of limitations applicable to collection of undercharges. Upon being advised that Gypsum Drywall is a fictitious name used by L & W Supply Corporation, Adams on July 19, 1988 filed an amended complaint against L & W Supply Corporation, doing business as Gypsum Drywall ("L & W"). Said complaint was served on L & W Supply Corporation on August 3, 1988.

"Adams initially granted L & W an extension of time to and until September 14, 1988 to answer or otherwise plead in response to the undercharge complaint. After considerable dialogue between L & W and Adams, L & W offered to settle the civil suit for the sum of \$27,810.99. Upon receipt of said settlement offer Adams granted L & W an open extension of time to answer or otherwise plead in response to the undercharge complaint. The

settlement offer of L & W was later amended to \$27,109.01.

"The background of the settlement offer of L & W is as follows. Pursuant to L & W's request, Adams forwarded to L & W a copy of the joint compound study filed with the Commission showing undercharges pertaining to Gypsum Drywall of \$36,731.14. Following a thorough examination of Adams joint compound study, L & W determined that there was some uncertainty in the proper application of Adams tariffs and offered to settle the civil complaint for \$27,109.01. In this petition, Adams is requesting that the PUC approve the settlement of the Adams vs. L & W civil action for \$27,109.01."

By memorandum dated November 8, 1989, W. G. Waldorf, a Senior Transportation Representative employed in the Transportation Division's Compliance and Enforcement Branch advised the assigned Administrative Law Judge that "the staff does not object to the relief sought in the petition."

Findings of Fact

1. As a result of its review of records required by Ordering Paragraph 3b of D.87-08-033, Adams has filed a report of undercharges totaling \$36,731.14, for the account of L & W Supply Corporation (L&W), doing business as Gypsum Dry Wall.

2. Based on the report set forth in Finding 1 above, Adams has filed a civil suit in the Superior Court for the State of California in and for the County of Yolo seeking \$36,731.14 from L&W.

3. L&W has offered to settled the suit set forth in Finding 2 for the sum of \$27,109.01.

4. The Transportation Division staff has advised it has no objection to the proposed settlement.

Conclusion of Law

Adams should be authorized to settle the civil complaint with L&W for \$27,109.01.

ORDER

IT IS ORDERED that Adams Trucking, Inc. may settle the civil suit filed in the Superior Court of California in and for the County of Yolo against L & W Supply Corporation for the sum of \$27,109.01.

This order is effective today.

Dated JAN 9 1980, at San Francisco, California.

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

Commissioner Stanley W. Hulett,  
being necessarily absent, did  
not participate.

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

*Wesley Franklin*

WESLEY FRANKLIN, Acting Executive Director

*JB*